

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

[1] OKLAHOMA STATE CONFERENCE
of the NAACP

Plaintiff,

v.

[1] JOHN O’CONNOR, in his official
capacity as Oklahoma Attorney
General,

[2] DAVID PRATER, in his official
capacity as District Attorney of
Oklahoma County,

Defendants.

Case No.

COMPLAINT

Plaintiff Oklahoma State Conference of the National Association for the Advancement of Colored People Branches and Youth Units (“Oklahoma NAACP”), in its organizational capacity, sues Oklahoma Attorney General John O’Connor and Oklahoma County District Attorney David Prater in their official capacities.

INTRODUCTION

1. In the wake of and in direct response to racial-justice demonstrations that swept the nation and Oklahoma in the aftermath of the May 2020 murder of George Floyd, the Oklahoma legislature enacted HB1674, a law that chills Oklahoma NAACP’s efforts to mobilize Black people and their allies to advocate for racial justice.

2. HB1674 poses an existential threat to Oklahoma NAACP and other racial-

justice organizations. Through its unconstitutionally vague and overbroad terms, HB1674 subjects organizations to devastating fines because of their association with third parties who commit unlawful acts by building upon the foundation of Oklahoma's existing criminal-conspiracy statute, which is itself unconstitutionally vague and overbroad.

3. In addition, HB1674 criminalizes "standing" in streets or "approaching motor vehicles" in a manner that renders the street "impassable" or "passage unreasonably inconvenient." Not only do the vague and overbroad terms of this provision criminalize conduct that is protected by the First Amendment, but also the new crime is one of the offenses that triggers HB1674's draconian organizational-liability provision.

4. Because those provisions of HB1674 violate the First and Fourteenth Amendments to the U.S. Constitution, this Court should declare them unconstitutional, along with Oklahoma's unconstitutional definition of criminal conspiracy, and permanently enjoin Defendants from enforcing those provisions.

JURISDICTION

5. This action arises under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983. This Court therefore has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

6. In addition, this Court has jurisdiction to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

7. Venue is proper in the Western District of Oklahoma under 28 U.S.C.

§ 1391(b) because a substantial part of the events or omissions giving rise to the claims have occurred or will occur in this District and because Defendants are located in this District. Defendants are sued in their official capacities, and each of them resides in Oklahoma.

THE PARTIES

8. Plaintiff Oklahoma NAACP is a nonprofit, nonpartisan civil rights organization in Oklahoma. Founded in 1913, Oklahoma NAACP is the oldest civil-rights organization in Oklahoma, and serves as the umbrella organization for local branch units throughout the state. Oklahoma NAACP's members are predominately Black and other minority individuals. Its mission is to ensure the political, social, educational, and economic equality of all persons and to eliminate race-based discrimination.

9. Oklahoma NAACP has more than 1500 members. In addition to its adult branches, Oklahoma NAACP has junior youth councils (youths under the age of 13), youth councils (young adults under the age of 25), high school chapters, and college chapters in nearly every county in Oklahoma. All told, Oklahoma NAACP has 76 branches, college chapters, and youth councils across Oklahoma's 77 counties.

10. Oklahoma NAACP and its constituent branches, councils, and chapters have long organized and participated in protests, demonstrations, and public gatherings to advocate for racial justice. In fact, members of the Oklahoma City NAACP Youth Council in 1958 organized one of the civil rights movement's first sit-ins to protest

segregation at the Katz Drug Stores.¹

11. Because of HB1674's vague and overbroad terms, Oklahoma NAACP and its branches, councils, and chapters reasonably fear that they will be bankrupted if they continue to organize and participate in protests, demonstrations, and public gatherings. Specifically, Oklahoma NAACP fears that, due to the overbreadth and vagueness of HB1674's language, the organization will be deemed a "conspirator" with individuals who may be charged under Oklahoma's anti-riot or unlawful-assembly laws for their conduct at protests, demonstrations, or other public gatherings that Oklahoma NAACP organizes or in which it participates. Even though Oklahoma NAACP has no intention of violating Oklahoma's anti-riot or unlawful-assembly laws, being deemed a "conspirator" with individuals who are convicted of such crimes would expose Oklahoma NAACP to the devastating fines that HB1674 authorizes.

12. If HB1674 goes into effect, Oklahoma NAACP will be chilled from organizing or attending protests, demonstrations, and public gatherings and from associating with other organizations for fear that doing so will result in Oklahoma NAACP being deemed a "conspirator" under HB1674.

13. If HB1674 goes into effect, Oklahoma NAACP will also be forced to expend resources to train and educate Oklahoma NAACP units and members about potential liability under HB1674, and will need to arrange and pay for transportation to such training sessions, rather than focusing on civic engagement. Oklahoma NAACP

¹ Kelsey Schlotthauer, *60 Years Later, Oklahoma's Sit-In Movement Is Remembered*, *Oklahoman* (Aug. 12, 2018), <https://perma.cc/Y6W7-ZL5V>.

will need to consult with local and national lawyers to create appropriate guidance materials with respect to HB1674, and it will need to allocate time to disseminate these materials. When Oklahoma NAACP and its members take part in future protests, demonstrations, or public gatherings, the organization will need to allocate additional resources and volunteer time in attempts to ensure that these events hopefully comply with HB1674's vague and overly broad restrictions.

14. Defendant John O'Connor is sued in his official capacity as the Oklahoma Attorney General. He is "the chief law officer of the state." Okla. Stat. tit. 74, § 18. Oklahoma law charges Attorney General O'Connor with the duty "[t]o initiate or appear in any action in which the interests of the state or the people of the state are at issue" and to "take and assume control of the prosecution . . . of the state's interest" where he "deems it advisable." *Id.* § 18b(A)(3); *see also State, ex rel., Pruitt v. Steidley*, 349 P.3d 554, 558 (Okla. Ct. Crim. App. 2015) (overturning a district court order prohibiting the Attorney General from assuming control of a prosecution without the Governor's or State Legislature's authorization). Attorney General O'Connor is therefore responsible for enforcement of HB1674 and is an appropriate defendant in this case.

15. Defendant David Prater is sued in his official capacity as District Attorney of Oklahoma County. Oklahoma law charges each county's district attorney with the duty to "appear in all trial courts and prosecute all actions for crime committed in the district" that are not being prosecuted by the Attorney General. Okla. Stat. tit. 19, § 215.4. District Attorney Prater is therefore responsible for enforcement of HB1674 and is an appropriate defendant in this case.

ALLEGATIONS

Oklahoma NAACP's First Amendment Activities

16. Since its founding in 1913, Oklahoma NAACP and its members have exercised their First Amendment right to “peaceably . . . assemble[] and to petition the government for a redress of grievances” both on their own and in conjunction with other groups and individuals who advocate for racial justice. U.S. Const. amend. I.

17. A primary way in which Oklahoma NAACP and its members petition the government for a redress of grievances is through organizing or participating in peaceful demonstrations, protests, marches, parades, and similar public gatherings. These events are designed to influence lawmakers and educate the public by raising awareness of racial-justice and other civil-rights issues. These events are open to the public and often draw large numbers of participants who congregate in or march through city streets and sidewalks; chant, yell, and sing; and carry signs and flags. All such conduct is constitutionally protected.



18. When Oklahoma NAACP and its members peaceably assemble and petition the government for a redress of grievances in this manner, they sometimes incidentally violate certain Oklahoma laws. In part, this is because several Oklahoma laws criminally sanction conduct that is typical of demonstrations that Oklahoma NAACP organizes or in which it participates.

19. For example, it is a crime in Oklahoma to make loud noise. Okla. Stat. tit. 21, § 1362 (classifying as a misdemeanor “willfully or maliciously disturb[ing] . . . the peace and quiet of any city of the first class, town, village, neighborhood, family, or person by loud or unusual noise”). Oklahoma NAACP provides sound amplification (*e.g.*, PA systems or bullhorns) at demonstrations as a matter of course. As a result, demonstrators at some of the demonstrations that Oklahoma NAACP has organized or participated in may have violated § 1362.

20. It is also a crime in Oklahoma to trespass on private or public property. *Id.* § 1835 (classifying as a misdemeanor “willful[] or malicious[] enter[ing] [of] a garden, yard, pasture, or field of another . . . without permission by the owner or lawful occupant thereof”); *id.* § 1353 (classifying as a misdemeanor “intru[sion] or squat[ting] upon any lot or piece of land within the bounds of any incorporated city or town without license or authority from the owner thereof”); *see also, e.g.*, Okla. City Code of Ordinances Art. III, §§ 30-32, 30-33, 30-35, 30-35.2 (classifying as a municipal offense trespassing on private, city, or public property). Some demonstrations organized by Oklahoma NAACP or in which it participates are so large that, to avoid standing in public streets, Oklahoma NAACP members must stand in private parking lots, in possible violation of these

provisions.

21. Oklahoma law prohibits jaywalking. *See* Okla. Stat. tit. 47, § 11-503 (“Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway. . . . Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.”). Because of the volume of persons participating in demonstrations organized by Oklahoma NAACP or in which it participates, demonstrators may not always cross at crosswalks or may fail to yield the right-of-way to all vehicles upon the roadway.

22. Oklahoma law provides: “Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.” Okla. Stat. tit. 47, § 11-506(a). Some demonstrations organized by Oklahoma NAACP or in which it participates are so large that Oklahoma NAACP members walk in the street rather than on the crowded sidewalk in possible violation of § 11-506(a). In addition, when sidewalks are impassible because of crowds, some Oklahoma NAACP members who use wheelchairs may have no choice but to move into the street.

23. Oklahoma law also prohibits displaying certain unsanctioned flags or standards while on government or government-subsidized property. Okla. Stat. tit. 21 § 375 (classifying as a misdemeanor “plac[ing], hoist[ing], rais[ing], or display[ing] any flag, standard, colors or ensign,” other than enumerated exceptions “upon or over any publicly owned tax-supported property or premises except roads, streets, highways,

stadiums or arenas”).² Oklahoma NAACP demonstrators often carry or display the organizational banner at marches and demonstrations, including those held on government property such as the State Capitol grounds. Because Oklahoma NAACP’s banner is not among the flags that are permitted to be displayed on government property, this conduct may have violated § 375. *See Standard*, MERRIAM-WEBSTER’S ONLINE DICTIONARY, <https://perma.cc/5YHE-TQ62> (last visited August 28, 2021) (“a conspicuous object (such as a banner) formerly carried at the top of a pole and used to mark a rallying point especially in battle or to serve as an emblem”).

24. Given the centrality of racial-justice demonstrations to Oklahoma NAACP’s mission, the organization risks the relatively minimal fines that the aforementioned crimes authorize, rather than refrain from exercising its First Amendment rights.

25. In addition to engaging in conduct that might incidentally violate certain Oklahoma laws, Oklahoma NAACP and its members sometimes engage in civil disobedience—the “deliberate but nonviolent act of lawbreaking to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or

² Section 375 of Title 21 almost certainly violates the First Amendment because of its content- and viewpoint-discriminatory terms. *See, e.g., Brown v. Cal. Dep’t of Transp.*, 321 F.3d 1217, 1223–24 (9th Cir. 2003); *Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1569–70 (11th Cir. 1993); *see also* Okla. Stat. tit. 21, § 374 (classifying as a felony “carry[ing], caus[ing] to be carried, or publicly display[ing] any red flag or emblem or banner, indicating disloyalty to the Government of the United States or belief in anarchy or other political doctrines or beliefs, whose objects are either the disruption or destruction of organized government, or the defiance of the laws of the United States or the State of Oklahoma”).

morality”—as a component of their demonstration activity. BLACK’S LAW DICTIONARY 280 (9th ed. 2009).

26. For example, Oklahoma NAACP staged sit-ins at the State Capitol in support of a teacher’s union strike in 2018 and in response to the killing of Trayvon Martin and racially motivated murders in Tulsa in 2012. Those sit-ins, during which some members also laid down in front of the Capitol building and in Capitol hallways, may have violated an Oklahoma law that prohibits impeding access to government buildings. Okla. Stat. tit. 21, § 1379.1(A)–(B) (classifying as a misdemeanor “obstruct[ing] or impeded[ing] in any way[] passage through or within any state-owned or - leased building, office or facility” or “obstruct[ing] entrances and exits” of the same). The sit-ins also may have violated another Oklahoma law that prohibits individuals from refusing to leave property of the State Legislature in response to lawful orders from police officers. *Id.* § 302.1 (classifying as a misdemeanor “refus[al] to leave any part of the chambers, galleries or offices of either house of the State Legislature or building in which such chambers, galleries or any such office is located . . . upon a lawful order of the police or a security officer to disperse”).

27. On other occasions, Oklahoma NAACP has planned demonstrations knowing that participants might spill into public highways and streets, in possible violation of other state laws. *See* Okla. Stat. tit. 21, § 1754 (“Every person who shall knowingly and willfully obstruct . . . or cause to be obstructed . . . any public highway or public street of any town . . . shall be deemed guilty of a misdemeanor . . .”). Oklahoma NAACP has held demonstrations that have obstructed traffic in the vicinity of the State

Capitol. And, this year, Oklahoma NAACP members attended demonstrations organized by Black Lives Matter that obstructed traffic near the Oklahoma City Police Department's headquarters.

28. Other Oklahoma NAACP demonstrations have interrupted legislative proceedings with chants or other noise, in possible violation of state laws prohibiting disrupting state legislative activity. *See id.* § 302(3) (classifying as a misdemeanor “willfully disturb[ing], disrupt[ing] or interfere[ing] with any session, meeting or proceeding of either house of the State Legislature or any committee of either house of the State Legislature . . . by . . . [m]aking unreasonable noise”); *see also id.* § 1361 (classifying as a misdemeanor “willfully disturb[ing] or break[ing] up any assembly or meeting, not unlawful in its character, other than a religious meeting, public meeting of electors, or funeral”). For example, Oklahoma NAACP held demonstrations in support of raising the minimum wage and in solidarity with a teachers’ strike in 2018, during which demonstrators shouted during hearings and blocked the halls of the Capitol.

29. When engaging in civil disobedience in opposition to unjust laws, the creed of nonviolent resistance demands willing acceptance of the penalties associated with violating the law. As Dr. Martin Luther King, Jr., explained, “[o]ne who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty . . . in order to arouse the conscience of the community over its injustice.” Martin Luther King, Jr., *Letter from a Birmingham Jail* (1963), available at <https://perma.cc/6KCX-V4GC>.

30. But HB1674 fails to give Oklahoma NAACP fair notice as to whether engaging in civil disobedience will expose it to the devastating fines that the law

authorizes against organizations. *See infra* ¶¶ 37–47.

Oklahoma’s Existing Anti-Riot and Unlawful-Assembly Laws

31. Several longstanding Oklahoma laws criminally prohibit violence against persons or property that might occur in the context of a protest, demonstration, or public gathering. Although these laws are expansive, they pose little threat to the work of Oklahoma NAACP because the organization does not engage in, advocate, or condone violence.

32. In Oklahoma, it is a crime to participate in a riot, which is defined as “[a]ny use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together without authority of law.” Okla. Stat. tit. 21, § 1311; *see also id.* §§ 1312 (setting forth penalties for riot), 1313 (criminally prohibiting “rout,” which is attempted riot), 1315 (classifying rout as a misdemeanor).

33. An unusual provision also deems an individual to be participating in a riot if he or she is “present at any riot” and “refuses to obey” a “lawful[] command[] to aid . . . in arresting any rioter.” *Id.* § 1318. Thus, under Oklahoma law, an individual can be charged with riot—even if his or her conduct does not meet the statutory definition of riot set forth in § 1311—if he or she refuses to be involuntarily conscripted into the service of law enforcement.

34. “Incitement to riot” also is a crime in Oklahoma. *Id.* § 1320.2. That crime is broadly defined as “intending to cause, aid, or abet the institution or maintenance of a riot, to do an act or engage in conduct that urges other persons to commit acts of unlawful

force or violence, or the unlawful burning or destroying of property, or the unlawful interference with a police officer, peace officer, fireman or a member of the Oklahoma National Guard or any unit of the armed services officially assigned to riot duty in the lawful performance of his duty.”³ *Id.* § 1320.2; *see also id.* § 1320.4 (classifying incitement to riot as a felony).

35. Oklahoma law also prohibits “unlawful assembly,” which is defined under two different statutes. *Id.* §§ 1314, 1320.3.

a. Section 1314 defines “unlawful assembly” as whenever three or more people either (1) “assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof”; or (2) “assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm.” *Id.* § 1314; *see also id.* § 1315 (classifying unlawful assembly as a misdemeanor).

b. Separately, § 1320.3 defines “unlawful assembly” as either (1) “assembl[ing] or act[ing] in concert with four or more persons for the purpose of engaging in conduct constituting the crime of riot” or (2) “remain[ing] at the scene of a riot after being instructed to disperse by law authorities.” *Id.* § 1320.3; *see also* § 1320.5 (classifying violation of § 1320.3 as a felony).

³ Oklahoma’s incitement-to-riot statute is similar in many respects to a federal statute that two courts have held is overbroad under the First Amendment. *See United States v. Rundo*, 990 F.3d 709, 716–21 (9th Cir. 2021) (finding parts of the federal Anti-Riot Act overbroad and severing them from the statute); *United States v. Miselis*, 972 F.3d 518, 534–39, 542–43 (4th Cir. 2020) (same).

36. Related conduct that does not necessarily amount to riot, incitement to riot, or unlawful assembly also is criminally sanctionable under Oklahoma law. *See id.* §§ 1316 (classifying as a misdemeanor remaining at the site of a riot, rout, or unlawful assembly after a lawful dispersal order is issued), 1317 (classifying as a misdemeanor the failure to “retire” from an assembly constituted for a lawful purpose where three or more people engage in riotous conduct), 1319 (criminally sanctioning “resist[ance] [of] the execution of any legal process[] under circumstances not amounting to a riot”).

HB1674 Subjects Organizations to Devastating Fines Based on Third Parties’ Conduct

37. In April 2021, Governor Kevin Stitt signed into law HB1674, which expands in vague and overbroad terms Oklahoma’s already extensive statutory framework criminalizing riots and unlawful assemblies. 2021 Okla. Sess. Laws ch. 106 (to be codified at Okla. Stat. tit. 21, §§ 1312, 1320.11–.12). HB1674 is set to take effect on November 1, 2021. *Id.*

38. Section 3 of HB1674 provides that “[i]f an organization is found to be a *conspirator* with persons who are found to have committed any of the crimes described in Sections 1311 through 1320.5 and 1320.10 of Title 21 of the Oklahoma Statutes, the conspiring organization shall be punished by a fine that is ten times the amount of said fine authorized by the appropriate provision.” *Id.* § 3 (to be codified at Okla. Stat. tit. 21, § 1320.12) (emphasis added).

39. Thus, under HB1674’s terms, an organization deemed a “conspirator” with any individual convicted of riot, incitement to riot, unlawful assembly, or any of the other

enumerated crimes would be subject to a fine ten times the amount associated with the underlying crime. Moreover, § 3 is ambiguous as to whether it authorizes a single multiplied fine against an organization deemed a conspirator with multiple persons in a single conspiracy, or a multiplied fine for *every person* with whom the organization is deemed to have conspired.

40. The fines associated with convictions for the offenses underlying § 3 range from \$100 to \$10,000. Okla. Stat. tit. 21, §§ 9 (up to \$1,000 fine for felonies generally), 10 (up to \$500 fine for misdemeanors generally), 1319 (up to \$1,000 for resisting execution of legal process), 1320.4 (up to \$10,000 fine for incitement to riot), 1320.5 (up to \$5,000 fine for unlawful assembly); 2021 Okla. Sess. Laws ch. 106, § 1 (to be codified at Okla. Stat. tit. 21, § 1312(5)) (fine between \$100 and \$5,000 for unlawful obstruction of a public street). Thus, depending on how many individuals an organization is deemed to have “conspired” with, the organization could be subject to fines totaling millions of dollars for a single event.

41. HB1674’s organizational liability provision is especially threatening to Oklahoma NAACP and other racial-justice organizations because the term “conspirator,” as used in HB1674, is vague and overbroad.

42. Oklahoma’s Penal Code elsewhere provides a sweepingly broad and multipronged definition of “conspiracy.” Under Oklahoma law, a conspiracy exists whenever “two or more persons conspire” to (1) “commit any crime”; (2) engage in malicious prosecution or false arrest; (3) “[f]alsely . . . move or maintain any suit, action, or proceeding”; (4) engage in fraud; or (5) “commit any act injurious to the public health,

to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws.” *Id.* § 421(A).

43. HB1674 does not specify which of these various categories of conspiracies triggers potential organizational liability. Moreover, although the Act designates enumerated crimes (riot, incitement to riot, unlawful assembly, etc.) for which an organization deemed a “conspirator” can be held vicariously liable, it does not make clear what sorts of crimes trigger organizational liability. Specifically, HB1674 is vague as to whether organizational liability is triggered only when an organization conspires to commit the crimes enumerated in the statute, or whether it is triggered by conspiring to commit *any* type of crime—including minor and unrelated offenses—with individuals who independently and unforeseeably also violate Oklahoma’s anti-riot or unlawful-assembly laws.

44. HB1674 therefore could potentially subject an organization to severe fines if it is found to have conspired with individuals to commit minor crimes such as making loud noise, jaywalking, or displaying unsanctioned flags on government property, *see supra* ¶¶ 19–23, if any of those individuals is also found to have violated one of the anti-riot or unlawful-assembly laws. This aspect of HB1674 is particularly threatening to Oklahoma NAACP because the organization and its members sometimes may incidentally violate minor Oklahoma laws or engage in civil disobedience as part of their First Amendment activities. *See supra* 18–28.

45. Moreover, to the extent that the term “conspirator” as used in HB1674 incorporates by reference Oklahoma’s definition of “conspiracy” that applies to “act[s]

injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws,” Okla. Stat. tit. 21, § 421(A)(5), those terms also are vague and overbroad. *See Musser v. Utah*, 333 U.S. 95, 96–97 (1948) (vacating on vagueness grounds convictions under an identically worded conspiracy statute that the court held “would seem to be warrant for conviction for agreement to do almost any act which a judge and jury might find at the moment contrary to his or its notions of what was good for health, morals, trade, commerce, justice or order”).

46. In short, there is no telling what conduct might expose Oklahoma NAACP to HB1674’s draconian fines, and the law’s broad language threatens to encompass a substantial amount of expressive activity protected by the First Amendment. The law therefore poses an existential threat to the organization.

47. The threat that HB1674 poses to Oklahoma NAACP is not hypothetical. Last year, for example, Oklahoma County District Attorney David Prater charged several individuals with riot and incitement to riot for their conduct at racial-justice demonstrations in which Oklahoma NAACP participated in the aftermath of the May 2020 murder of George Floyd.⁴ If HB1674 takes effect, Oklahoma NAACP easily could be subjected to the law’s severe fines, even though the organization does not engage in or conspire to commit riot or related offenses.

⁴ Nolan Clay, *More OKC Protesters Charged with Rioting*, *Oklahoman* (June 30, 2020), <https://perma.cc/G8R3-GNQH>; Nolan Clay, *Some OKC Protesters Charged with Terrorism, Rioting, Assault*, *Oklahoman* (June 27, 2020), <https://perma.cc/828Y-584Z>.

B. HB1674 Creates a Vague and Overbroad Street-Obstruction Crime

48. In addition to HB1674’s organizational-liability provision, the law also creates a new crime that prohibits “unlawful obstruct[ion] [of] the normal use of any public street, highway, or road.” 2021 Okla. Sess. Laws ch. 106, § 1. The street-obstruction provision prohibits (among other conduct) merely “render[ing] *impassible or . . . unreasonably inconvenient*” “the normal use of any public street, highway or road . . . by standing or *approaching* motor vehicles thereon.”⁵ *Id.* (emphasis added). The provision provides no definition of the terms “approach” or “unreasonably inconvenient.” And, although the provision defines “obstruct” in part to mean “to render impassable,” that definition provides no measure of time during which the street must actually be impassable before someone violates the provision. Five minutes, five seconds, or some other temporal interval might all trigger a violation.

49. Indeed, during the floor debate on HB1674, members of the Oklahoma

⁵ The full text of § 1 of HB1674 is as follows:

Every person who shall unlawfully obstruct the normal use of any public street, highway or road within this state by impeding, hindering or restraining motor vehicle traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of motor vehicles or pedestrians traveling thereon shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for a term not exceeding one (1) year, or by a fine of not less than One Hundred Dollars (\$100.00) and not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. In addition, the person shall be liable for all damages to person or property by reason of the same. As used in this paragraph, “obstruct” means to render impassible or to render passage unreasonably inconvenient or hazardous.

2021 Okla. Sess. Laws ch. 106, § 1.

Legislature recognized the difficulties of deciphering precisely what conduct might trigger the street-obstruction provision. One of the principal authors of the law, Senator Rob Standridge, struggled to articulate a scenario that might trigger liability under the prohibition on obstruction by “standing” in a public street, highway, or road, but admitted that mere jaywalking might be sufficient. HB1674 Floor Debate, Okla. Senate, Reg. Sess., 10:17:26–10:21:26 (Apr. 14, 2021), <https://oksenate.gov/live-chamber>. When pressed on what might render “reasonably inconvenient” the normal use of a public street, highway, or road, Senator Standridge stated only that it is a “high standard,” but could not elaborate further. *Id.* at 10:20:57–10:21:26

50. At demonstrations organized by Oklahoma NAACP or in which it participates, demonstrators often “stand” in streets. Depending on the size of a demonstration or its location, participants may have no alternative but to stand in the street, even if the aim of the demonstration is not to block traffic or to use the streets as a forum for speech. Indeed, some of the most iconic moments in the history of American social movements have involved demonstrators standing in streets.



51. Members of Oklahoma NAACP also on occasion walk toward cars during demonstrations to distribute leaflets or to share their message with motorists. Because HB1674 does not define the term “approach,” it provides no notice as to how close demonstrators can be to a vehicle before they are potentially in violation of the law.

52. No doubt, some people would find it “unreasonably inconvenient” for demonstrators to walk toward or to come near their vehicles or to be delayed by the presence of some demonstrators in the street. For those opposed to the message being presented by those demonstrators, even a short delay in their commute could be considered inconvenient. Assuredly, going about one’s day untroubled by the sight of demonstrators and without being confronted by the often-distressing truths that demonstrations expose is more convenient than the alternative. HB1674 provides no standard governing what quantum of inconvenience meets the threshold of being “unreasonable” and therefore criminal. And because of the indeterminacy of the phrase “unreasonably inconvenient,” the new traffic-obstruction crime necessarily sweeps within its ambit conduct that is protected by the First Amendment.

53. Moreover, “[p]ublic streets . . . are quintessential public fora.” *McCraw v. City of Oklahoma*, 973 F.3d 1057, 1068 (10th Cir. 2020). Because Section 1 can be applied to restrict First Amendment activity in public streets, it is valid only if it is “narrowly tailored to serve a significant governmental interest.” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989)).

54. Section 1 of HB1674 is not narrowly tailored to serve any significant governmental interest because its vague and overbroad terms can apply to peaceful demonstration activity that poses no threat to public safety. Indeed, rather than serving a significant governmental interest, Section 1 of HB1674 restricts First Amendment activity even if that activity amounts to nothing more than an “inconvenien[ce]” to a single motorist.

55. Beyond the direct threat that the new traffic-obstruction crime poses to Oklahoma NAACP and its members, the provision also is one of the crimes that can trigger organizational liability under HB1674. *See* 2021 Okla. Sess. Laws ch. 106, § 3 (enumerating Okla. Stat. tit. 21, § 1312 among the provisions that trigger organizational liability). Thus, if individuals at a protest, demonstration, or public gathering that Oklahoma NAACP organizes or in which it participates “stand” in the street or “approach” vehicles in an “unreasonably inconvenient” manner, Oklahoma NAACP could be liable for up to \$50,000 for every demonstrator who stands in the street or who approaches a vehicle. *See id.* § 1 (making violations of the new subsection punishable by fines between \$100 and \$5,000); *id.* § 3 (ten-times liability provision).

CAUSES OF ACTION

Count I

Due Process Clause of the Fourteenth Amendment to the U.S. Constitution (42 U.S.C. § 1983)

56. Oklahoma NAACP realleges and incorporates by reference all allegations set forth in paragraphs 1 through 55 above.

57. The Fourteenth Amendment to the U.S. Constitution provides, in relevant part, that “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

58. A state “violates this guarantee by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015).

59. The Due Process Clause’s prohibition against unconstitutionally vague laws applies “not only to statutes defining elements of crimes, but also to statutes fixing sentences.” *Id.* at 596.

60. Section 3 of HB1674 is unconstitutionally vague because it subjects an organization to devastating fines if it is deemed a “conspirator” with individuals who commit riot, incitement to riot, unlawful assembly, or related crimes. 2021 Okla. Sess. Laws ch. 106, § 3. The law neither provides a definition of “conspirator” nor specifies whether HB1674’s organizational-liability provision is triggered when an organization is found to have conspired with individuals to commit minor crimes unrelated to riot or unlawful assembly.

61. Moreover, it is unclear whether § 3 incorporates Oklahoma Penal Code’s multiple definitions of “conspiracy,” Okla. Stat. tit. 21, § 421(A), the lattermost of which is identical to a conspiracy statute that the Supreme Court found unconstitutionally vague, *Musser*, 333 U.S. at 96–97; *see also* Okla. Stat. tit. 21, § 421(A)(5) (defining as a conspiracy “two or more persons conspir[ing] . . . [t]o commit any act injurious to the

public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws”).

62. In addition, § 1 of HB1674 is unconstitutionally vague because it criminally sanctions “standing” in the street or “approaching motor vehicles” in a manner that renders “normal use of any public street, highway, or road . . . impassable or . . . passage unreasonably inconvenient.” 2021 Okla. Sess. Laws ch. 106, § 1. The statute provides no standard by which to distinguish conduct that is sufficiently “inconvenient” to warrant criminal sanction from lawful conduct, and it does not specify how close an individual may be to a vehicle before he or she is deemed to have “approach[ed]” it or the amount of time a street must be “impassable” before a violation of the law occurs.

63. In these respects, §§ 1 and 3 of HB1674, as well as § 421(A)(5) of Title 21, fail to give fair notice as to the conduct that they punish. Through their standardless and indeterminate terms, §§ 1 and 3 also invite arbitrary and discriminatory enforcement against Oklahoma NAACP and other racial-justice organizations, as well as their members.

64. If §§ 1 and 3 of HB1674 go into effect, they will chill Oklahoma NAACP’s First Amendment activities because the organization and its members reasonably fear that continuing to organize and participate in protests, demonstrations, and public gatherings in a nonviolent manner will result in the organization being subjected to HB1674’s draconian fines, and they will divert the organization’s resources toward training and education designed to minimize as much as possible violations of the law. For the same reasons, to the extent § 3 incorporates § 421(A)(5)’s unconstitutionally vague terms,

Oklahoma NAACP's First Amendment activities will be even further chilled.

Count II

First Amendment to the U.S. Constitution (42 U.S.C. § 1983)

65. Oklahoma NAACP realleges and incorporates by reference all allegations set forth in paragraphs 1 through 55 above.

66. The First Amendment to the U.S. Constitution, applicable to the states through the Fourteenth Amendment, prohibits the State of Oklahoma from, in relevant part, “abridging the freedom of speech . . . or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

67. A law is facially invalid under the First Amendment if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008)).

68. Section 421(A)(5) of Title 21 can be applied to a substantial amount of activity that is protected by the First Amendment. Because it defines as a conspiracy an “agreement to do almost any act which a judge and jury might find at the moment contrary to his or its notions of what was good for health, morals, trade, commerce, justice or order,” it encompasses virtually any demonstration that a prosecutor finds objectionable. *Musser*, 333 U.S. at 97.

69. Moreover, because § 3 of HB1674 incorporates by reference § 421(A)(5)’s overbroad definition of conspiracy, the new provision authorizes draconian fines for the

vast swath of activity protected by the First Amendment that the conspiracy definition captures.

70. Section 1 of HB1674 also can be applied to a substantial amount of activity that is protected by the First Amendment. For example, demonstrators could be prosecuted under the provision for standing in the street in a manner that inconveniences motorists by relatively briefly delaying traffic. Demonstrators could also be prosecuted under the provision for walking toward vehicles to distribute leaflets or to engage motorists in conversation if those motorists would prefer not to interact with demonstrators.

71. Section 1 also is unconstitutional because it is not narrowly tailored to serve any significant government interest in a manner that could justify its restrictions on First Amendment activity in public streets, which are “quintessential public fora.” *McCraw*, 973 F.3d at 1068.

72. Moreover, because § 1 is one of the offenses that triggers HB1674’s organizational-liability provision, the NAACP of Oklahoma and other organizations could be subjected to devastating fines based on the application of § 1 to conduct that is protected by the First Amendment.

73. If HB1674 goes into effect, it will chill the First Amendment activities of Oklahoma NAACP, its members, and others by making them liable to criminal prosecution for organizing and participating in peaceful protests, demonstrations, and other public gatherings and by increasing § 421(A)(5)’s chilling effect. The law will further injure Oklahoma NAACP by diverting the organization’s resources toward

training and education designed to minimize as much as possible violations of the law.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing facts and arguments, Oklahoma NAACP respectfully requests that this Court:

- 1) Declare that §§ 1 and 3 of HB1674 and § 421(A)(5) of Title 21 are unconstitutional;
- 2) Preliminarily and permanently enjoin enforcement of §§ 1 and 3 of HB1674 and § 421(A)(5) of Title 21 in their entirety;
- 3) Award Oklahoma NAACP's costs of suit and reasonable attorneys' fees and other expenses under 42 U.S.C. § 1988; and
- 4) Grant such additional relief as the interests of justice may require.

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**Application for admission pro hac vice forthcoming*

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