CASE NO. 20-CV-346-JED-FHM

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

TAYLEUR RAYE PICKUP, *et al.*,

Plaintiffs,

v.

THE DISTRICT COURT OF NOWATA COUNTY OKLAHOMA, *et al*.,

Defendants.

MOTION TO DISMISS AND BRIEF IN SUPPORT OF DEFENDANT CATHI EDWARDS, COURT CLERK OF ROGERS COUNTY, IN HER OFFICIAL CAPACITY

Respectfully submitted,

Thomas A. Le Blanc, OBA #14768
tleblanc@bestsharp.com
W. Caleb Jones, OBA #33541
wcjones@bestsharp.com
BEST & SHARP
Williams Center Tower 1
One West Third Street, Suite 900
Tulsa, Oklahoma 74103
(918) 582-1234
(918) 585-9447 (facsimile)
Attorneys for Defendant Cathi Edwards,
Court Clerk of Rogers County, in her Official Capacity

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MOTION TO DISMISS AND BRIEF IN SUPPORT OF DEFENDANT CATHI EDWARDS, COURT CLERK OF ROGERS COUNTY, IN HER OFFICIAL CAPACITY

COME NOW Defendant Cathi Edwards, Court Clerk of Rogers County, in Her Official Capacity, and hereby file this Motion to Dismiss and Brief in Support pursuant to Federal Rule of Civil Procedure 12(b)(1), (6). Because the Court lacks subject matter jurisdiction over Plaintiffs' claims, and because Plaintiffs have otherwise failed to state a claim upon which relief can be granted, the Court should dismiss this lawsuit.

I. STATEMENT OF FACTS

In their Complaint, Plaintiffs allege that they are members of federal-recognized Indian Tribes who have "either been prosecuted for traffic offenses or misdemeanor crimes occurring within the Cherokee Reservation by the State of Oklahoma or its political subdivisions." Dkt. #2, ¶6. As a result of their violation of Oklahoma law, Plaintiffs have allegedly been required to pay money for "fines, court costs and/or supervision fees to the State of Oklahoma or its political subdivisions." Dkt. #2, ¶7. Plaintiffs claim that, pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Cherokee Nation "has never been disestablished and remains an 'Indian Reservation.'" Dkt. #2, ¶55. And, for that reason, Plaintiffs suggest that the various Oklahoma state courts that have imposed fines, fees or costs on them did not have

"subjective matter jurisdiction to criminally charge and prosecute" them. Dkt. #2, ¶56. Plaintiffs claim that subject matter jurisdiction is "vested solely in the Cherokee Nation or in the United States." Dkt. #2, ¶56.

Plaintiffs do not state claims against most Defendants. For instance, Plaintiffs provides no facts indicating Cathi Edwards, Court Clerk of Rogers County, violated any rights of any named Plaintiff. Rather, Plaintiffs claim that, "[u]nder the structure of the District Court, the Court Clerk is the proper party to refund the monies sought by this action." Dkt. #2, ¶17. Plaintiffs apparently plan to find additional plaintiffs to join this lawsuit, and then have those plaintiffs attempt to state claims against all Defendants. Dkt. #2, ¶8, ¶¶66-78.

The named Plaintiffs and their law violations are listed below:

- **Tayleur Raye Pickup**:
  - Escape from Arrest or Detention; Mayes County District Court, Case No. CM-2016-472.[1]
  - Obstructing an Officer; Mayes County District Court, Case No. CM-2019-482.[2]
- **Chanda Lynelle Butcher**:
  - Obtaining Money by Bogus Check; Mayes County District Court, Case No. CM-2014-343.[3]
- **Lindsey Reanna Butcher:**

[1] Tayleur Pickup pled guilty to this crime. (Exhibit 1, Court Minute). A court may take judicial notice of documents that are public records of the courts of Oklahoma without converting a motion to dismiss to a motion for summary judgment. *See United States v Pursley*, 577 F.3d 1204, 1214 n. 6 (10th Cir. 2009). While the cited records are available on the Oklahoma Supreme Court Network (www.oscn.net/dockets), relevant records have been provided as exhibits for the convenience of the Court.

[2] Tayleur Pickup pled guilty to this crime. (Exhibit 2, Court Minute).

[3] Chanda Butcher pled guilty to this crime. (Exhibit 3, Court Docket).

- Operating Motor Vehicle without Valid Driver's License, Mayes County District Court, Case No. TR-2019-2754.[4]
- Failing to Wear Seatbelt while Operating Motor Vehicle, Mayes County District Court, Case No. TR-2019-2755.[5]

- **Crystal Lee Leach**

  - Failing to Wear Seatbelt While Operating a Motor Vehicle, Mayes County District Court, Case No. CM-2019-173.[6]

- **Shyanne Nicole Sixkiller**

  - Speeding Ticket, Locust Grove Police Department

In this Court, Plaintiffs seek to vacate their state law convictions (or deferred prosecution agreements). Dkt. #2, ¶¶84, 85, 87, 92. They also seek an order directing the State of Oklahoma (and all Defendants) to refund all costs and fees paid as a result of their convictions. Dkt. #2, p. 21. Plaintiffs' state law claim is pled as one for "money had and received." Dkt. #2, ¶¶86-89. Plaintiffs' two federal claims are pled as: "declaratory judgment" and 42 U.S.C. §1983. Dkt. #2, ¶¶85, 91.

The nature of the §1983 claim is unclear, but it appears Plaintiffs claim that Defendants have violated Plaintiffs' "due process rights" by subjecting them to "trial and punishment before a Court that had no subject matter jurisdiction." Dkt. #2, ¶92. Plaintiffs suggest that it has "been long recognized that state government has no jurisdiction over the crimes committed by Tribal members on a reservation." Dkt. #2, ¶94. Despite this allegation, Plaintiffs do not allege that they raised any subject matter jurisdiction defense in their state traffic and misdemeanor cases, nor do

[4] Lindsey Butcher pled guilty to this offense. (Exhibit 4, Court Docket).

[5] Lindsey Butcher pled guilty to this offense. (Exhibit 5, Court Docket).

[6] Crystal Leach pled guilty to Driving a Motor Vehicle While Under the Influence of Drugs (a misdemeanor) and received a deferred sentence. (Exhibit 6, Deferment).

they allege that they pursued any post-conviction relief. Rather, Plaintiffs request *this* Court (1) declare that the Cherokee Reservation has not been disestablished; (2) find that any state court conviction (or deferred adjudication) imposed on any plaintiff is "void"; and (3) order Defendants to "refund all monies" paid by Plaintiffs to Defendants as a result of their convictions or deferred adjudications. Dkt. #2, p. 21.

II. ARGUMENTS AND AUTHORITIES

A complaint should be dismissed for failure to state a claim upon which relief can be granted when "it appears that the plaintiff can prove no set of facts in support that would entitle him to relief, accepting the well-pleaded allegations of the complaint as true and construing them in the light most favorable to the plaintiff." *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1201 (10th Cir. 2003) (quoting *Yoder v. Honeywell, Inc.*, 104 F.3d 1215, 1224 (10th Cir. 1997)). Federal Rule of Civil Procedure 8(a)(2) requires that a pleader provide "a short and plain statement of the claim showing . . . entitle[ment] to relief." The required "short and plain statement" must provide "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To show an "entitlement to relief," a plaintiff must plead "more than labels and conclusions . . ." *Id.* at 562. The initial pleading must contain "[f]actual allegations [which are sufficient] to raise a right to relief above the speculative level." *Id.* In other words, the complaint must allege "enough facts to state a claim to relief that is plausible on its face," not just conceivable. *Id*. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556); *see also Gee v. Pacheco*, 627 F.3d 1178, 1184 (10th Cir. 2010).

A. DEFENDANT COURT CLERK CATHI EDWARDS IS ENTITLED TO ELEVENTH AMENDMENT IMMUNITY

Plaintiffs have sued Court Clerk Cathi Edwards in her role as an arm of the Court for the purpose of collecting fees and costs related to violations of Oklahoma law. Dkt. #2, ¶17 (alleging Edwards "collected monies from Tribal members that were *assessed by the Court* as a fine, a court cost, or other fees."). While district court clerks are elected county officials per Art. 17, § 2 of the Oklahoma Constitution, they act as arms of the state with regard to their ministerial court duties.[7] Case law has directly addressed this issue, finding that Court Clerks act as arms of the state when acting as a bursar for the district court. For instance, in *North Side State Bank v. Board of County Comm'rs of Tulsa County*, 894 P.2d 1046 (Okla. 1994), the Court stated:

> Moreover, the court clerk's functions *qua* the court's *bursar* are not county functions, but rather those of the state. The clerk's office collects court costs, filing and license fees, fines and forfeitures, as well as sums deposited by litigants in condemnation cases, interpleader suits, and matrimonial cases for support and alimony. *All* this money is deposited in various accounts maintained for the court clerk by the treasurer *as an agent of the state*. Although the funds drawn upon for the voucher in question were not *stricto sensu* "court funds" because they represented money deposited for disbursement to the rightful recipient, the court clerk's function of receiving and disbursing funds of *every* character is inextricably connected, not with county government, but with that official's duty as state court's bursar. In managing funds not derived from county appropriations the court clerk acts as a functionary of the *state district court* rather than *as a county official*. Only when handling appropriated county funds does the court clerk function as an elected executive county official.

Id. at 1051-52; *see also Speight v. Presley*, 203 P.3d 173 (Okla. 2008) ("The district court clerk is 'judicial personnel' and is an arm of the court whose duties are ministerial, except for those discretionary duties provided by statute. In the performance of clerk's ministerial functions, the

[7] In Oklahoma, fines fees and costs are collected by the court clerk and deposited in a Court fund with the country treasurer, who acts "as an agent of the state in the care and handling of the Court fund." 20 O.S. § 1301; *see also Court Fund of Tulsa County v. Cook*, 557 P.2d 875, 877 (Okla. 1976).

court clerk is subject to the control of the Supreme Court and the supervisory control that it has passed down to the Administrative District Judge in the clerk's administrative district.").

"In our constitutional scheme, a federal court generally may not hear a suit brought by any person against a nonconsenting State." *Allen v. Cooper*, 140 S. Ct. 994, 1000 (2020). Eleventh Amendment immunity applies not only to a state but also to an entity that is an arm of the state. *See Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). Damage claims against state officials in their official capacity are deemed to be against the state entity the official represents and are therefore barred by the Eleventh Amendment. *Couser v. Gay*, 959 F.3d 1018, 1022 (10th Cir. 2020). The Tenth Circuit has recently noted that state courts are considered arms of the state and are entitled to sovereign immunity. *Collins v. Daniels*, 916 F.3d 1302, 1316 (10th Cir. 2019).

And, as noted above, the Court Clerk serves as "judicial personnel" for purposes of collecting court costs and fees. *See Speight, supra*. Plaintiffs' claims against Defendant Court Clerk Edwards, in her official capacity, are based solely on her collection of such fees and costs. Dkt #2, ¶17. For that reason, Defendant Edwards, in her official capacity, is entitled to Eleventh Amendment immunity with respect to Plaintiffs' §1983 claim for damages. *E.g., Badillo v. Thorpe,* 158 Fed. Appx. 208 (11th Cir. 2005) (court administrator entitled to Eleventh Amendment immunity); *Kicklighter v. Goodrich*, 162 F.Supp.3d 1363, 1369 (S.D. Ga. 2016) (clerk of court entitled to Eleventh Amendment immunity); *Cruz v. Puerto Rico*, 558 F.Supp.2d 165, 176 (D.P.R. 2007) (office of court administration entitled to Eleventh Amendment immunity); *Glover v. Gaston County D.A. Office*, 2007 WL 2712945 (W.D.N.C. 2007) (elected court clerk entitled to Eleventh Amendment immunity).

B. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS

Further, as shown below, the Court lacks subject matter jurisdiction over Plaintiffs' claims.

1. The Court Lacks Subject Matter Jurisdiction over Plaintiffs' §1983 Claims per the *Rooker-Feldman* Doctrine

"The *Rooker-Feldman* doctrine . . . provides that only the Supreme Court has jurisdiction to hear appeals from final state court judgments." *See Bear v. Patton*, 451 F.3d 639, 641 (10th Cir. 2006). Lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments. *See Kline v. Biles*, 861 F.3d 1177, 1180 (10th Cir. 2017). The doctrine applies to those "complaining of injuries caused by state-court judgments." *See Mayotte v. U.S. Bank N.A.*, 880 F.3d 1169, 1174 (10th Cir. 2018). An element of the claim must be that the state court wrongfully entered its judgment. *Id.* (discussing *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005)). The doctrine applies to any "federal action that tries to modify or set aside a state-court judgment because the state proceedings should not have led to that judgment." *See Mayotte*, 880 F.3d at 1175 (italics in original).

That is, *Rooker-Feldman* applies to complaints seeking review and rejection of a state court judgment, such as where a plaintiff "allege[s] that a defect in the state proceedings invalidate[s] the state judgment" or where a plaintiff alleges violations of constitutional rights by the state court itself. *Id.* *Rooker-Feldman* applies even where the plaintiff claims that the state court judgments are "void." *See Anderson v. Private Capital Group, Inc.*, 549 Fed. Appx. 715, 717 (10th Cir. 2013) (finding claim barred by *Rooker-Feldman* doctrine even where plaintiff contended state court judgment was void because the state court allegedly lacked jurisdiction to enter judgment); *In re Smith*, 287 Fed. Appx. 683, 685 (10th Cir. 2008) ("[Appellant] has cited no authority, and we have found none, for the proposition that there is a general exception to *Rooker-Feldman* when the state court is alleged to have acted without jurisdiction.").

In *Reid v. North Carolina*, 837 F.Supp.2d 554 (W.D.N.C. 2011), *aff'd*, 471 Fed. Appx. 188 (4th Cir. 2012), the plaintiff had been convicted in state court for possession of cocaine. He later

filed a §1983 lawsuit in federal court claiming that the state court did not have subject matter jurisdiction to entertain his prosecution because the case had been improperly transferred from juvenile proceedings in district court to adult proceedings in superior court. *Id.* at 556. Like the plaintiffs here, he claimed that his due process rights were violated by the state proceedings and requested the federal court invalidate his state court convictions (i.e., because the state court lacked subject matter jurisdiction). The federal court found that it lacked subject matter jurisdiction due to the *Rooker-Feldman* doctrine:

> Plaintiff specifically seeks to have "the Judgement Conviction rendered by the Gaston Superior Court invalidated as null and void in being that the Court never had jurisdiction to enter the judgment for its inception." . . . The requested relief would have this Court conduct an appellate review of state court decisions and make determinations that these judgments were erroneously entered. This Court is without jurisdiction to provide such relief. This Complaint should, therefore, be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of jurisdiction over the subject matter.

Id. at 556.[8]

The present case fits precisely within the confines of the *Rooker-Feldman* doctrine. Plaintiffs argue that the state court-judgments were wrongfully entered and seek an order from this Court declaring said judgments to be "void." Dkt. #2, p. 21. Plaintiffs seek damages caused by those judgments in the form of an order requiring Defendants to reimburse them for the fees and costs demanded by those judgments. Because the present lawsuit, in essence, amounts to a

[8] The *Reid* Court noted that, even if it had jurisdiction, the procedural due process claim would be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) because, "[i]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 559. In *Reid*, the *Heck* doctrine barred the claim because the plaintiff had failed to show that his underlying conviction had been invalidated. *Id.* As shown *infra*, the same is true in this case.

consolidated appeal of numerous state court judgments, it is barred by *Rooker-Feldman.* *See Campbell v. City of Spencer*, 582 F.3d 1278, 1284 (10th Cir. 2012) (affirming dismissal because §1983 claim amounted to attack on state court judgment, noting that the §1983 claim "has merit only if the state-court forfeiture order was unlawful on the record before that court"); *4901 Corp. v. Town of Cicero*, 220 F.3d 522, 528 (7th Cir. 2000) ("Voiding (effectively reversing) the state court judgment is something we may not do.").

2. The Court Should Abstain from Hearing Plaintiffs' §1983 Claims per the *Younger* Doctrine

In the alternative, the Court should abstain from hearing Plaintiff's §1983 claim. "Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *See Taylor v. Jaquez*, 126 F.3d 1294, 1297 (10th Cir. 1997) (quoting *Younger v. Harris*, 401 U.S. 37 (1971)). The *Younger* doctrine requires a federal court to abstain from exercising jurisdiction where three (3) conditions have been met:

> First, there must be ongoing state criminal, civil, or administrative proceedings. Second, the state court must offer an adequate forum to hear the federal plaintiff's claims from the federal lawsuit. Third, the state proceeding must involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies.

Taylor, 126 F.3d at 1297. "Once these three conditions are met, *Younger* abstention is non-discretionary and, absent extraordinary circumstances, a district court is required to abstain." *Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003). The *Younger* doctrine applies not only to requests for equitable relief, but also to claims for monetary relief "when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." *D.L. v. Unified School District No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004).

"*Younger* abstention is jurisdictional." *Id.* at 1228.[9] The doctrine recognizes that, in certain instances, federal court proceedings may cause "undue interference with state proceedings" which "counsels against federal relief." *See Elna Safcovic, LLC v. TEP Rocky Mountain, LLC*, 853 F.3d 660, 670 (10th Cir. 2020); *see also Juidice v. Vail*, 430 U.S. 327 (1977) (federal district court should have abstained because of the state's interest in the contempt process which vindicates the regular operation of its judicial system); *Pennzoil v. Texaco, Inc.*, 481 U.S. 1 (1987) (federal court should have abstained from entering preliminary injunction prohibiting state court from enforcing state court judgment); *Winn v. Cook*, 945 F.3d 1253 (10th Cir. 2019) (district court should have abstained in case where plaintiff requested federal court order state court to provide him with jury trial where plaintiff had otherwise waived right to jury trial in state proceedings).

In the present case, there are ongoing state criminal proceedings related to each of the plaintiffs, at least insofar as each plaintiff has a right to seek redress in their individual cases pursuant to Oklahoma's Uniform Post-Conviction Procedure Act, 22 O.S. §1080 *et seq*.[10] Second, Oklahoma state courts provide an adequate forum to hear plaintiff's claims, insofar as plaintiffs can make their subject matter jurisdiction and disgorgement arguments there. In fact, state courts are the most appropriate forum to address this matter, since they are the ones that imposed the

[9] The Supreme Court recently held that three categories of cases "define *Younger's* scope": "ongoing state criminal prosecutions," "certain 'civil enforcement proceedings,'" and "'civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions.'" *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013). The present case clearly involves ongoing state criminal proceedings.

[10] The Act specifically allows for a filing by a "person who has been convicted of, or sentence for, a crime and who claims: . . . (b) that the court was without jurisdiction to impose the sentence." 22 O.S. §1080. In Oklahoma, it is impermissible to launch a collateral attack on a judgment and sentence in a criminal case. *See Oklahoma State Senate ex rel. Roberts v. Hetherington*, 868 P.2d 708 (Okla. 1994). "Such collateral attacks must be voiced by post-conviction relief procedures." *Martin v. State*, 674 P.2d 37, 41 (Okla. Crim. App. 1983).

judgments at issue.[11] Third, the state proceeding involve important state law policies, as "state criminal proceedings are viewed as a traditional area of state concern." *Winn*, 945 F.3d at 1258 (quotes omitted). For those reasons, *Younger* abstention applies and this case should be dismissed.

C. PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST CATHI EDWARDS, IN HER OFFICIAL CAPACITY, FOR VIOLATION OF 42 U.S.C. §1983

Even assuming the Court has subject matter jurisdiction to resolve Plaintiffs' claims, Plaintiffs have failed to state a claim for relief. This is true for several reasons:

1. Plaintiffs Have Failed to State *Any* Claim Against Court Clerk Cathi Edwards and Plaintiffs Lack Standing to Assert Claims of Non-Parties

At the outset, it is clear that Plaintiff's Complaint has failed to identify *any* constitutional violation caused by Court Clerk Cathi Edwards and has failed to allege that she, in fact, retains the funds at issue for purposes of Plaintiffs' state law claim for "money had and received."[12] Dkt. #1, ¶17. And Plaintiffs lack standing to pursue claims of non-parties. *McKinney v. Gannet Co.*, 649 F.2d 1240 (10th Cir. 1982) (federal courts lack standing to issue advisory opinions). Because the Complaint lacks any facts supporting a plausible claim against Court Clerk Cathi Edwards and because Plaintiffs lack standing to assert claims of non-parties, the Court should dismiss all claims against Cathi Edwards in her official capacity.

2. *Heck* Bars Plaintiffs' §1983 Claims

[11] Court costs and fees imposed in a criminal action are part of the penalty of the offense. *See* 28 O.S. §101; *State v. Ballard*, 868 P.2d 738, 741 (Okla. Crim. App. 1994). And, as noted by the District Attorneys, the Oklahoma Court of Criminal Appeals is now addressing the status of the Cherokee reservation in several criminal proceedings. Dkt. #24, pp. 18-20. Federalism principles support deference to the state court proceedings on this issue.

[12] In an action for "money had and received," the defendant must be in "possession of money belonging to another which in equity and good conscience he ought to pay over to the claimant." *See Ryan v. Spaniol*, 193 F.2d 551, 553 (10th Cir. 1951).

Plaintiffs have attempted to pursue a due process claim under 42 U.S.C. §1983. Plaintiffs have failed to state a claim in that regard. In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

Heck, 512 U.S. at 486. The Court further stated that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. If so, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction has already been invalidated. *Id.* The *Heck* doctrine applies to any federal tort or civil rights action that would necessarily imply the invalidity of a plaintiff's conviction or sentence. See *Parris v. Harris*, 45 F.3d 383, 384 (10th Cir. 1995) (applying *Heck* to FTCA claims); *Crow v Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996); *Lawson v. Engleman*, 67 Fed. Appx. 524, 526 n.1 (10th Cir. 2003).

In this case, Plaintiffs' federal causes of action are not actionable in light of the *Heck* doctrine. Court fines and fees are part of the legislatively-created penalty imposed by a Court at sentencing. 28 O.S. §101. Before Plaintiffs can seek damages for harms caused by alleged unlawful state court convictions, they must show that the convictions or sentences have been declared invalid by a state tribunal authorized to make that determination. *Heck, supra*. In an unpublished opinion, Judge Eagan found that the "favorable termination" requirement applies even when the plaintiff is not incarcerated and the plaintiff complains of misdemeanor or traffic offense violations. *See Taylor v. City of Bixby*, 2012 WL 6115051 (N.D. Okla. 2012) (dismissing claim

per *Heck* as "plaintiff has not afforded the state of Oklahoma an opportunity to cure the alleged constitutional violations and was not diligent in pursuing his claims"); *see also McFadden v. City of Midwest City*, 2014 WL 798013 (W.D. Okla. 2014) (*Heck* applies even where *habeas* remedy not available when state procedure otherwise provides "another route for a plaintiff to seek relief from his conviction"). Here, Plaintiffs have admittedly not pursued any post-conviction relief in the Oklahoma state court system. For that reason, *Heck* bars their §1983 claims.

3. Plaintiffs Have Failed to Identify any Custom, Policy or Practice on the Part of Court Clerk Cathi Edwards that Violated the Constitutional Rights of Plaintiffs

Even assuming the §1983 claims are not barred by *Heck,* Plaintiffs have failed to state a claim for relief. Section 1983 of Title 42 provides a cause of action against "[e]very person who, under color of statute . . . of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . ." Section 1983 is not itself a source of substantive rights. *Graham v. Connor*, 490 U.S. 386, 393-394 (1989). Rather, it provides a cause of action for the vindication of federal rights. *Id.* The purpose of § 1983 is to "deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that he suffered the deprivation of a right secured by the constitution or laws of the United States and that the defendant, acting under color of state law, caused the deprivation. *See West v. Atkins*, 487 U.S. 42, 48 (1988). Where the defendant in question is a county government, the plaintiff must show that a municipal policy or custom was the moving force behind the constitutional deprivation. *Monell v. New York City Dept. of Social Serv.*, 436 U.S. 658 (1978). That is, "[a] plaintiff suing a

county under section 1983 must demonstrate two elements: (1) a municipal employee committed a constitutional violation, and (2) a municipal policy or custom was the moving force behind the constitutional deprivation." *See Myers v. Okla. County Bd. of Cty. Comm'rs*, 151 F.3d 1313, 1318 (10th Cir. 1998). In this case, Plaintiffs attempt to state a due process claim. (Dkt. #2 at ¶¶ 92, 93). They claim that their due process rights were violated because Defendants prosecuted them in Oklahoma courts when the state or municipal courts at issue lacked subject matter jurisdiction to hear their cases. However, Plaintiffs fail to identify any violation of their due process rights that can be remedied under §1983 as against Court Clerk Cathi Edwards.

a. Final Policy Maker. Plaintiffs cannot show that their allegations of unconstitutional conduct are related to any final policymaking decisions of Court Clerk Cathi Edwards. As stated above, a municipality can only be held liable for acts which the municipality itself is responsible – that is, those it has "officially sanctioned or ordered." *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 125 (1988). In *Praprotnik*, the Court held that only those officials with "final policymaking authority" can subject a municipality to liability, and that the question of whether an official has "final policymaking authority" is a question of state law. *Id.* at 123. The conduct must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area. *Id.* To determine whether an individual is a final policymaker, the Court considers: (1) whether the official is meaningfully constrained "by policies not of that official's own making"; (2) whether the official's decisions are final – i.e., are they subject to any meaningful review; and (3) whether the policy decision purportedly made by the official is within the realm of the official's grant of authority. *See, e.g., Randle v. City of Aurora*, 69 F.3d 441, 448 (10th Cir. 1995) (citing *Praprotnik*, 485 U.S. at 127); *Patel v. Hall*, 849 F.3d 970, 979 (10th Cir. 2017); *Praprotnik*, 485 U.S. at 125 (noting plaintiff must identify "some official or

body that has the responsibility for making law or setting policy in any given area of a local government's business").

Under Oklahoma law, county officials may only exercise those powers which are expressly granted to them by statute or which are incidental to carrying out express powers. *See Tulsa Exposition & Fair Corp*., 468 P.2d 501, 507 (Okla. 1970). Here, Plaintiffs have identified no facts indicating Court Clerk Edwards set final, official county policy related to collecting fines and fees from tribal members within the boundaries of the Cherokee Reservation. Rather, the Oklahoma courts imposed the fines and fees as part of the guilty pleas entered in the underlying state cases, and the Court Clerk serves solely in a ministerial role in collecting those fines and fees. "The assessment of a fine is exclusively an adjudicative function of a judge, and not the court clerk." *Petuskey v. Cannon*, 742 P.2d 1117, 1121 (Okla. 1987) ("Oklahoma common law has consistently referred to a court clerk as an officer or arm of the court, whose primary function is ministerial in nature."). The Court Clerk is not involved with assessing any court's subject matter jurisdiction to render the underlying judgment at issue or in making any final policy regarding said prosecutions. For that reason, Plaintiff cannot state a §1983 claim against Court Clerk Edwards, in her official capacity as a Court Clerk for Rogers County.

b. Procedural due process. And even assuming the Court Clerk was involved in some aspect of the prosecutions at issue, Plaintiffs have failed to state a due process claim on the face of their Complaint. "[A] claim of denial of procedural due process requires that the plaintiff have a constitutionally protected property interest that was injured or revoked without proper procedural protections." *Schanzenbach v. Town of La Barge*, 706 F.3d 1277, 1283-84 (10th Cir. 2013). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

In this case, Plaintiffs have failed to identify any facts indicating they were denied a protected property interest without proper procedural protections. Rather, each Plaintiff was prosecuted in an Oklahoma state court proceeding and could have raised any and all subject matter defenses at that time. In fact, Plaintiffs claim that it has "been long recognized" that State courts have no jurisdiction over crimes committed by a tribal member on a reservation. Dkt. #2, ¶94. However, Plaintiffs fail to allege any facts showing they were prevented from raising this defense in state court. And, as noted above, they also have post-conviction relief available under Oklahoma law, but they have failed to pursue such relief. *E.g.,* 22 O.S. §1080 *et seq*.; *Banks v. State,* 953 P.2d 344 (Okla. Crim. App. 1998). To date, their convictions remain intact. Hence, Plaintiffs have failed to state a procedural due process claim.

c. Substantive Due Process. The standard for judging a substantive due process claim is whether the challenged government action would "shock the conscience of federal judges." *Uhlrig v. Harder*, 64 F.3d 567, 573 (10th Cir. 1995) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992)); *see also County of Sacramento v. Lewis*, 523 U.S. 833, 834 (1998); *Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 528-29 (10th Cir. 1998). To satisfy this standard, a plaintiff must do more than show that the government actor intentionally or recklessly caused injury to the plaintiff by abusing or misusing government power. *Livsey v. Salt Lake County*, 275 F.3d 952, 957-958 (10th Cir. 2001). Instead, a plaintiff must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking. *Schmitz Land Co., LLC v. Rio Arriba Bd. of Cty. Commissioners*, 2011 WL 13289860, at 5 (D.N.M. 2011).

Plaintiffs have not alleged that any Defendants' conduct was conscience shocking in nature. Plaintiffs were prosecuted for violations of Oklahoma law, and each pled guilty to the underlying offense. (Exhibit 1-6). Plaintiffs were free to press their subject matter jurisdiction

defenses at that time. The fact that they failed to do so does not establish that their prosecution was "conscience shocking" in nature. Because Plaintiffs have failed to identify a cognizable §1983 claim against Court Clerk Cathy Edwards, she should be dismissed from this lawsuit.

4. Plaintiffs' Claim for Declaratory Relief Should be Dismissed

Plaintiffs also state a claim for Declaratory Judgment, but the "operation of the Declaratory Judgment act is procedural only." *Skelly Oil Co. v. Phillips Petroleum Co*., 339 U.S. 667, 879 (1950). The Declaratory Judgment Act (28 U.S.C. §2201) "enlarged the range of remedies available in federal courts, but did not extend their jurisdiction." *United Food & Commercial Workers Union v. Albertson's, Inc*., 207 F.3d 1193, 1197 (10th Cir. 2000). The Act "does not provide an independent basis for federal jurisdiction." *North Cen. F.S., Inc., v. Brown*, 951 F. Supp. 1383, 1395 (N.D. Iowa 1996). In the present case, because Plaintiffs have failed to state a viable §1983 claim in the first instance, the Court should decline to hear the request for declaratory relief related to the status of the Cherokee Reservation. As noted above, Plaintiffs have failed to pursue any post-conviction relief in state court, and it would be anomalous for the Court to preemptively issue an advisory opinion on the status of the Cherokee reservation.

Further, Plaintiffs' request for declaratory and injunctive relief, just as their request for damages, would (if successful) imply the invalidity of their state court convictions and sentence. In fact, Plaintiffs seek declaratory relief *precisely for the purpose* of establishing that their convictions are "void." Dkt. #2, ¶85. The Tenth Circuit has held that, if a §1983 claim for damages is barred by *Heck*, then a related request for declaratory relief should also be dismissed. *See Archilta v. Oklahoma*, 123 Fed. Appx. 852, 856-567 (10th Cir. 2005); *Lawson v. Engleman*, 67 Fed. Appx. 524, 526 n.2 (10th Cir. 2003); *see also Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) ("[A] state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief

sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration."). The same holds true in this case, and the claim for declaratory judgment should therefore be dismissed.

In addition, declaratory relief may not be used to proclaim liability for a past act, but may only be used to define legal rights and obligations of the parties in anticipation of some future conduct. *See Utah Animal Rights Coalition v. Salt Lake City Corp*., 371 F.3d 1248, 1266 (10th Cir. 2004) (McConnell, J., concurring) ("[A] declaratory judgment action involving past conduct that will not recur is not justiciable."); *Francis E. Heydt Co. v. United States*, 948 F.2d 672, 676-77 (10th Cir. 1991). The Court "treat[s] declaratory relief as retrospective 'to the extent that it is intertwined with a claim for monetary damages that requires us to declare whether a past constitutional violation occurred.'" *Winsness v. Yocom*, 433 F.3d 727, 735 (10th Cir. 2006) (citation omitted)). The Eleventh Amendment bars retrospective claims for declaratory relief. *See Meiners v. Univ. of Kan*., 359 F.3d 1222, 1232 (10th Cir. 2004).

Here, Plaintiffs seek relief which is retrospective in nature in the form of an order declaring Defendants' past actions were unlawful and without jurisdiction. For that reason, their claims for declaratory judgment are barred by the Eleventh Amendment. *See Johns v. Stewart*, 57 F.3d 1544, 1553 (10th Cir. 1995) ("The Eleventh Amendment does not permit judgments against state officers declaring that they violated federal law in the past.") (citations and quotations omitted). Further, the Court should abstain from considering the declaratory claim for the reasons set forth in the Defendant District Attorneys' Motion to Dismiss. Dkt. #24, pp. 26-28.

D. THE COURT SHOULD DECLINE TO EXERCISE JURISDICTION OVER THE STATE LAW CLAIMS

Since Plaintiff has failed to state a federal claim, the Court should decline to exercise jurisdiction over the remaining state law claim for "money had and received." 28 U.S.C. §1367(c) ("The district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction"). "Section 1367(c) provides conditions where district courts may decline to exercise supplemental jurisdiction, and the Supreme Court repeatedly has determined that supplemental jurisdiction is not a matter of the litigants' right, but of judicial discretion." *Estate of Harshman v. Jackson Hole Mountain Resort Corp*., 379 F.3d 1161, 1165 (10th Cir. 2004) (citations omitted). The Tenth Circuit has stated, "[w]hen all federal claims have been dismissed, the court may, *and usually should*, decline to exercise jurisdiction over any remaining state claims." *Smith v. City of Enid*, 149 F.3d 1151, 1156 (10th Cir. 1998) (citing 28 U.S.C. § 1367(c)). Here, if the Court dismisses the §1983 claim, it should decline to exercise jurisdiction over the state law claim.

E. IN THE ALTERNATIVE, PLAINTIFF'S STATE LAW CLAIM FOR "MONEY HAD AND RECEIVED" SHOULD BE DISMISSED

1. The GTCA Bars the Claim

Even assuming the Court exercises jurisdiction over the state law claim, it should be dismissed. Plaintiffs have sued Cathi Edwards in her official capacity as Court Clerk for Rogers County. "A suit against a governmental officer in his or her "official capacity" is the same as a suit against the entity that the officer represents, and is an attempt to impose liability upon that entity." *Pellegrino v. State ex rel. Cameron Univ. ex rel. Bd. of Regents of State*, 63 P.3d 535, 537 (Okla. 2003). The Oklahoma Governmental Tort Claims Act applies to tort claims asserted against Rogers County. 51 O.S. §§151(11), 152. The term "tort" refers to "a legal wrong, independent of

contract, involving violation of a duty imposed by general law, statute, the Constitution of the State of Oklahoma, or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment." 51 O.S. §151(14). In short, Plaintiffs must (1) follow the claims presentation process and (2) allege sufficient facts to show that the notice provisions have been satisfied. *See Girdner v. Board of Comm'rs of Cherokee County*, 227 P.3d 1111 (Okla. Ct. App. 2009). Plaintiffs have failed to do so here.[13]

Even assuming the notice provisions were followed, Rogers County would be exempt from liability under 51 O.S. §155 for loss resulting from "judicial, quasi-judicial, or prosecutorial functions" or resulting from "adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule regulation or written policy." 51 O.S. §§ 155(2), (4); *see supra* n. 12.

2. Plaintiffs Have Failed to Give Notice Pursuant to 62 O.S. §206(A).

And assuming Plaintiffs do not pursue a "tort" claim, then they must comply with Oklahoma's fee protest statute: 62 O.S. §206(A) ("In all cases where it is alleged or claimed that fees or taxes of the state are in whole or in part unconstitutional or otherwise invalid, the aggrieved person shall pay the full amount thereof to the proper collecting officer and at the same time give notice in writing to said officer stating the grounds of his complaint and that suit will be brought against him for the recovery of all or a specified part of said fees or taxes."). Here, Plaintiffs

[13] In support, Defendant Cathi Edwards, in her official capacity, adopts and incorporates herein the arguments of the District Courts filed earlier in this case. (Dkt. #18 at pp. 11-15). As noted there, the Oklahoma Legislature has broadened the definition of "tort" to include "any legal wrong" involving a "duty imposed by general law" or "otherwise." 51 O.S. §151(11). This definition is broad enough to encompass Plaintiffs' claim for "money had and received."

dispute the validity of the fees paid pursuant to their existing convictions in state court. Dkt. #1, ¶59. However, Plaintiffs have not provided notice to the "proper collecting officer," or otherwise alleged compliance with §206(A) in their Complaint. For that reason, the claim is subject to dismissal. *See also* Dkt. # 24 at 16-17.

3. Plaintiffs Fail to State a Claim against Court Clerk Cathi Edwards for "Money Had and Received"

And even assuming the GTCA and the "fee protest statute" do not apply to the state law claim for "money had and received," it is clear that Plaintiffs have failed to state a claim in that regard against Court Clerk Cathi Edwards. A claim for "money had and received" may be brought against the "receiver and holder of the money." *Duncan v. Anderson*, 250 P. 1080, 1019 (Okla. 1926). "Although an action for money had and received is one at law, it is in the nature of a suit in equity and is governed by equitable principles. It may be maintained when a person has in his possession money belonging to another which in equity and good conscience he ought to pay over to the claimant." *Cont'l Oil Co. v. Rapp*, 301 P.2d 198, 202 (Okla. 1956). Plaintiffs must also identify the sum certain amount in which Defendants have been "unjustly enriched." *Lampton v. Stobaugh,* 2012 WL 5878875 (N.D. Okla. 2012). Here, Plaintiffs do not allege that Cathi Edwards holds an "sum certain" at issue, nor do Plaintiffs identify any particular "sum certain" that is being "unjustly" held by Defendants. For that reason, Plaintiffs do not state a claim against Cathi Edwards for "money had and received."

Second, in Oklahoma, a party cannot pursue a civil claim that, in essence, amounts to a collateral attack on a criminal judgment. "An action for a declaratory judgment will not lie 'to launch an impermissible collateral attack upon the judgment and sentence in a criminal case.'" *Dutton v. City of Midwest City*, 353 P.3d 532, 541-52 n.28 (Okla. 2015) (citing *Oklahoma State Senate ex rel. Roberts v. Hetherington*, 868 P.2d 708, 709 (Okla. 1994)). Plaintiffs' action for

"money had and received" is, in essence, an attack on the underlying judgments as their alleged right to recover damages necessarily depends on a finding that those judgments were improperly entered. For that reason, the state law claim is barred. *Id.*

Further, since the claim for "money had and received" is governed by equitable principles, various equitable defenses clearly bar this state law claim. *Cf. McGirt*, 140 S. Ct. at 2481 (noting that "many legal doctrines – procedural bars, res judicata, statutes of repose, and laches, to name a few – are designed to protect those who have reasonably labored under a mistaken understanding of the law."). In support, Defendant Edwards adopts the arguments made by the Cities and Towns, as previously filed in this matter. Dkt. #27 at pp. 11-15 (discussing laches, waiver/estoppel, unclean hands). Defendant would further note that the public record shows that Plaintiffs Tayleur Pickup, Chanda Butcher, Lindsey Butcher and Crystal Leach all pled guilty to the underlying offense. (Exhibits 1-6). Plaintiffs never challenged the subject matter jurisdiction of the courts in those proceedings and, to date, their convictions remain intact. Plaintiffs, who have voluntarily admitted to violations of Oklahoma, are in no position to now argue that they are entitled to disgorgement of fees and costs paid over to the State.

III. CONCLUSION

Plaintiffs have failed to identify *any* facts supporting *any* claim against Roges County Court Clerk Cathi Edwards. For the reasons discussed above, Cathi Edwards should be dismissed from this case. First, she is entitled to Eleventh Amendment immunity in her role as an arm of the state court system for purposes of collecting fines, costs and fees. Second, the Court lacks subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine and should abstain from considering Plaintiffs' §1983 claims per *Younger*. Third, Plaintiffs have failed to state a claim against Defendant per *Heck*, insofar as they have made no attempt to have their underlying convictions

reversed or vacated in the Oklahoma state court system. Fourth, the Court should decline to exercise jurisdiction over Plaintiff's state law claims or, in the alternative, should dismiss those claims for failure to state a claim upon which relief can be granted.

WHEREFORE, premises considered, Defendant Cathi Edwards, Court Clerk of Rogers County, in her official capacity, requests the Court dismiss any and all claims against her.

Respectfully submitted:

s/ Thomas A. LeBlanc
Thomas A. Le Blanc, OBA #14768
tleblanc@bestsharp.com
W. Caleb Jones, OBA #33541
wcjones@bestsharp.com
BEST & SHARP
Williams Center Tower 1
One West Third Street, Suite 900
Tulsa, Oklahoma 74103
(918) 582-1234
(918) 585-9447 (facsimile)
Attorneys for Defendant Cathi Edwards, Court Clerk of Rogers County, in her Official Capacity

CERTIFICATE OF SERVICE

I hereby certify that on 17th day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

Keith A. Wilkes
Hall Estill Hardwick Gable Golden & Nelson
320 S. Boston Avenue, Suite 200
Tulsa, OK 74103-3708
918-594-0400
Fax: 918-594-0505
Email: kwilkes@hallestill.com
Attorney for Defendant City of Owasso

Christopher J. Collins
Wellon B. Poe, Jr.
Jamison Whitson
Collins Zorn & Wagner
429 N.E. 50th Street, Second Floor
Oklahoma City, OK 73105
405-524-2070
Fax: 405-524-2078
Email: cjc@czwlaw.com
Email: wbp@czwlaw.com
Email: jcw@czwlaw.com
Attorneys for Defendants April Frauenberger, in her official capacity, Court Clerk of Nowata County, Oklahoma; Jill Spitzer, in her official capacity, Court Clerk of Washington County, Oklahoma; Caroline Weaver, in her official capacity, Court Clerk of Delaware County, Oklahoma; Deborah Mason, in her official capacity, Court Clerk of Craig County, Oklahoma; and Laura Wade, in her official capacity, Court Clerk of Mayes County, Oklahoma

John M. Dunn
John M. Dunn Law Office PLLC
616 S. Main Street, Suite 206
Tulsa, OK 74119
918-526-8000
Fax: 918-359-5050
Email: jmdunn@johndunnlaw.com
Attorney for Plaintiffs

Mark D. Lyons
Lyons & Clark, Inc.
616 S. Main Street, Suite 201
Tulsa, OK 74119
918-599-8844

Fax: 918-599-8585
Email: lyonscla@swbell.net
Attorney for Plaintiffs

Michael Shouse
Tulsa County District Attorney's Office
500 S. Denver, Suite 832
Tulsa, OK 74103
918-596-4825
Email: mshouse@tulsacounty.org
Attorney for Defendant, Don Newberry, Court Clerk of Tulsa County, Official Capacity

Douglas A. Wilson
Tulsa County District Attorney's Office
500 S. Denver, Suite 827
Tulsa, OK 74103
918-596-8795
Email: douglas.wilson@tulsacounty.org
Attorney for Defendant, Don Newberry, Court Clerk of Tulsa County, Official Capacity

Stefanie E. Lawson
Assistant Attorney General
Litigation Division
313 N.E. 21st Street
Oklahoma City, OK 73105
405-521-3921
Email: stefanie.lawson@oag.ok.gov
Attorney for Defendants, The District Court of Nowata County, The District Court of Washington County, The District Court of Delaware County, The District Court of Craig County, The District Court of Mayes County and The District Court of Rogers County

Erin M. Moore
Assistant Attorney General
Litigation Division
313 N.E. 21st Street
Oklahoma City, OK 73105
405-521-3921
Email: erin.moore@oag.ok.gov
Attorney for Defendants, The District Court of Nowata County, The District Court of Washington County, The District Court of Delaware County, The District Court of Craig County, The District Court of Mayes County and The District Court of Rogers County

Jacqueline R. Zamarripa
Assistant Attorney General
Oklahoma Attorney General's Office
313 N.E. 21st Street

Oklahoma City, OK 73105
405-521-3921
Email: jackie.zamarripa@oag.ok.gov
Attorney for Defendants, Kevin Buchanan, Kenny Wright, Matt Ballard and Steve Kunzweiler

Randall J. Yates
Assistant Solicitor General
Oklahoma Attorney General's Office
313 N.E. 21st Street
Oklahoma City, OK 73105
405-522-4448 or 405-521-3921
Email: randall.yates@oag.ok.gov
Attorney for Defendants, Kevin Buchanan, Kenny Wright, Matt Ballard and Steve Kunzweiler

Andrew W. Lester
Spencer Fane LLP
9400 N. Broadway Extension, Suite 600
Oklahoma City, OK 73114
405-844-9900
Email: alester@spencerfane.com
Attorney for Defendants Town of Adair, City of Bartlesville, Town of Big Cabin, Town of Bluejacket, City of Catoosa, Town of Chelsea, Town of Chouteau, City of Claremore, City of Collinsville, Town of Copan, City of Dewey, Town of Disney, City of Grove, City of Jay, Town of Kansas, Town of Langley, Town of Locust Grove, City of Nowata, Town of Oologah, City of Pryor, Town of Ramona, Town of Salina, Town of South Coffeyville, Town of Spavina, Town of Strang, Town of Talala, Town of Verdigris, City of Vinita, Town of Warner and Town of West Siloam Springs

Courtney D. Powell
Spencer Fane LLP
9400 N. Broadway Extension, Suite 600
Oklahoma City, OK 73114
405-844-9900
Email: cpowell@spencerfane.com
Attorney for Defendants Town of Adair, City of Bartlesville, Town of Big Cabin, Town of Bluejacket, City of Catoosa, Town of Chelsea, Town of Chouteau, City of Claremore, City of Collinsville, Town of Copan, City of Dewey, Town of Disney, City of Grove, City of Jay, Town of Kansas, Town of Langley, Town of Locust Grove, City of Nowata, Town of Oologah, City of Pryor, Town of Ramona, Town of Salina, Town of South Coffeyville, Town of Spavina, Town of Strang, Town of Talala, Town of Verdigris, City of Vinita, Town of Warner and Town of West Siloam Springs

Anthony J. Ferate
Spencer Fane LLP
9400 N. Broadway Extension, Suite 600
Oklahoma City, OK 73114

405-844-9900
Email: ajferate@spencerfane.com
Attorney for Defendants Town of Adair, City of Bartlesville, Town of Big Cabin, Town of Bluejacket, City of Catoosa, Town of Chelsea, Town of Chouteau, City of Claremore, City of Collinsville, Town of Copan, City of Dewey, Town of Disney, City of Grove, City of Jay, Town of Kansas, Town of Langley, Town of Locust Grove, City of Nowata, Town of Oologah, City of Pryor, Town of Ramona, Town of Salina, Town of South Coffeyville, Town of Spavina, Town of Strang, Town of Talala, Town of Verdigris, City of Vinita, Town of Warner and Town of West Siloam Springs

s/ Thomas A. LeBlanc