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INSURANCE COMMISSIONER
OKLAHOMA

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

IN RE: HEARING PURSUANT TO 36 O.S. § 984)
AS TO WHETHER THE OKLAHOMA)
HOMEOWNER'S INSURANCE)
MARKET IS NONCOMPETITIVE)

Case No. 26-0820-TRN

REPLY IN SUPPORT OF THE DEPARTMENT'S MOTION TO DISMISS
PARTIES FOR LACK OF STANDING

The State of Oklahoma, *ex rel.* Glen Mulready, Insurance Commissioner (the "Department"), by and through counsel, Antuanya "Bo" DeBose and Nicole Nash, hereby reply to the response briefs of Bob Sullivan ("Mr. Sullivan") and the Oklahoma Attorney General ("OAG") filed September 10, 2026. Mr. MacIntyre did not file a response. In support, the Department states as follows:

**I. STANDING TO PARTICIPATE IN AN ADMINISTRATIVE PROCEEDING
REQUIRES A DIRECT, IMMEDIATE, AND SUBSTANTIAL EFFECT ON A
PROTECTED INTEREST**

Who has standing to appear in a hearing pursuant to 36 O.S. § 984 is an issue of first impression. The Department's counsel has been unable to find any case law specifically addressing this issue, and neither Mr. Sullivan nor the OAG have cited such case law in their responses. Regardless, the standard for standing in an administrative proceeding is well-established and was accurately set forth in the Department's Motion to Dismiss.

In Oklahoma Attorney General Opinion 00-52, former Attorney General Edmondson held the State Board of Agriculture did need to offer a hearing prior to renewing a Concentrated Animal Feeding Operation License "when nearby landowners present *specific factual allegations* showing that the proposed renewal of the license may have a direct, substantial and immediate effect on their property or legal interests." 30 Okla. Op. Att'y Gen. 256 (2000) (emphasis added). In that

opinion, the OAG—addressing the right to participate in an administrative hearing, not an appeal—set forth the same legal requirements for standing that the Department set forth in its Motion to Dismiss.

To have standing, a party “must show (1) actual or threatened injury, (2) for which relief can be given, and (3) the interest to be protected is ‘within a statutorily or constitutionally protected zone.’” *Brandon v. Ashworth*, 955 P.2d 233, 235 (Okla. 1998) (quoting *In re Initiative Petition No. 363*, 927 P.2d 558, 565 n.29 (Okla. 1996)). The interest must be “direct, immediate and substantial.” *Id.* at 235 (quoting *Underside v. Lathrop*, 645 P.2d 514, 517 (Okla. 1982)). See also *Cities Service Co. v. Gulf Oil Corp.*, 976 P.2d 545, 547 (Okla. 1999) (listing elements as “(1) a *legally protected interest* which must have been injured in fact - *i.e.*, an injury which is actual, concrete and not *conjectural* in nature, (2) a *causal* nexus between the injury and the complained of conduct, and (3) a *likelihood, as opposed to mere speculation, that the injury will be redressed by a favorable decision.*” *Id.* (emphasis in bold added) (citing *Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906 (1994)).

Id. at 2. A substantially similar standard of standing is also set forth in case law relied upon by the OAG in its response brief. See *Dean v. State ex rel. Doak*, 2012 OK CIV APP 105, ¶ 22, 292 P.3d 58, 64.

The Oklahoma Administrative Procedures Act (“OAPA”), specifically 75 O.S. § 250.3(15) defines a “Party” as “a person or agency named and participating, or *properly seeking and entitled by law to participate*, in an individual proceeding.” (emphasis added). The Oklahoma Supreme Court has held, “A person is a party to an administrative proceeding either by being named as such, becoming a party by applicable statutory law, or if his interest therein is of constitutional proportions. Interested parties are those who have a legally recognized private interest, and not simply a possible pecuniary benefit.” *First Nat. Bank v. Oklah. Sav. & Loan Bd.*, 1977 OK 171, ¶ 7, 569 P.2d 993, 996; see also *Stewart v. Rood*, 1990 OK 69, ¶¶ 31-32, 796 P.2d 321, 333 (*overruled by DuLaney v. Okla. State Dep't of Health*, 1993 OK 113, ¶¶ 31-32, 868 P.2d 676 (but not overruled as to the basis for standing)). In *First Nat. Bank*, the Oklahoma Savings and Loan Board held a

hearing on the approval of a charter application to establish a branch office in Cleveland, Oklahoma for a competitor of First National Bank (“FNB”). *Id.* at ¶ 1, 995. FNB appeared at the hearing but requested a continuance on the grounds that it received late notice and had insufficient time to prepare. *Id.* at ¶¶ 1–5, 995–996. The Oklahoma Supreme Court dismissed FNB’s appeal, finding that FNB—despite having a possible pecuniary interest—did not have a legally protected interest that entitled it to notice or to participate in the hearing. *Id.* at ¶¶ 7–8, 996–997 (“In order to be entitled to a hearing...it must be shown that appellant will be adversely affected in a legal or property right. The right to be free from competition is not a vested property right, and because it is not, the appellants were not entitled to notice of the hearing.”)

In Oklahoma Attorney General Opinion Number 81-155, former Attorney General Cartwright applied *First Nat. Bank* when determining a complaining witness did not have standing to appear as a party in disciplinary action against a psychologist. 13 Okla. Op. Att’y Gen. 278 (1981). Even though the complainant had been allegedly wronged by the psychologist, the complainant did not have a “private or proprietary interest of a constitutional nature automatically entitling him to receive the status of a ‘party’ to the proceeding with the various rights and powers outlined in the Administrative Procedures Act....” *Id.* The purpose of the hearing was to revoke or suspend the psychologists’ license, “not the vindication of any alleged wrongs suffered by the complainant.” *Id.* The OAG opinion also makes clear that instigating a proceeding does not entitle a person to be a party to that proceeding. *Id.* “In administrative cases involving decisions aimed at public protection, rather than at providing a remedy for private wrongs, ‘while a private person may request that action be taken by the administrative agency or a charge by such a person may be essential to put the machinery of the agency into motion, the person at whose instigation a proceeding is instituted does not become a party to the proceedings or have any control over it.’”

Id. (citing 2 Am. Jur. 2d “Administrative Law” § 367 (1962 and Supp. 1980)). So even if it were true that Sullivan’s request initiated this proceeding, that would still not be enough to establish standing.

Toxic Waste, Nat. Motor Club of Okla., and *Roussel* do not contradict that a party has to have a direct, immediate, and substantial effect on a protected interest to have standing to appear in an administrative hearing. *Toxic Waste Impact Group, Inc. v. Leavitt*, 1994 OK 148, 890 P.2d 906; *Nat. Motor Club of Okla., Inc. v. State Ins. Bd.*, 1964 OK 138, 393 P.2d 511; *Roussel v. State ex rel. Grimes*, 1980 OK 101, 614 P.2d 53. Distinguishable from this case, Toxic Waste Impact Group had specific statutory standing to request an administrative public hearing, did not do so, and thus lacked standing at the appellate level. *Toxic Waste*, 1994 OK 148, ¶¶ 2, 11–12, 890 P.2d 906, 909, 911.¹ Title 36 O.S. § 984 provides no such statutory standing to Mr. Sullivan and Mr. MacIntyre. In *Nat. Motor Club of Okla.* and *Roussel*, standing was not challenged in the administrative proceeding, so the lack of standing was not addressed until appeal. *Nat. Motor Club of Okla.*, 1964 OK 138, ¶¶ 1–3, 393 P.2d 511–513; *Roussel*, 1980 OK 101, ¶¶ 1–17, 614 P.2d 53, 54–57. In *Roussel*, the administrative hearing was to approve or disapprove an application for acquisition of control of insurance company, and Court found it persuasive that the application named United Founders, which was the party seeking standing. *Id.* at ¶ 15. No similar facts exist in this matter.

II. THE BURDEN OF PROOF LIES WITH THE CHALLENGED PARTIES TO ESTABLISH STANDING.

¹ 63 O.S. § 1-2006(D)(1981) stated: “If any of the affected property owners or qualified interest groups request a public hearing, such hearing shall be held before a construction permit is issued. All affected property owners and qualified interest groups who request a hearing shall be joined at the hearing. At any requested hearing, the Department shall hear testimony and accept evidence pertaining only to the physical and technical suitability of the proposed hazardous waste facility.” This statute was renumbered as 27A O.S. § 2-7-113 by Laws 1993, HB 1002, c. 145, § 359, which was then repealed by Laws 1994, SB 997, c. 373, § 31.

A party invoking a court's jurisdiction has the burden of establishing his or her standing (when contested) to pursue the action in court. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, —, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351, 364; *Wells Fargo Bank, N.A. v. Heath*, 2012 OK 54, ¶¶ 8–9 and 12, 280 P.3d 328, 332–334; *Heritage Village Apartments, Ltd. v. Okla. Housing Finance Agency*, 2001 OK CIV APP 4, ¶ 7, 18 P.3d 1085, 1087.

Additionally, a motion to dismiss for lack of standing does not require the submission of evidence—the motion is evaluated based solely on the allegations in the motion. When a motion to dismiss for lack of standing is filed as a pretrial motion, the court evaluates the sufficiency of the pleading, not the underlying facts. The trial court and reviewing court must accept the petition's allegations and all inferences that can be drawn from them as true. *Guzman v. Guzman*, 2021 OK 26, ¶¶ 2-3, 507 P.3d 630. Therefore, the Department need not allege that Mr. MacIntyre or Mr. Sullivan filed late, filed improperly, or misrepresented anything. OAG Response Brief at 9, ¶ 24. Because the court takes the petition's allegations as true, the moving party need not submit evidence to support the motion — the motion tests the legal sufficiency of the pleading, not the facts supporting it. *Berkson v. State ex rel. Askins*, 2023 OK 70, ¶ 2, 532 P.3d 36.

Lastly, parties whose standing has not been challenged bear no burden of proof. Respectfully, Mr. Sullivan nor the OAG have provided statutory proof or case law to support the notion that an objection to standing concerning two parties requires the other participants to bear a burden to prove their standing as well. Standing of the other parties is not at issue in this briefing

The Oklahoma Supreme Court stated the applicable rule in *Okla. Public Employees Ass'n*: “an association's standing is based upon members of that association possessing standing to sue in their own right.” *Okla. Pub. Employees Ass'n v. Okla. Dep't of Cent. Servs.*, 2002 OK 71, ¶¶ 7–9, 55 P.3d 1072, 1077. In that case, the Court examined whether members of the OPEA possessed

standing, ultimately concluding that they did, which in turn conferred standing upon the association itself. Upon information and belief, the associations who are parties in this case have membership composed of property and casualty insurers writing homeowners business in Oklahoma; thus, there are insurers currently before this court. The outcome of the hearing will have a direct, immediate, and substantial impact on the associations' membership. If the Hearing Examiner finds the Oklahoma's homeowners insurance market is noncompetitive, the members of the associations will be required to change their rate filing processes. Insurance producers and surplus lines brokers do not share this direct impact as they do not file rates with the Department.

III. MESSRS. SULLIVAN AND MACINTYRE DO NOT SATISFY THE STANDARD FOR STANDING IN AN ADMINISTRATIVE PROCEEDING

The homeowners insurance market, by the intent of the Legislature, is presumed competitive and no rate may be found to be excessive. 36 O.S. §§ 984–985, 989. If it is determined that the market is not competitive, then existing rates “shall be deemed to be in compliance with the laws of this state unless disapproved” after a hearing; insurers will have to file rates and supporting information with the Department thirty (30) days in advance and can be disapproved by conditional order with opportunity to request a hearing. 36 O.S. §§ 985.1 and 989. The direct, substantial, and immediate impact is to insurers and advisory organizations (and the trade organizations of which those entities are members) who have to change their filing and rating policies and procedures and are subject to increased regulatory oversight.

Mr. Sullivan and the OAG concede Mr. Sullivan's only interests are that he is a licensed producer and surplus lines broker, who sells homeowners insurance policies, and is a consumer of a homeowners insurance policy. Mr. MacIntyre has experience working in the insurance industry and is believed to also be a consumer. Importantly, neither the OAG nor Mr. Sullivan identify a statutorily or constitutionally protected interest on behalf of either candidate that is affected by the

outcome of the 36 O.S. § 984 hearing. Mr. Sullivan provides no specifics as to how the outcome of the hearing, even if found noncompetitive, will directly affect his business interests. Mr. Sullivan argues that the protected interest is the loss of the protection of a market in which rates are reviewable for excessiveness and cites *Cox Okla. Telecom, LLC. v. State ex rel. Okla. Corp. Comm.*, 2007 OK 55, 164 P.3d 150, in support. But this still is not a direct, immediate, or substantial loss. Even in a market where rates are reviewable for excessiveness, there is only a speculative possibility, which is contingent upon future events, that this would result in any homeowners premium reductions for Mr. Sullivan or his clients. The Oklahoma Supreme Court was clear in *First Nat. Bank* that a “possible pecuniary interest” is not sufficient to establish standing. *First Nat. Bank*, 1977 OK 171, ¶ 7, 569 P.2d 993, 996. Nor is *Cox* applicable here. *Cox*, 2007 OK 55, ¶ 7, 164 P.3d at 155. *Cox* held that competitive harm resulting from the lifting of regulatory oversight can be a sufficiently concrete injury. *Id.* In this case, there can be no such loss of regulatory oversight when the default and presumption is a competitive market with less regulation. Unlike in *Cox* and *Dean*, no directly impacted and protected business competition interest on behalf of Mr. Sullivan or Mr. MacIntyre has been identified. See *Cox*, 2007 OK 55, ¶ 7, 164 P.3d at 155; *Dean*, 2012 OK CIV APP 105, ¶¶ 24–27, 292 P.3d at 64–65.

Gann v. State ex rel. Okla. Corp. Comm., 2026 OK 24, *Okla. State Senate v. State Bd. For Property & Cas. Rates*, 2000 OK 69, 11 P.3d 1242, and *Oklahoma State AFL-CIO v. State Bd. For Property & Cas. Rates*, 1970 OK 3, 463 P.2d 693, are also not applicable. In those cases, the purpose of the administrative hearings was to approve or disapprove specific rate changes and standing was extended to the persons paying the rates and to associations who had some members who were paying the rates or would be applicants for insurance products subject to those rates. *Gann*, 2026 OK 24, ¶¶ 12 and 21; *Okla. State Senate*, 2000 OK 69, ¶¶ 2 and 6, 11 P.3d at 1243–

1244; *Okla. State AFL-CIO*, 1970 OK 3, ¶¶ 1 and 5, 463 P.2d at 694–695. If this were an actual ratemaking hearing pursuant to 36 O.S. §§ 989 and 990, those cases would be more persuasive. However, the purpose of a hearing pursuant to 36 O.S. § 984 is to determine whether or not an insurance market is noncompetitive and the direct impact on rates is how and when they are filed and reviewed.

Messrs. Sullivan and MacIntyre bear the burden of establishing their standing, and the Department respectfully submits that they have not done so.

IV. THE DEPARTMENT’S MOTION TO DISMISS IS NOT UNTIMELY AND IS NOT WAIVED.

In Oklahoma, standing is treated as a threshold jurisdictional question that may be raised at any stage of the proceeding—by any party or by the court itself—and must be resolved before any other issue on the merits can be decided. *See Osage Nation v. Bd. Of Comm’rs of Osage Cnty.*, 2017 OK 34, ¶¶ 64 and 66, 394 P.3d 1224, 1245–1246 (“This Court has treated standing as jurisdictional.”); *Wells Fargo Bank, N.A. v. Heath*, 2012 OK 54, ¶¶ 8–9 and 12, 280 P.3d 328, 332–334 (“Standing may be raised at any stage of the proceeding, and when raised, the party invoking the court’s jurisdiction has the burden of establishing his or her standing.”).

Although there is no deadline to raise a standing objection, the burden on the challenging party increases as litigation progresses. The party seeking relief has a greater burden at later stages in the case than in defending a pretrial motion to dismiss. *Okla. Educ. Ass’n v. State ex rel. Okla. Legislature*, 2007 OK 30, ¶ 10, 158 P.3d 1058, 1063. The Department filed the Motion to Dismiss Parties Due to Lack of Standing on September 3, 2026—only six (6) business days after Mr. Sullivan filed his entry of appearance. The Department’s Motion to Dismiss is not untimely or waived. Standing is a jurisdictional issue, and it may be raised at any stage of the proceeding.

When a court raises the issue sua sponte, the parties must be given a reasonable opportunity to present facts and law on the issue prior to the court's decision. *Indep. Sch. Dist. # 52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56, ¶ 54, 473 P.3d 475, 498. While standing in this matter was not raised sua sponte, the Department recognized and made clear that Mr. Sullivan and Mr. MacIntyre should receive full and fair opportunity to respond. The Department specifically stated in its motion, “the Department does not wish for the scheduled pre-hearing conference to be delayed or continued further and believes any briefing and/or hearing on this matter could be scheduled or addressed after the pre-hearing conference.” Department’s Motion at 6. Thus, the Hearing examiner set forth a briefing schedule for objections and replies to the Department’s Motion to Dismiss and set oral argument regarding the Motion on September 15, 2026. All parties have been provided a reasonable opportunity to be heard and present evidence on the issue of standing.

V. PARTICIPATION IN AN ADMINISTRATIVE HEARING, ON ITS OWN, IS NOT SUFFICIENT TO ESTABLISH STANDING.

The entry of appearance is designed to establish counsel of record, provide an address for service, and notify the court or agency of representation—not to resolve substantive questions such as standing. Standing to participate in an administrative proceeding flows from a party's legal interest in the subject matter of the proceeding—not from the mere act of filing a notice of appearance. The Department’s regulations are silent on how and when a party must file an entry of appearance in an administrative case. However, even where administrative rules permit a person to become a party of record through an entry of appearance, this procedural party status does not resolve the underlying question of whether that party has a cognizable legal interest sufficient to confer standing. Standing requires a showing of a legally protected interest, which is a substantive inquiry that the mere filing of a procedural document cannot satisfy.

The Department did treat Mr. MacIntyre and Mr. Sullivan as parties in the Joint Motion for Stipulation and Clarification filed on September 1, 2026, and will continue to treat them as parties unless and until the court issues an order finding they are not proper parties. However, the fact that Mr. Sullivan has responded to motions and participated in pre-conference hearings thus far has no bearing on whether he has standing to continue to participate in this matter going forward. Once standing is raised, it must be resolved in advance of the trial court's decision on the merits. *See State ex rel. Fugate v. Stitt*, 2025 OK 54, ¶¶ 5–6, 577 P.3d 265, 268 (citing *Toxic Waste*, 1994 OK 148, ¶ 9, 890 P.2d 906, 911).

VI. CONCLUSION

WHEREFORE, the Department respectfully asks the Hearing Examiner to consider this reply and grant such relief as he deems just.

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CERTIFICATE OF MAILING

I, Antuanya "Bo" DeBose, hereby certify that a true and correct copy of the above and foregoing *Reply* was mailed by first class U.S. Mail with postage prepaid and return receipt requested, along with electronic mail on this 14th day of September, 2026 to:

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