



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

**FILED
SUPREME COURT
STATE OF OKLAHOMA**

JUN 17 2020

**JOHN D. HADDEN
CLERK**

Greenwood Centre Ltd., an Oklahoma
limited partnership, John Hope Franklin
Center for Reconciliation, Inc., an non-
profit corporation, Shannon Martin, an
individual, and Bim Stephen Bruner, an
individual,

Plaintiffs,

v.

Rebecca Brett Nightingale, Judge of the
District Court in and for Tulsa County,

Defendants.

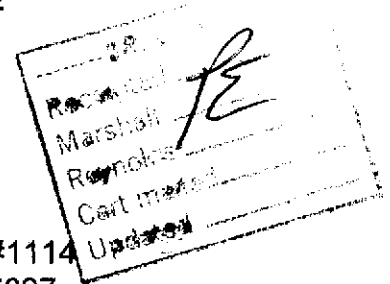
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Case No. _____

Tulsa County District Court
Case No. CJ-2020-1909

**APPLICATION TO ASSUME ORIGINAL JURISDICTION
and PETITION FOR WRIT OF MANDAMUS**

Respectfully Submitted:



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June 17, 2020

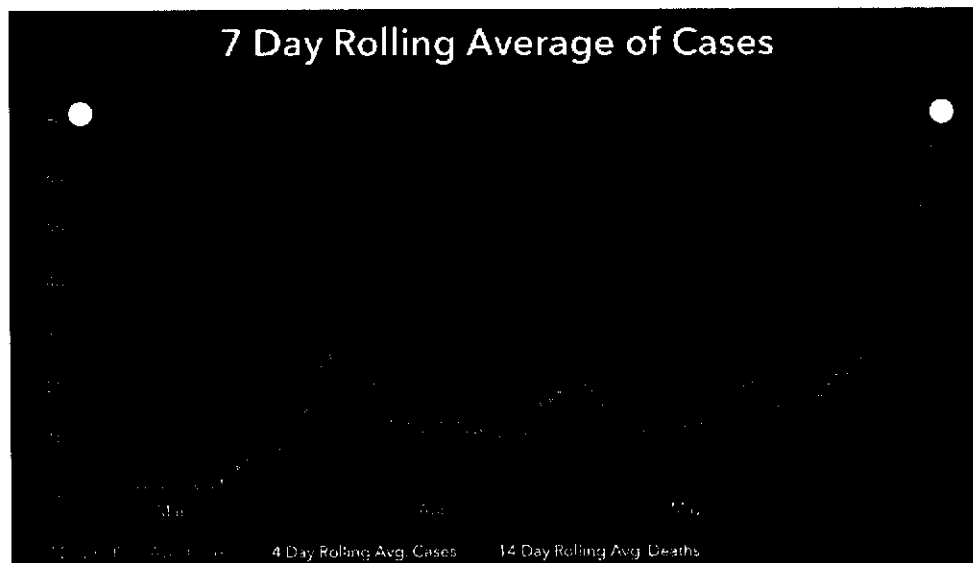
Counsel for Plaintiffs

Greenwood Centre, Ltd., John Hope Franklin Center for Reconciliation, Inc., Shannon Martin, and Bim Stephen Bruner (“Petitioners”) hereby respectfully request that the Supreme Court assume original jurisdiction of this action pursuant to 12 O.S. § 1451 and issue a writ of mandamus ordering Tulsa County District Judge Rebecca Brett Nightengale to enter a temporary injunction in Green Centre, Ltd., et al. v. SMG, et al., CV-2020-01909 (the “District Court Action”) requiring SMG and ASM Global Parent, Inc. (collectively, “ASM Global”) to follow mandatory social distancing guidelines.

The District Court, in a one-line order devoid of explanation, denied Petitioners’ request to hold a hearing to address the grave public health emergency unfolding in Tulsa. This was an abuse of discretion that warrants emergency intervention by this Court, as discussed below.

One Graph is Worth a Thousand Words

The Tulsa Health Department (“THD”) publishes daily statistics tracking the COVID-19 cases in Tulsa County. the most recent THD-published data depicting the seven day rolling average of new COVID-19 cases demonstrates the public health crisis exploding in Tulsa:



In the midst of this meteoric rise in new COVID-19 cases, Respondents plan to hold a mass gathering indoor event in Downtown Tulsa, expected to draw 19,000 people.

Disregarding their legal and moral duty to implement minimum public-safety precautions, Respondents plan to hold the event without requiring adherence to CDC-issued rules for mass gathering events. As correctly noted by THD director Bruce Bart, "It's the perfect storm of potential over-the-top disease transmission. It's a perfect storm that we can't afford to have."¹

The bitter irony of the District Court's refusal to hold a hearing to examine these important issues is that the Tulsa County Courthouse sits two blocks from the BOK Center, where the event is planned. Strict social distancing rules are in place at the Tulsa County Courthouse – requiring face-masks, cancelling jury trials, strictly limiting the number attendees at hearings, and holding many hearings via remote video-conferencing. Despite court officials' awareness of the grave risk of viral transmission when no safeguards are implemented, the District Court sits mute when, in three days, 19,000 people will gather in an indoor arena two blocks away without any social distancing requirements. This is the first such mass gathering event in the nation since the outbreak of the pandemic. This Court must act to protect the health and welfare of our beloved City.

REASONS WHY THIS ACTION IS BROUGHT IN THE SUPREME COURT

On June 20, 2020 in the midst of the worst pandemic in over a century, ASM Global plans to hold an indoor rally in downtown Tulsa in the BOK Center, an arena that holds

¹ See Noah Weiland, Tulsa Officials Plead for Trump to Cancel Rally as Virus Spikes in Oklahoma, available at <https://apple.news/An4ZSy7tHSMGnNZEsgsVLpQ>.

over 19,000 people. Despite state and local executive orders that require ASM Global to follow CDC guidance which, in turn, require businesses to follow certain social distancing protocols, ASM Global has no plans to require rally attendees to practice social distancing. The guidance, consistent with the advice of every credible, qualified medical expert, is clear: **this type of mass-gathering indoor event creates the greatest possible risk of community-wide COVID-19 transmission.**

Petitioners are businesses and immunocompromised individuals who live and work in or near downtown Tulsa. Each Petitioner is uniquely susceptible to COVID-19, whether because the virus has and will prevent them from conducting business or because the virus constitutes a grave threat to their lives. And Petitioners have good reason to worry that the rally will only make things worse. Tulsa is currently experiencing an explosion of new COVID-19 cases. Petitioners' livelihoods and lives are at risk with each new infection. With 19,000 people set to participate in an indoor rally—chanting, singing, yelling, and then leaving to interact with the rest of the community—the numbers of new infections will skyrocket. Unless someone does the right thing, Tulsa and the surrounding region will soon be in the grips of a deadly public health disaster.

On June 16, Petitioners did the right thing by filing their original Petition and Emergency Motion for Temporary Injunction in the District Court Action. The Emergency Motion for Temporary Injunction sought to require ASM Global to follow government mandated social distancing protocols by requiring attendees to wear face-masks, reduce the number of attendees to allow for 6 feet of distance between them, and undergo temperature checks. ASM Global is already requiring their employees to take such

precautions; Petitioners want ASM Global to afford their employees and the rest of Tulsa the same protections.

It only took the District Court two hours to deny this request with a simple minute order. No reason was given for the denial. More galling than that, no hearing was set to allow Petitioners to present evidence from qualified medical experts. This Supreme Court is now the only institution that stands between Tulsa and a biological bomb.

NATURE OF REMEDY SOUGHT

Petitioners request that the Supreme Court issue a writ of mandamus ordering the District Court to enter a Temporary Injunction requiring ASM Global to follow mandated social distancing guidelines. In the alternative, Petitioners request that the Supreme Court issue a writ of mandamus requiring the District Court to hold an evidentiary hearing on Petitioners' Emergency Motion for Temporary Injunction.

FACTS ENTITLING PETITIONER TO RELIEF

The following facts entitle Petitioner to the relief requested:

The Covid-19 Pandemic

1. The 2019 Novel Coronavirus, more commonly known as COVID-19, is a respiratory illness that emerged in the waning months of 2019 in Wuhan, China.²
2. COVID-19 spreads from person-to-person through close contact with infected individuals. Infected individuals are contagious even if they are not exhibiting symptoms of the disease.
3. Older individuals and people with serious underlying medical conditions,

² We are prepared to offer the testimony of Bruce Dart, THD Director, to attest to these and other facts about COVID-19 and the current public health crisis in Tulsa.

such as asthma, diabetes, and serious heart conditions, are more likely to become severely ill and die from COVID-19 than others. However, the virus can strike anyone, particularly those who come into close, prolonged contact with infected individuals. [Id.]

4. There is currently no vaccine to protect against COVID-19. The best—and only—way to avoid the transmission of COVID-19 is to limit contact between people, a practice known as social distancing.

Governments Take Unprecedented Steps to Contain Covid-19

5. After witnessing the exponential spread of COVID-19 into over 100 different countries, the World Health Organization (“WHO”) declared COVID-19 a pandemic on March 11, 2020. [City of Tulsa Ordinance 2020-10, Appendix Tab 1.]

6. Following the WHO’s lead, the President of the United States declared a national emergency because of COVID-19 on March 13. State and local governments soon followed. [Id.]

7. On March 15, 2020, the Governor of Oklahoma issued Executive Order 2020-07 declaring a state of emergency. The next day, the Mayor of the City of Tulsa proclaimed the existence of a civil emergency in the City of Tulsa with Executive Order 2020-01. [Id.]

8. The original civil emergency order in Tulsa prohibited gatherings larger than 50 people. Over the next few weeks as COVID-19 spread unchecked, Tulsa issued Executive Orders Nos. 2020-2 through 5, which closed most businesses and prohibited gatherings of more than 10 people. On April 1, a shelter-in-place order required Tulsa residents to remain home unless engaging in certain “essential” activities. [Id.]

9. Most state and local governments throughout the country issued similar emergency orders. Even so, over 2,000,000 people have been infected by the COVID-19 pandemic in the United States and 116,140 have died.

Oklahoma Places Restrictions on Reopening

10. On April 24, 2020, the Governor of Oklahoma issued the Open Up and Recover Safely (“OURS”) Plan, a three-phased approach to re-opening Oklahoma’s cities and businesses. [App., Tab 1.]

11. Oklahoma is now in phase three of the OURS Plan. While large gatherings are no longer prohibited, the State has instructed individuals to “minimize time spent in crowded environments and continue following [Center for Disease Control (“CDC”)] guidelines regarding social distancing” Individuals over 65 or part of a vulnerable population must “continue following safer-at-home policies.” Finally, the OURS Plan requires businesses to observe proper CDC-recommended social distancing protocols as they reopen. [See OURS Plan, Appendix Tab 2.].

12. The most recent guidance from the City of Tulsa requires all businesses in the city to follow the OURS Plan. [App. Tab 1.]

13. The THD also requires compliance with the OURS Plan and CDC guidelines for mass gatherings. See <https://www.tulsa-health.org/COVID19>.

14. CDC Social Distancing guidance requires individuals to “stay at least 6 feet (about 2 arms’ length) from other people.” Moreover, people should “[l]imit close contact with others outside your household in indoor and outdoor spaces.” The CDC notes that social distancing is particularly important for at-risk populations, such as people over 65 or with underlying medical conditions. [See CDC Social Distancing Guidance, Appendix

Tab 3.]

15. In addition to its Social Distancing guidelines, the CDC has issued guidance for events and gatherings. **The CDC considers events like the ASM Global event on June 20th to create the “highest risk” for spreading COVID-19 because it involves “[l]arge in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area.”** [See Id., “Considerations for Events and Gatherings,” p. 1]. In order to prevent the spread of COVID-19, events are directed to “[l]imit attendance or seating capacity to allow for social distancing” [Id. at p. 4] In addition, events should “[b]lock off rows or sections of seating in order to space people at least 6 feet apart . . . [and] [p]rioritize outdoor activities where social distancing can be maintained as much as possible.” [Id.]

16. The CDC also directs event planners to consult with local public health officials about the feasibility of safely holding an event. Factors that should be considered include the size of the possible crowd, the number of attendees who are at higher risk of developing serious complications from COVID-19, the proximity of attendees at the event, and the amount of spread in both the local community and the communities from where attendees are likely to travel. [See Id., CDC “Event Planning and COVID-19: Questions and Answers,” p. 2]

Covid-19 Cases Skyrocket in Tulsa

17. As Oklahoma’s businesses have begun reopening over the past few weeks, the number of COVID-19 cases in the state has been steadily increasing.

18. The week beginning June 8 saw the 7-day rolling average of new cases double from 24.9 to 51.4 cases per day in Tulsa. As of June 14, Tulsa County had 458

active COVID-19 cases increasing at a daily rate of +6.76%. [Screenshot of THD Dashboard, Appendix Tab 4]

19. As of Tuesday morning, the number of active cases had risen to 532 with a daily change of 16.16%. [App., Tab 4.]



20. Tulsa is experiencing double the amount of new cases it experienced in March and April when restrictions on large gatherings and businesses were still in place. With each new case, the trend line continues to rise with no end in sight. [App., Tab 4.]



21. Significantly, this sudden spike in cases is not the result of increased testing. Rather, the increase appears to be related to several highly attended private events and “quarantine fatigue.” As Tulsa continues to emerge from its shelter-in-place order, the numbers are only going to get worse. [Articles, Appendix Tab 5.]

22. To date, 1.7 of every 10 people infected with COVID-19 in Tulsa has been hospitalized, while 62 of the 1,564 confirmed cases have died. If these numbers hold—and there is no reason to believe they won’t—the people of Tulsa and its front-line healthcare workers will soon be dealing with a rising tide of hospitalizations and deaths that could overwhelm our healthcare system. [App., Tab 4.]

Into This Powder Keg, ASM Global Is Preparing To Toss a Match

23. ASM Global has the sole contractual right to manage the BOK Center (the “Arena”), a multi-purpose arena in downtown Tulsa with a capacity of over 19,000 that hosts sporting events and concerts.

24. ASM Global is contractually obligated to operate the Arena pursuant to the

policies and procedures approved by the City of Tulsa and the Tulsa Public Facilities Authority (“TPFA”). In addition, ASM Global must exercise reasonable precautions to prevent harm or loss to Arena visitors and is liable for all damages caused by its management of the Arena.

25. The Arena has not hosted an event in over three months. Scheduled events have either been postponed or cancelled. The earliest date for which an event has been rescheduled is July 30th.

26. This wholesale cancellation of events was not taken lightly, nor can it be completely blamed on the various emergency orders that have been in place since March. Rather, the cancellations are a product of widespread consensus among experts that large, indoor gatherings such as music concerts and sporting events are the riskiest environments for the spread of COVID-19. [App., Tab 5.]

27. In such a setting, it would take only a few infected individuals—who are likely asymptomatic and have no idea that they are infected—to infect hundreds if not thousands more. These newly infected individuals will, in turn, go on to infect others. [App., Tab 6]

28. It is reasonable to expect that this event will attract many individuals who will not be able to enter the venue, but will gather outside and nearby in uncontrollable groups, unwittingly spreading the virus.

29. Such a “super-spreader” event would exacerbate Tulsa’s already troubling increase in active COVID-19 cases, threatening the health and safety of everyone in the city.

30. Despite recognizing this and having prudently cancelled all previously

scheduled events at the Arena, ASM Global has now contracted to hold a political rally at the Arena this coming Saturday, June 20, 2020 (the "Rally").

31. The Rally will bring tens of thousands of people from Tulsa and the surrounding areas into close, prolonged contact in the first large indoor gathering held in the nation since March. These attendees, many of whom will belong to at-risk populations, are likely to shout, sing, and chant. CDC guidance establishes that such an event creates an extremely heightened risk of viral transmission. [App. Tab 3.]

32. Prior to agreeing to hold the Rally, ASM Global had a duty to consult with local health officials and consider: the size of the possible crowd, the number of attendees who are at higher risk of developing serious complications from COVID-19, the proximity of attendees at the event, and the amount of spread in both the local community and the communities from where attendees are likely to travel.

33. Pursuant to state and local orders, which incorporate CDC guidance, a consideration of these factors would mandate, at a minimum, prohibiting persons over 65 or with underlying medical conditions from attending the event, and requiring social distancing and face-masks for all attendees.

34. ASM Global, however has not consulted with local public health officials or given due consideration to the recent spread of the virus and the numbers of high risk individuals who will attend the Rally.

35. More troubling still, neither ASM Global nor the Rally organizer plans to require social distancing at the Rally. This is directly contrary to CDC guidance which must be followed pursuant to state and local law and ASM Global's contractual obligations.

36. In addition to constituting a grave threat to its attendees, the Rally also threatens the health of ASM Global's employees. These employees are required to wear face masks and practice safe social distancing, but they are not afforded such protections from the event's attendees. This makes it impossible for ASM Global's employees to safely perform their jobs and represents an additional breach of ASM Global's duties under the OURS Plan and CDC guidance.

The Rally Will Be a Public Health Disaster

37. Health officials throughout the nation have condemned the Rally as a reckless gamble that can only exacerbate the region's COVID-19 problems.

38. **The Tulsa Health Department's Director, Bruce Dart, has warned that the Rally will be dangerous for all attendees. In particular, he has urged that "we shouldn't be in enclosed spaces and we shouldn't have extended contact with other people because that's where the risk lies."** [App., Tab 5.]

39. Prominent physicians throughout the country agree. Dr. Ashish Jha, director of Harvard's Global Health Institute, called the upcoming Rally "an extraordinarily dangerous move for the people participating and the people who may know them and love them and see them afterward." [App., Tab 5.]

40. Dr. Nahid Bhadelia, Medical Director of the Special Pathogens Unit at Boston University School of Medicine stated that the Rally is "a perfect storm setup: the idea of tons of people, where one sick person can have an impact of generating secondary cases on this immense level, where it's indoors, where there's no ventilation." He further recommended moving the Rally outdoors, reducing the number of attendees, and requiring social distancing and face-masks. [App., Tab 5.]

41. In a stunning admission of the dangers posed by the Rally, the organizer of the Rally is forcing attendees to sign the following waiver:

By clicking register below, you are acknowledging that an inherent risk of exposure to COVID-19 exists in any public place where people are present. By attending the Rally, you and any guests voluntarily assume all risks related to exposure to COVID-19 and agree not to hold Donald J. Trump for President, Inc.; BOK Center; ASM Global; or any of their affiliates, directors, officers, employees, agents, contractors, or volunteers liable for any illness or injury.

Plaintiffs and the Community Will Suffer Irreparable Harm if ASM Global Hosts the Rally

42. Plaintiff Greenwood Centre, Ltd. owns 60,000 square feet of storefront and office space in downtown Tulsa. Its lessees include restaurants, salons, shops, and other businesses who need a healthy and safe environment in which to operate. The Greenwood Centre LTD is entrusted with the ownership and management of buildings in the Tulsa area sometimes referred to as "Black Wall Street." Greenwood Centre tenants, customers, and the commerce generated at the businesses within "Black Wall Street" will be imminently at peril due to the spread of COVID 19, including serious illness, death and destruction of business within the Black Wall Street area. Greenwood Centre, LTD and the lessees and businesses which operate in the Greenwood District, having already suffered considerable economic harm from the previous orders issued by both state and local authorities closing non-essential businesses and ordering consumers to shelter in place, will suffer irreparable economic damage from the second wave of infections which will arise from this super-spreader event.

43. Plaintiff John Hope Franklin Center for Reconciliation organizes and hosts events in downtown Tulsa dedicated to bringing awareness to issues of racial discrimination and keeping alive the memory of the 1921 Tulsa Race Massacre. A

spike in COVID-19 cases will endanger the health of its employees and volunteers as well as its ability to fundraise and fulfill its charitable mission.

44. Plaintiff Shannon Martin is an immunocompromised individual who is particularly susceptible to COVID-19. She has stage 4 breast cancer and is currently undergoing chemotherapy. She lives within 4 miles of the Arena. She works within 4 blocks of the Arena.

45. Plaintiff Steve Bruner is an immunocompromised individual who is a resident of Tulsa and a member of the Muscogee Creek Nation. He is 71 and has diabetes, a heart condition, and is a prostate cancer survivor.

46. The Rally constitutes an existential threat to Plaintiffs and their community.

Respectfully Submitted:



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