IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

LESSIE BENNINGFIELD RANDLE; VIOLA FLETCHER; HUGHES VAN ELLISS, SR.; HISTORIC VERNON A.M.E. CHURCH, INC.; LAUREL STRADFORD; ELLOISE COCHRANE-PRICE; TEDRA WILLIAMS; DON M. ADAMS; DON W. ADAMS; STEPHEN WILLIAMS; AND THE TULSA AFRICAN ANCESTRAL SOCIETY,	)	
Plaintiffs,	)	
vs.	)	Case No.: CV-2020-01179
	)	Judge Caroline Wall
CITY OF TULSA; TULSA REGIONAL CHAMBER; TULSA DEVELOPMENT AUTHORITY; TULSA METROPOLITAN AREA PLANNING COMMISSION; BOARD OF COUNTY COMMISSIONERS FOR TULSA COUNTY, OKLAHOMA; VIC REGALADO, IN HIS OFFICIAL CAPACITY AS SHERIFF OF TULSA COUNTY; and OKLAHOMA MILITARY DEPARTMENT,	)	
Defendants.	)	

TULSA REGIONAL CHAMBER'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS (SUBJECT MATTER JURISDICTION)

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TULSA REGIONAL CHAMBER'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS (SUBJECT MATTER JURISDICTION)

Defendant Tulsa Regional Chamber, Inc. (the "Chamber"), under 12 O.S. § 2012(B)(1), submits its Reply in Support of its Amended Motion to Dismiss for lack of subject matter jurisdiction.

INTRODUCTION

Plaintiffs-Descendants and the Church rely on vague allegations and inapt legal arguments that fail to fulfill their burden of showing they have standing to sue the Chamber for wrongs in the 1921 Massacre and urban renewal in the 1960s and 1970s. Plaintiffs-Descendants and the Church concede they did not suffer concrete, direct, and personal injuries from the Chamber's alleged conduct. Instead, they cite only the derivative impact from injuries to their ancestors or, in the case of the Church, its members of a preceding unincorporated organization. Plaintiffs-Descendants and the Church likewise cannot meet their burden of showing the causation requirement for standing by mixing the alleged discrete conduct of the Chamber with that of other defendants. Nor do the intrusive remedies sought against the Chamber provide any assurance of a cure. Finally, Plaintiffs' claims against the Chamber are political questions that only the political branches can appropriately address. The Chamber asks this Court to dismiss Plaintiffs' Amended Petition for lack of subject matter jurisdiction.

ARGUMENT AND AUTHORITIES

Standing requires Plaintiffs to show three requirements: (1) a legally protected interest which must have been injured in fact – *i.e.*, suffered an injury which is actual, concrete, and not conjectural, (2) a causal nexus between the injury and the complained-of conduct, and (3) a likelihood, as opposed to mere speculation, that the injury is capable of being redressed by a favorable court decision. *Smith v. Lopp*, 2020 OK CIV APP 24 (quoting *Murray Cnty. v.*

Homesales, Inc., 2014 OK 52, ¶ 17, 330 P.3d 519). Also, Plaintiffs' claims cannot seek resolution of a political question without guidance from the political branches of government. *OEA v. State of Oklahoma*, 2007 OK 30, ¶ 19, 158 P.3d 1058, 1065.

Plaintiffs fail to meet any of these requirements, and this Court should dismiss Plaintiffs' Amended Petition.

PROPOSITION I: PLAINTIFFS DO NOT HAVE STANDING TO SEEK EQUITABLE REMEDIES WITHOUT SPECIFIC ALLEGATIONS OF CONCRETE, FUTURE HARM BY THE CHAMBER

In their Responses to the Motions to Dismiss, Plaintiffs present for the first time their position that they seek only equitable relief in this lawsuit. This position creates new, insurmountable hurdles to proving they have standing. According to Plaintiffs, they "do not allege a tort" in this lawsuit. *See* Plaintiff's Resp. to Chamber's Motion to Dismiss, at p. 7.[1] Indeed, Plaintiffs assert "Defendants' repeated assertions that Plaintiffs are seeking 'damages' here . . . are incorrect. Plaintiffs are seeking *no* monetary damages in this action, but *only* forms of equitable relief." Plaintiffs' Combined Opposition to the Motions of Defendants City of Tulsa and Tulsa Metropolitan Area Planning Commission to Dismiss Plaintiffs' First Amended Petition, at p. 19 (emphasis in original). Accepting Plaintiffs' representations at face value, Plaintiffs cannot establish their standing to pursue equitable remedies.

A plaintiff seeking equitable relief cannot establish an injury in fact simply by showing that he or she has suffered some harm in the past. Each plaintiff must demonstrate a "real and immediate threat of repeated injury." *O'Shea v. Littleton*, 414 U.S. 488, 496–97 (1974) (plaintiffs who sought to enjoin judges from racial discrimination lacked standing because it was speculative that any plaintiff would again be charged with a crime and brought before the

particular judges). The mere possibility of future injury must rise beyond the level of speculative or hypothetical injury. See *City of Los Angeles v. Lyons,* 461 U.S. 95, 103 (1983) (finding a lack of standing because it was "no more than speculation" to assert that the plaintiff would someday in the future again be arrested and subjected to an unconstitutional chokehold). See also *Updike v. City of Gresham,* 62 F. Supp. 3d 1205, 1213–14 (D. Or. 2014), *aff'd sub nom. Updike v. Multnomah Cty.,* 870 F.3d 939 (9th Cir. 2017); *Clapper v. Amnesty Int'l USA,* 568 U.S. 398 (2013) (no standing exists if the party seeking injunctive relief cannot show a future, repeated injury from the wrongful acts is "certainly impending").

In *Warth v. Seldin,* 422 U.S. 490 (1975), organizations and individuals in Rochester, New York sought to enjoin a neighboring town from enforcing a zoning ordinance because the ordinance would effectually exclude persons of low and moderate income from living in the city. The plaintiffs also sought injunctive relief to require the defendants to enact and administer a new ordinance designed to alleviate the effects of past actions. The plaintiffs in *Warth* were all property owners and taxpayers, some of which would fit in the classification of persons with low or moderate incomes. The U.S. Supreme Court nevertheless found that "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." *Warth,* 422 U.S. at 499 (citing numerous U.S. Supreme Court cases).

Here, pure speculation would be required to show a real and immediate future threat from the Chamber. Plaintiffs identify no facts in their Amended Petition suggesting that the Chamber is or will cause repeated or future injuries to Plaintiffs. All allegations in the First Amended Petition center on alleged wrongful conduct by the Chamber decades ago. Plaintiffs'

[1] Plaintiffs incorporate their Combined Opposition to City of Tulsa and Tulsa Metropolitan Area Planning

allegations that they continue to feel the impact of past conduct is not enough. Without this showing, Plaintiffs cannot establish standing to seek equitable remedies.

PROPOSITION II: PLAINTIFFS-DESCENDANTS AND THE CHURCH FAIL TO SHOW AN ACTUAL, CONCRETE INJURY IN FACT

A. The Derivative Injuries Alleged by Plaintiffs-Descendants Are Conjectural. No Injury In Fact Is Alleged.

Plaintiffs-Descendants do not question that they must show a "personal" injury-in-fact to have standing to pursue their claims. Plaintiffs-Descendants concede their claims are derivative of wrongs committed against their ancestors. Plaintiffs-Descendants likewise do not challenge the long-standing general rule that standing principles forbid courts from hearing cases brought by third parties. See, e.g., *Powers v. Ohio*, 499 U.S. 400, 406 (1991) ("In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief premised on the legal rights or interests of third parties."); *Singleton v. Wulff*, 428 U.S. 106 (1976).

Plaintiffs-Descendants instead rely on two cases where descendants were allowed to pursue claims under unique and narrow circumstances not present in this lawsuit. Plaintiffs-Descendants' reliance on these cases is misplaced. In *Hodel v. Irving*, 481 U.S. 704 (1987), descendants of tribal members challenged the constitutionality of a federal statute that re-allocated fractional property rights because the statute did not provide for "just compensation" as constitutionally required for eminent domain. Three justices filing a concurring opinion recognized the limited application of the case. "I am of the view that the unique negotiations giving rise to the property rights and expectations at issue here make this case the unusual one." *Id.* at 718 & 2084 (Justices Brennan, Blackman and Marshall & Blackmun, concurring).

Commission's Motions to Dismiss the First Amended Petition, pp. 31-36.

Since then, courts have exclusively applied Hodel's holding in similar constitution-based eminent domain proceedings. See, e.g., *Litevich v. Probate Court, Dist. of West Haven*, 2013 WL 2945055 (Conn. Super. Ct. May 17, 2013) (limiting *Hodel* to constitutional eminent domain rights). Plaintiffs-Descendants here assert no constitutional eminent domain claim.

The other case cited by Plaintiffs-Descendants, *Bodner v. Banque Paribas*, 114 F. Supp.2d 117 (E.D.N.Y. 2000) is an outlier even among similar lawsuits seeking almost identical claims. In *Bodner*, descendants alleged civil conspiracy theories against French financial institutions for the conversion of assets taken from their ancestors during the Holocaust. The Eastern District of New York concluded plaintiffs had standing to pursue the claims because the assets would have passed immediately to heirs and legatees under French law and New York upon their deaths in concentration camps. Numerous courts have rejected the reasoning in *Bodner* in similar lawsuits. In *Ungaro-Benages v. Dresdner Bank AG*, 2003 WL 25729923, at *6-7 (S.D. Fla. Feb. 20, 2003), the Southern District of Florida affirmed the lack of standing for descendants of persons who died in the Holocaust. In *Zivkovich v. Vatican Bank*, 242 F.Supp.2d 659, 670-71 (N.D. Cal. 2002), the grandson of a man killed during the Holocaust claimed damages from assets looted by defendants. "Plaintiff fails to make allegations ... from which the Court could infer an injury in fact resulting from Defendants' conduct." Id. at 671. See also *Schoeps v. Andrew Lloyd Webber Art Foundation*, 66 A.D.3d 137, 143 (N.Y. Sup. Ct. 2009) (descendant-plaintiffs did not have standing to seek the return of painting from the current owner; limited *Bodner* to its specific facts). See also *Enterprise Bank v. Magna Bank of Missouri*, 894 F. Supp. 1337, 1342-44 (E.D. Mo. 1995).[2]

[2] Even if this Court was inclined to stretch the principles of standing to Plaintiffs-Descendants based on *Hodel* and *Bodner*, standing still cannot be found because the Amended Petition still does not allege the Plaintiffs-Descendants are heirs or legatees of their ancestors.

Descendants-Plaintiffs lack any real connection to the zone of interest sought to be protected by the relief they seek. With one exception,[3] no Plaintiffs-Descendants live in the City of Tulsa, where the "equitable relief" would necessarily be implemented. The "zone-of-interests" test requires plaintiffs to make a factual showing that plaintiffs each have a cognizable interest in the remedies sought to be protected by a statute. *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883 (1990). Plaintiffs-Descendants are not within the zone of interest to be protected through most of the requested equitable remedies because they do not live in Tulsa, where the Court would implement the remedies.

- Plaintiff Fletcher lives in Bartlesville. *See* V. Ford Fletcher depo. at 7:7-8 (Ex. 1); Amd. Pet. at ¶ 7.
- Plaintiff Hughes Van Ellis, Sr. lives in Denver, Colorado. Amd. Pet. at ¶ 8.
- Plaintiff Laurel Stradford lives in Chicago, Illinois. Amd. Pet. at ¶ 10.
- Plaintiff Tedra Williams resides in Dallas, Texas. Amd. Pet. at ¶12.
- Plaintiff Don M. Adams lives in Del City, Virginia. Amd. Pet. at ¶ 13.
- Plaintiff Don W. Adams lives in Alpharetta, Georgia. Amd. Pet. at ¶ 14.
- Plaintiff Stephen Williams lives in San Bernardino, California. Amd. Pet. at ¶ 15.

The "zone of interests" to be remedied center on Tulsa, from abating the alleged (and undefined) public nuisance, to the creation of a Level 1 trauma center, to an accounting of various aspects of the Chamber's business. *See* Prayer for Relief, Amd. Petition. The Chamber is in the City of Tulsa, and its mission necessarily centers on the City of Tulsa. The non-resident Plaintiffs-Descendants are not within the zone of interest of the wide-ranging "equitable" remedies they seek.

[3] Plaintiff Ellouise Cochrane-Price alleges she lives in Tulsa County. *See* Amd. Petition, at ¶ 11.

B. The Church Cannot Legally Show A "Direct, Immediate and Substantial" Legal Interest that Would Give Rise to Associational Standing

The Church concedes it did not exist as a legal entity at the time of the 1921 Massacre or that it only recently came into legal existence. *See* Plaintiff's Resp. to Chamber's Motion to Dismiss, at pp. 9-10. As such, the Church cannot have a "direct, immediate, and substantial interest" to sue on behalf of members of a prior unincorporated association that no longer exists. *OEA v. Oklahoma Legislature*, 2008 OK 30, ¶¶ 10-12, 158 P.3d 1058, 1063-64. Plaintiffs' Amended Petition merely avers the Church lost prominent members who had contributed financially and by their involvement due to the Massacre. Amd. Pet. at ¶ 29. However, as the Church concedes, these prominent members were members of a prior organization, not the Church named as a plaintiff in this lawsuit.

Even if this Court ignores the Church's legal status, Plaintiff's Response and the Amended Petition are devoid of any factual allegations or proof the Church's current members have "independent standing" as descendants of persons impacted by the Massacre. *See* Amd. Petition, at ¶¶ 9 & 29; *OEA*, 2008 OK 30, at ¶ 9. *See also Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (to establish representational standing an organization's members must otherwise have standing to sue in their own right). And, even if the Church had made such allegations in the Amended Petition, the Church's members cannot create standing by relying on the residual effects of wrongs committed against their ancestors for the same reasons discussed in Section I of this Reply. The Church lacks standing to pursue claims against the Chamber.

PROPOSITION III: PLAINTIFFS-DESCENDANTS FAIL TO SHOW CAUSATION

To show causation for standing, Plaintiffs point merely to the alleged derivative impact of the Chamber's purported wrongs on their ancestors a century ago. *See* Plaintiff's Resp. to

Chamber's Motion to Dismiss, at pp. 10-13. Derivative claims "may make it substantially more difficult to meet the minimum requirement of Art. III: To factually establish that the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm." *Warth v. Seldin*, 422 U.S. 490, 505 (1975). Here, speculation is required to connect the specific injuries alleged by Plaintiffs-Descendants' injuries to the particular challenged acts of the Chamber that, if true, happened generations in the past.

A. Plaintiffs-Descendants Fail to Show a Causal Connection between the Specific Alleged Acts of the Chamber and their Injuries.

Rather than connecting the alleged wrongs by the Chamber to their injuries, Plaintiffs-Descendants opt instead to lump the Chamber with "all Defendants" to claim their collective actions since 1921 are part and parcel of an all-encompassing public nuisance. *See* Plaintiff's Resp. to Chamber's Motion to Dismiss, at p. 10 ("All Defendants Cause the Massacre and Plaintiffs' Injuries"); Amd. Petition. Plaintiffs-Descendants then cite to the purported causation standards for the tort of nuisance. *Id.* This ploy seems designed to obscure their inability to allege specific facts against each separate defendant that would show a causal link between each defendant and Plaintiffs-Descendants' injuries. It cannot establish standing. Plaintiffs-Descendants must allege specific facts of acts or omissions by the Chamber that caused the particular injuries claimed by Plaintiffs. See, e.g., *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973). Many courts interpret this requirement to mean a plaintiff must show "but for" causation, *i.e.*, in this case, that Plaintiffs-Descendants' various alleged injuries would not have occurred but for the alleged acts or omissions of the Chamber. See, e.g., *Environmental Texas Citizen Lobby, Inc. v. ExxonMobil Corp.*, 968 F.3d 357 (5th Cir. 2020) (plaintiffs must establish standing for each alleged violation or act); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) ("[A] plaintiff must demonstrate standing for each claim he seeks to press.").

Plaintiffs-Descendants cannot rely on broad-stroke allegations of causation that apply, without distinction, to all Defendants equally.[4] Plaintiffs-Descendants do not show how the alleged conduct of the Chamber (as detailed in the Chamber's Motion) causally connects to their alleged injuries. Plaintiffs instead must allege specific, concrete facts demonstrating the challenged practices of the Chamber harm that particular plaintiff and that each particular plaintiff would benefit in a tangible way from the court's intervention. *Warth*, at 508. See also *Baker v. Carr*, 369 U.S. 186, 204 (1964) (each plaintiff must have a "personal stake" in the outcome of the controversy to warrant the exercise of jurisdiction by the Court.); *J.P. Morgan Chase Bank Nat. Ass'n v. Eldridge*, 2012 OK 24, ¶ 7, 273 P.2d 62, 75 (quoting *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 7, 163 P.3d 512, 519-20). Because Plaintiffs-Descendants fail to do so, they lack standing to pursue claims against the Chamber in this lawsuit.

B. Disparate Impact from Wrongs against Ancestors Cannot Establish the Causation Requirement of Standing.

Plaintiffs-Descendants seek to establish causation by pointing to the disparate racial impacts on them and other residents and former residents of Greenwood and North Tulsa. *See* Plaintiff's Resp. to Chamber's Motion to Dismiss, at pp. 13-14. Throughout the Amended Petition, Plaintiffs cite the impacts of racial discrimination against their ancestors as the basis for their lawsuit. See, e.g., Amd. Petition, at ¶¶ 26, 112, 140, 159, 175, 177 & 195. However, the U.S. Supreme Court has repeatedly held that the causation requirement is not satisfied if the plaintiffs themselves did not experience the defendants' discriminatory practices. See, e.g., *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972); *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Rizzo v. Goode*, 423 U.S. 362 (1976); *Allen v. Wright*, 468 U.S. 737, 755 (1984) (limited on other

[4] Nor would this be allowed under Oklahoma law. "In any civil action based on fault and not arising out of contract, the liability for **damages caused by two or more persons shall be several** only and a joint tortfeasor

grounds, *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014) (holding that the causation requirement should no longer be considered "prudential" but a constitutional concern)). Here, neither the Plaintiffs-Descendants nor the Church has alleged personal, direct discrimination by the Chamber. Disparate racial impacts alone cannot establish the causation required for standing.

PROPOSITION IV: PLAINTIFFS' INJURIES ARE NOT REDRESSABLE BY THIS COURT

Plaintiffs-Descendants argue it would be manifestly unjust if this Court determines it cannot redress all the ills from the 1921 Race Massacre. *See* Plaintiff's Resp. to Chamber's Motion to Dismiss, at pp. 14-15. Plaintiffs-Descendants misperceive the inherent constitutional concerns raised by their lawsuit. Plaintiffs argue the alleged combined acts of all Defendants during and after the Massacre could legally constitute an actionable nuisance under Oklahoma law. While the Chamber disputes this assertion, whether Plaintiffs can assert an actionable nuisance is not the focus of the redressability requirement. The issue is whether this Court can redress those wrongs through the remedies listed in Plaintiffs' Amended Petition on behalf of countless unidentified non-parties to this lawsuit.

Redressability requires a substantial likelihood that the ***relief requested*** will redress the injury claimed. *Simon v. Eastern Kentucky Welfare Org.*, 426 U.S. 488, 494 (1974); *Fent v. Contingency Review Bd.*, 200& OK 27, ¶ 7, 163 P.3d 512, 519 (citing numerous cases). Here, "Plaintiffs . . . seek only forms of equitable relief—namely, abatement and an accounting and disgorgement of defendants' unjust and ill-gotten profits." *Id.* (citing the Prayer for Relief, Petition).[5] Plaintiffs' Prayer for Relief asks for numerous declarations (Prayer for Relief, Amd.

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shall be liable only for the amount of damages allocated to that tortfeasor. 12 O.S. § 14 (emphasis added).

[5] *See also* Plaintiffs' Opposition to Defendants Board of County Commissioners for Tulsa County and Vic Regalado, in His Official Capacity as Sherriff for Tulsa County's Motion to Dismiss, at p. 4 ("the GTCA has no bearing on claims for the equitable relief that Plaintiffs seek....)

Pet. at ¶ 12(1)-5), injunctive relief (*id.* at ¶ 12(6)-(9), an accounting (*id.* at ¶ 12(10), the creation of a Victims Compensation Fund (*id.* at ¶ 11), and an "abatement" of all conditions in the Greenwood neighborhood and North Tulsa that are aspects of the nuisance created by the Chamber. The abatement includes: (1) the Court will resolve and require monetary payment of claims to current and past Greenwood residents resulting from the Massacre, (2) the Court will judicially force property development, mental health and education programs, quality-of-life program, a land trust for vacant or undeveloped property owned by the Chamber, which the Court will distribute to descendants of those who lost homes or businesses in the Massacre or those who received less than market value for property during urban renewal, (3) construction of a Level 1 Trauma Center hospital in Greenwood, (4) the creation of a scholarship fund for Massacre descendants of the Greenwood District, and (5) awarding of City contracts to Black Tulsans who currently live in Greenwood neighborhood and North Tulsa communities, with priority to Massacre descendants. Plaintiffs also ask this Court to set up a Victim Compensation Fund for the "sole benefit of survivors of the Massacre, descendants of those killed, injured, or lost property in the Massacre, and residents of the Greenwood and North Tulsa Communities who have lived in Greenwood or North Tulsa... or where displaced from those communities at any time from May 31, 1921 until the present, in that order[.]" *Id.* at ¶ 11.

Although Plaintiffs have not filed a class-action lawsuit, they seek remedies explicitly designed to benefit thousands if not tens of thousands of non-parties. The Opioid Litigation has no bearing on the redressability issues in this lawsuit. There, the State sought to recoup public funds to re-fill State coffers of funds spent on opioid abuse.[6] Here, Plaintiffs are

[6] *State of Oklahoma v. Purdue Pharma*, Case No. CJ-2017-816 (Cleveland County), appeal before the Oklahoma

individuals asking this Court to develop, implement and enforce a myriad of economic and societal remedies on behalf of innumerable and undefined individuals, both deceased and living, descendants of those individuals, Tulsans and non-Tulsans, Oklahomans and non-Oklahomans that conceivably live anywhere in the world. Plaintiffs' injuries, as pled, simply cannot be redressed by this Court.

PROPOSITION V: PLAINTIFFS' CLAIMS NECESSARILY ASK A POLITICAL QUESTION THE LEGISLATURE SHOULD RESOLVE

Plaintiffs argue that the Chamber's political question concerns are inapt under *Baker v. Carr*, 369 U.S. 186 (1962). Plaintiffs, however, downplay the fundamental political questions raised by the claims in their lawsuit. Political questions raised by a case are non-justiciable primarily as a function of the separation of powers. *Id.* at 210. As the Oklahoma Supreme Court has stated, political activity related to governing is reviewable by the political branches of government, *i.e.*, the legislative and executive, because the answer to a political question is impervious to judicial re-examination. *In re De-Annexation of Certain Real Property from the City of Seminole*, 2004 OK 60, ¶ 14, 102 P.3d 120, 127-28; *OEA v. State of Oklahoma*, 2007 OK 30, 158 P.3d 1058. In essence, the judicial branch is ill-equipped to decide generalized policy concerns because courts use an established technique for decision-making with the greatest freedom from external controls. Lon Fuller, *The Firms and Limits of Adjudication*, 92 HARV. L. REV. 353, 394-404 (1978). Because this lawsuit raises multiple public policy issues, with the decisions hinging on a choice between conflicting fundamental values, resolving the issues in this lawsuit is best left to a representative body of government. *OEA*, 2007 OK 30, at ¶ 20, 158 P.3d at 1065 ("The state's policy-making power is vested exclusively in the Legislature.").

Supreme Court, Case No. 117994. Similarly, Plaintiffs err in relying on *City of Cincinnati v. Beretta USA Corp.*, 768 N.E.2d 1136 (Ohio 2002), in which the City, as a governmental entity, sued to recoup public funds from gun

The factors listed in *Baker v. Carr* are not designed to be weighed but are more aptly described as categories of impermissible political questions. See *Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (where there is a textually demonstrable constitutional commitment of the issue "or" a lack of discoverable, manageable standards). Here, the claims made by Plaintiffs constitute a political question because of the "lack of judicially discoverable and manageable standards for resolving the issues." *Baker*, 369 U.S. at 210.

A prime example of a similar instance where a lack of manageable standards is *Iwanowa v. Ford Motor Co.*, 67 F. Supp.2d 424, 488 (D.N.J. 1999). In *Iwanowa*, the plaintiff sought to recover for herself and others who were forced to perform labor during World War II. The Court concluded the claims raised a political question because it lacked judicially discoverable and manageable standards. In doing so, it invoked a prior case, in which the court also found the claims for forced labor to be non-justiciable, political questions:

> the span between the doing of the damage and the application of the claimed assuagement is too vague. The time is too long. The identity of the alleged tortfeasors is too indefinite. The procedure sought--adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in a European area by a government then in power-is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed.

Id. at 489 (quoting *Kelberine v. Societe Internationale*, 363 F.2d 989, 995 (D.C. Cir. 1966)). Like the Court in *Kelberine*, the *Iwanowa* Court found the claims "'pos[ed] an insoluble problem if undertaken by courts without legislative or executive guidance, authorization or support. *Iwanowa*, 67 F.Supp.2d at 488-89 (quoting *Kelberine*, 363 F.2d at 995).

Plaintiffs similarly ask this Court to take on the almost insurmountable task of managing a case full of complexity, problems with proof, overwhelming numbers, and novel

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manufacturers and distributors for costs associated with firearms. The Chamber does not concede the State

legal positions. The Court would have to oversee the identification of thousands of potential claimants, many deceased, and, perhaps even more daunting, the ancestors of the claimants. While Plaintiffs claim "all Defendants" are responsible for a single public nuisance, the reality is that the parties would have to somehow locate testimony and evidence about complicated, poorly documented events involving countless actors. Testimony and documents would have to be authenticated and presented in a form that can be heard by a jury. The administration of this lawsuit poses an unsolvable problem that should be left to the political branches of government.

CONCLUSION

Plaintiffs cannot meet the required standards for standing. Their derivative injuries are not concrete, direct, and non-conjectural injuries. Nor do Plaintiffs-Descendants and the Church meet their burden of showing causation by treating all allegations against all Defendants as a single act of public nuisance. Plaintiff-Descendants and the Church fail to establish a connection between the specific alleged actions of the Chamber and their injuries. This Court cannot redress the intrusive remedies sought against the Chamber with any assurance the alleged injuries can be cured. Finally, Plaintiffs' claims are political questions that the political branches of government can appropriately address.

WHEREFORE, Defendant Tulsa Regional Chamber, Inc., under 12 O.S. § 2012(B)(1), asks this Court to dismiss the claims made by Plaintiffs in this lawsuit.

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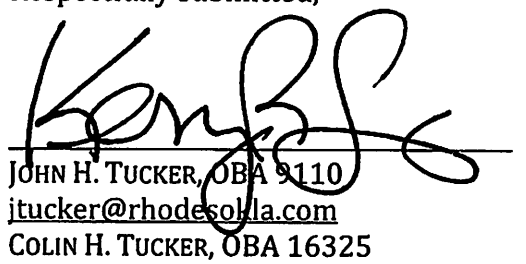
properly brought a nuisance claim.

Respectfully submitted,

By 

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I hereby certify that on the 26th day of August, 2021, a true and correct copy of the above and foregoing was sent to the following via U.S. Mail, with correct postage fully prepaid thereon:

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IN THE DISTRICT COURT OF TULSA COUNTY

FOR THE STATE OF OKLAHOMA

LESSIE BENNINGFIELD RANDLE, Life-long resident of Greenwood District, Tulsa, Oklahoma, an individual, et al.,	)	
Plaintiffs,	)	
vs.	)	No. CV-2020-1179
CITY OF TULSA, a municipal corporation, et al.,	)	
Defendants.	)	

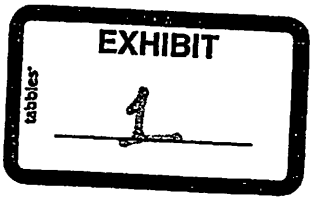
VIDEOTAPED DEPOSITION OF VIOLA FORD FLETCHER

TAKEN ON BEHALF OF THE PLAINTIFFS

TAKEN REMOTELY

ON OCTOBER 16, 2020

REPORTED BY: KAREN B. JOHNSON, CSR



A 106 years old.
Q And what is your birthday?
A The 5th day of May, it's 5-10, 1914.
Q Wow. How do you feel today, ma'am?
A I feel fine. Feel well, feel well. Good. Feels good, yeah.
Q And where do you live?
A I live now in Bartlesville, Oklahoma.
Q And do you live alone?
A Yes, I live alone.
Q What was your parents' name?
A Lucinda Ellis now, then, and my father was John Wesley Ford.
Q And were you married?
A Yes, I've been married.
Q What was the name of your husband?
A Robert Fletcher.
Q Did you have any children?
A Yes, I had three.
Q All right. Can you tell us your children's names?
A Ronald, Deborah, and James. Had to think of that.
Q Let's talk about your -- just a little bit about your educational history. Did you graduate