

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

MATTHEW COLWELL,

Plaintiff,

vs.

No. CIV-23-476-D

RYAN WALTERS, *in his official capacity as
Superintendent of Public Instruction and in his individual
capacity,* and

MATT LANGSTON, *in his official capacity as Chief
Policy Advisor, Administrative Services, and in his
individual capacity,*

Defendants.

MOTION TO DISMISS AND BRIEF IN SUPPORT

Defendants Ryan Walters and Matt Langston, in their respective official capacities,¹ move this Court to dismiss the above-captioned complaint for lack of standing. Fed. R. Civ. P. 12(b)(1).

ARGUMENT

In order to have standing for a legal claim, a plaintiff must have (1) “an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Shields v. Pro. Bureau of Collections of Maryland, Inc.*, 55 F.4th 823, 827 (10th Cir. 2022) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)).

¹ Separate counsel represents their individual capacities. The term “Defendants” refers solely to their official capacities in this motion.

Standing is required by Article III of the Constitution, and the Tenth Circuit reviews standing as a motion under Rule (12)(b)(1). *See id.*

A. Plaintiff lacks any injury or redressability for Count I.

Plaintiff cannot maintain Count I because he alleges no prospective injury to him. Plaintiff pleads that he was terminated. *See* Doc. 1, ¶ 11. Then, in Count I, Plaintiff asserts a facial challenge that Defendant Langston’s email is chilling the speech of current employees. *See id.* ¶¶ 20-21. He then particularly pleads that the email is “threatening the employment of persons with the Department.” *Id.* ¶ 22. Plaintiff is not a current employee. He faces no chilling of speech or threatened employment. Plaintiff attempts to assert the prospective rights of others without establishing a legal relationship to do so, and he therefore fails to plead any cognizable injury under Count I.

Plaintiff also cannot maintain Count I because he alleges no injury that can be redressed as to him. He seeks “only prospective declaratory and injunctive relief” against restraints on employee speech. *Id.* ¶¶ 19, 21. Such prospective relief would not apply to him because he is not an employee. *Id.* ¶ 11. Accordingly, he failed to plead any redressable injury to him under Count I.

Thus, this Court should dismiss Count I for lack of standing.

B. Leave to amend would be futile because Defendants are otherwise immune from suit.

For any relief other than prospective relief, Plaintiff cannot maintain a constitutional claim against Defendants. Defendants cannot be sued under 42 U.S.C. § 1983 in their official capacities. *See Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989). Assuming a cognizable state tort, Defendants also cannot be sued in their official capacities under the state

Government Tort Claims Act without proper notice. *See Harmon v. Craddock*, 2012 OK 80, ¶ 28. Such notice would require conceding that the acts were done within the scope of employment. *See id.* at ¶ 19 n.20. Plaintiff cannot maintain such a state law claim because he is asserting individual liability for acts outside the scope of employment. *See id.* Count II. Thus, Plaintiff's claim must be dismissed because he cannot address his asserted retrospective injuries in an official capacity suit.

CONCLUSION

This Court should dismiss Count I because Plaintiff lacks standing to assert that claim and cannot amend to assert any cognizable injury

Because dismissal of the only claim asserted against Defendants in their respective official capacities is proper, *see* Doc. 1 ¶ 23, the Court should fully dismiss Defendants in their respective official capacities from this case.

Respectfully Submitted,

s/ Bryan Cleveland
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