

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

-----

1. LESSIE BENNINGFIELD RANDLE, )  
Tulsa Race Massacre Survivor, )  
2. VIOLA FLETCHER, )  
Tulsa Race Massacre Survivor, )  
3. HUGHES VAN ELLISS, SR., )  
Tulsa Race Massacre Survivor, )  
4. HISTORIC VERNON A.M.E. CHURCH, INC., )  
a domestic not-for-profit corporation, )  
5. LAUREL STRADFORD, )  
great-granddaughter of J.B. Stradford, )  
6. ELLOUISE COCHRANE-PRICE, )  
daughter of Clarence Rowland and )  
cousin of Dick Rowland, )  
7. TEDRA WILLIAMS, )  
granddaughter of Wess Young, )  
8. DON M. ADAMS, )  
nephew and next friend of Dr. A.C. Jackson, )  
9. DON W. ADAMS, )  
great-grandson of Attorney H.A. Guess, )  
10. STEPHEN WILLIAMS, )  
grandson of A.J. Smitherman, )  
11. THE TULSA AFRICAN ANCESTRAL )  
SOCIETY, )  
an unincorporated association, )  
Plaintiffs, )  
v. )  
1. CITY OF TULSA, )  
a municipal corporation, )

Case No.: CV-2020-01179  
Judge Caroline Wall

- 2. TULSA REGIONAL CHAMBER, )  
a domestic not-for-profit corporation, )
  - 3. TULSA DEVELOPMENT AUTHORITY, )
  - 4. TULSA METROPOLITAN AREA )  
PLANNING COMMISSION, )
  - 5. BOARD OF COUNTY COMMISSIONERS )  
FOR TULSA COUNTY, OKLAHOMA, )
  - 6. VIC REGALADO, IN HIS OFFICIAL )  
CAPACITY AS SHERIFF OF TULSA COUNTY, )
  - 7. OKLAHOMA MILITARY DEPARTMENT, )
  - Defendants. )
- 

**PLAINTIFFS' OPPOSITION TO DEFENDANTS BOARD OF COUNTY  
COMMISSIONERS FOR TULSA COUNTY AND VIC REGALADO, IN HIS  
OFFICIAL CAPACITY AS SHERIFF FOR TULSA COUNTY'S  
MOTION TO DISMISS**

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

ARGUMENT ..... 1

    I. Plaintiffs Have Standing to Bring and Maintain this Lawsuit..... 1

    II. The GTCA is Inapplicable and Thus Cannot be a Basis for Dismissal ..... 3

CONCLUSION..... 4

Plaintiffs hereby submit this Brief in Opposition to the Motion to Dismiss filed by Defendants Board of County Commissioners for Tulsa County and Vic Regalado, in his official capacity as Sheriff of Tulsa County (collectively, “the County”). This opposition is one of six opposition briefs filed by Plaintiffs on June 1, 2021 (the “June 1 Oppositions”) in response to the seven motions to dismiss filed by Defendants on March 12, 2021 (the “March 12 Motions”). Plaintiffs respectfully refer to the Court to Plaintiffs’ Opposition to State of Oklahoma’s Motion to Dismiss to an overall introduction to the June 1 Oppositions and a chart which shows where responses to arguments made in the March 12 Motions are responded to in the June 1 Oppositions.

## **INTRODUCTION**

The County makes two arguments in its motion to dismiss. First, the County argues that Plaintiffs – primarily the Descendant Plaintiffs and the Church – lack standing to bring this case. Second, the County argues that Oklahoma’s Governmental Tort Claims Act (the “GTCA”) bars this action. Each argument fails on its own terms.

## **ARGUMENT**

### **I. Plaintiffs Have Standing to Bring and Maintain this Lawsuit**

The County argues that the Court must dismiss this action because Plaintiffs have failed to satisfy the requisite standing requirements under Oklahoma and federal law. *See* County Mot. 4-13.<sup>1</sup> The County makes arguments specific to the Church and Descendant Plaintiffs, but ultimately asserts that all Plaintiffs, including Survivor Plaintiffs, lack standing, and make four distinct arguments. *Id.*

---

<sup>1</sup> “County Mot.” refers to the Motion to Dismiss Plaintiffs’ Petition and Brief in Support filed on March 12, 2021 by Defendants Board of County Commissioners for Tulsa County and Vic Regalado, in his Official Capacity as Sheriff.

*First*, the Church and Descendant Plaintiffs lack standing because both fail to plead personal injury. *Id.* at 7. As the Church was an unincorporated association until 2019, in order to have standing, the County argues “its members must have a ‘direct, immediate and substantial’ interest in the controversy and a ‘personal stake in the outcome.’” *Id.* (quoting *Okla. Educ. Ass’n (OEA) v. Okla. Legislature*, 2007 OK 30, ¶ 9, 158 P.3d 1058, 1063). The County argues that Descendant-Plaintiffs lack standing because the Petition lacks allegations that “any Descendant-Plaintiff owns or has a legal interest in any real property in North Tulsa, the Greenwood District, or, for that matter, Oklahoma.” *Id.* at 7. Finally, the County asserts that the “familial relationships with an ancestor victim of the Massacre” is insufficient to confer standing. *Id.* at 8.

*Second*, the County argues that the injuries suffered by the Church and Descendant-Plaintiffs are too conjectural or general. *Id.* at 9-10. “The Church’s alleged loss of financial and social support from members of a prior entity of a century ago are too conjectural and too remote to confer standing.” *Id.* at 10. The County does not dispute that Descendant-Plaintiffs have alleged insecurity in health, loss of family wealth, status, and security, and loss of mental, physical, and financial health, but instead again reasons that these injuries are speculative and the financial and emotional harm experienced cannot be connected to Defendants’ actions. *Id.* at 10 (quoting *In re African-Am. Slave Descendants Litig.*, 471 F.3d 754, 759 (7th Cir. 2006)).

*Third*, the County argues that “[n]either a continuing generalized wrong nor continuing non-specific injuries can confer legal standing on a party.” County Mot. 11. Defendants contend that claims of “continuing injurious conduct and personal harm are too speculative and generalized to establish standing.” *Id.* at 12.

*Fourth*, the County argues that all Plaintiffs lack standing because the “redress of generalized harm . . . is beyond the Court’s limited powers.” *Id.* at 12. Specifically, that any of “the expansive remedies sought go far beyond the limited power of the judicial branch.” *Id.* at 13.

These arguments are unavailing. Plaintiffs have standing to sue because (1) all Plaintiffs have suffered a concrete injury (2) Plaintiffs have adequately pled causation and (3) this Court is capable of redressing Plaintiffs’ injury. As Defendants admit in their own Motion, the “Church and each Descendant-Plaintiff allege[s] they have—and will continue to be—‘affected’ by the loss of family wealth, status and security” caused by Defendants. County Mot. 8.

To avoid overburdening the Court with duplicative and overlapping arguments, Plaintiffs adopt and incorporate herein the arguments made by Plaintiffs in their Opposition to Chamber Standing MTD, at §§ I-IV, in further support.

## **II. The GTCA is Inapplicable and Thus Cannot be a Basis for Dismissal**

The County further argues that dismissal is proper because Plaintiffs’ claims are barred by Oklahoma’s Governmental Tort Claims Act (the “GTCA”), which Defendants contend, is the exclusive avenue to pursue recourse in this action. *See* County Mot. 13-21; 51 O.S. §§ 151-172. The County first argues that public nuisance, under common law or the GTCA, is a tort, as is unjust enrichment. *Id.* at 15-18. It also argues that “Plaintiffs failed to comply with the explicit mandatory notice provisions” of the GTCA, *id.* at 19, and that, if the nuisance conditions presented as early as the 1950s, as alleged in the Petition, the time to file a GTCA claim has since passed, *id.* at 20.

The County also points to five exemptions under the GTCA that it believes apply: “adoption or enforcement of or failure to adopt or enforce a law[;]” “[p]erformance of or the

failure to exercise or perform any act or service . . . in the discretion of the state or political subdivision or its employees;” “civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;” “[a]ny claim which is limited or barred by any other law;” “[a]n[y] act or omission of an independent contractor or consultant or his or her employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;” and the “[u]se of a public facility opened to the general public during an emergency.” *Id.* at 18-19 (citing 51 O.S. § 155).

Finally, the County argues that, even if employees participated in the Massacre, any conduct taken in the Massacre falls outside the scope of employment, and so precludes any liability on the part of Defendants. *Id.* at 21.

The County is mistaken. Contrary to its position, the GTCA has no bearing on claims for the equitable relief that Plaintiffs seek and Plaintiffs’ claims are not “torts” under the GTCA. Because the GTCA does not apply, the County’s remaining arguments are irrelevant and meritless. To avoid overburdening the Court with duplicative and overlapping arguments, Plaintiffs adopt and incorporate herein the arguments made by Plaintiffs in their Opposition to City/TMAPC MTD, at §§ II(A)-(D), in further support.

### **CONCLUSION**

For the reasons set forth herein, this Court should deny the County’s Motion to Dismiss the Petition, allowing discovery to proceed and allowing the parties to build a complete record on which this Court can address each of the issues presented by Plaintiffs’ claims. In the

alternative, this Court should grant Plaintiffs leave to amend to cure any defect in the Petition.<sup>2</sup>

Plaintiffs also request oral argument be heard on this motion.

Respectfully submitted,

SOLOMONSIMMONSLAW



Damario Solomon-Simmons, OBA# 20340  
601 S. Boulder, 600  
Tulsa, Oklahoma, 74119  
918-551-8999 - Phone  
918-582-6106 - Facsimile  
dss@solomonsimmons.com

-and-

BRYAN & TERRILL

J. Spencer Bryan, OBA # 19419  
Steven J. Terrill, OBA #20869  
3015 E. Skelly Dr., Suite 400  
Tulsa, Oklahoma 74105  
(918) 935-2777 - Phone  
(918) 935-2777 - Facsimile  
jsbryan@bryanterrill.com  
sjterrill@bryanterrill.com

-and-

Eric J. Miller, BAR #194237  
Professor and Leo J. O'Brien Fellow  
Burns 307  
919 Albany Street  
Los Angeles, California 90015

---

<sup>2</sup> As set forth more fully in Plaintiffs' Opposition to the State of Oklahoma's Motion to Dismiss, if the Court grants any or all of Defendants' motions, the Court has a mandatory duty to grant Plaintiffs leave to amend the Petition if the defect can be remedied. 12 O.S. § 2012(G) (“[o]n granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied . . .”); *Kelly v. Abbott*, 1989 OK 124, ¶6, 781 P.2d 1188, 1190 (“Because the statute provides that the trial court ‘shall’ grant leave to amend if the defect can be remedied, the duty is mandatory.”).



(213) 736-1175 - Phone  
eric.miller@lls.edu

-and-

MAYNARD M. HENRY, SR., ATTORNEY  
AT LAW, P.C.  
Maynard M. Henry, Sr., BAR #VSB39266  
10332 Main Street, #308  
Fairfax, Virginia 22030  
(703) 593-2773 - Phone  
(800) 234-6112 - Facsimile  
mhenryesquire@cox.net

-and-

JOHNSON | CEPHAS LAW  
Lashandra Peoples-Johnson, OBA# 33995  
Cordal Cephas, OBA#33857  
3939 S. Harvard Ave., Suite 238  
Tulsa, Oklahoma 74135  
(918) 877-0262 - Phone  
lashandra@johnsoncephaslaw.com  
cordal@johnsoncephaslaw.com

-and-

SCHULTE ROTH & ZABEL LLP  
Michael E. Swartz  
Sara E. Solfanelli (*Pro Hac Vice Forthcoming*)  
Randall T. Adams (*Pro Hac Vice Forthcoming*)  
Abigail F. Coster (*Pro Hac Vice Forthcoming*)  
Angela A. Garcia  
Amanda B. Barkin  
Ekenedilichukwu Ukabiala  
AnnaLise Bender-Brown  
Victoria Harris  
919 Third Avenue  
New York, New York 10022  
(212) 756-2471 - Phone  
michael.swartz@srz.com

-and-

SCHULTE ROTH & ZABEL LLP  
McKenzie E. Haynes  
Alexander Wharton (*Pro Hac Vice  
Forthcoming*)  
Brandon Faske (*Pro Hac Vice Forthcoming*)  
901 Fifteenth Street, NW, Suite 800  
Washington, District of Columbia 20005  
(202) 729-7485 - Phone  
mckenzie.haynes@srz.com

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of June 2021, I served the foregoing by email and U.S. Mail to the following:

Mr. David O'Melia  
Mr. Gerry Bender  
City of Tulsa Legal Department  
175 E. 2<sup>nd</sup> Street, Ste. 685  
Tulsa, OK. 74103  
[domeilia@cityoftulsa.org](mailto:domeilia@cityoftulsa.org)  
[gbender@cityoftulsa.org](mailto:gbender@cityoftulsa.org)

Kevin Wilkes  
Hall Estill  
320 S. Boston Ave., Ste. 200  
Tulsa, OK. 74103  
[kwilkes@hallestill.com](mailto:kwilkes@hallestill.com)

Kevin McClure  
State of Oklahoma, Office of the Attorney  
General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73104  
[Kevin.mcclure@oag.ok.gov](mailto:Kevin.mcclure@oag.ok.gov)

Jot Harley  
Jot Hartley Law Firm, PLLC  
177 W. Delaware Ave.  
Vinita, OK 74301  
[jothartley@gmail.com](mailto:jothartley@gmail.com)  
Attorney for Tulsa Development  
Authority

John H. Tucker  
Rhodes, Hieronymus, Jones,  
Tucker & Gable, PLLC  
P.O. Box 21100  
Tulsa, OK 74121-1100  
[jhtucker@rhodesokla.com](mailto:jhtucker@rhodesokla.com)



---

Damario Solomon-Simmons