



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 16 2024

JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE CHEROKEE NATION, ET AL.,

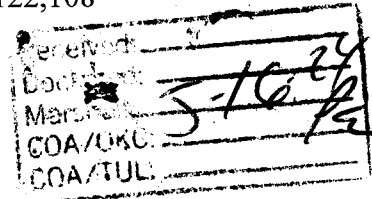
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, ET AL.,

Defendants,

Case No. 122,108



**GOVERNOR'S MOTION TO SET BRIEFING SCHEDULE
AND ORAL ARGUMENT**

J. Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma, hereby moves this Court for an order setting a briefing schedule pertaining to the question of law certified by the United States District Court for the District of Columbia. The Governor further requests that the Court set this case for oral argument on a date after the completion of the briefing that is convenient for the Court. Counsel for the Governor tried to reach counsel for Attorney General Drummond by phone and email but was unable to obtain his position.

In support of his motion, the Governor states as follows:

BACKGROUND

On August 7, 2020 the Plaintiffs initiated the underlying lawsuit in the U.S. District Court for the District of Columbia, naming the Governor as a Defendant. *See* Docket, *Cherokee Nation v. U.S. Dep't of the Interior*, No. 20-cv-2167-TJK (D.D.C. filed Aug. 7, 2020).

Pursuant to his statutory authority to "employ counsel to protect the rights or interests of the state in any action or proceeding, civil or criminal, which has been, or is about to be commenced," 74 O.S. § 6, the Governor retained counsel to represent him in the case. On August 31, 2020, the Governor made his first appearance in the federal district court proceeding by and through his appointed counsel. *See* [ECF No. 19].

Nearly three years later, on July 25, 2023, Oklahoma Attorney General Gentner Drummond filed a “Notice of Appearance” in which he purported to “enter [his] appearance as counsel in this case for J. Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma.” [ECF No. 176 at 4]. In the Notice of Appearance, AG Drummond argued that 74 O.S. § 18b(A)(3) gave him the “power to assume and control the State’s defense in this case,” and superseded the Governor’s authority to proceed with the counsel of his own choosing. [*Id.* at 2].

On August 4, 2023, the Governor filed a Motion to Strike or Otherwise Refuse to Recognize Notices of Appearance (Motion to Strike) [ECF No. 178]. The Governor’s motion refuted AG Drummond’s interpretation of Oklahoma law and explained “[t]hat the Attorney General has no power to seize litigation from the Governor.” [*Id.* at 3].

After briefing concluded on the Governor’s Motion to Strike, but before the district court entered a ruling, AG Drummond filed a Motion to Certify Question to the Oklahoma Supreme Court (AG’s Motion to Certify). [*See* ECF No. 183].

The Governor opposed the AG’s Motion to Certify on the basis that the AG had no standing to file it, and that in any event, the question whether AG Drummond was entitled to seize control of the federal district court litigation was not a difficult one under Oklahoma law and would not be dispositive of the underlying dispute in the case. [*See* ECF No. 186]. Without deciding AG Drummond’s standing to file his Motion to Certify, the district court on its own initiative entered an order certifying the question to this Court. [*See* ECF Nos. 190, 195].

On April 8, 2024, the district court entered its Order Certifying Question of Law to the Supreme Court of Oklahoma, which was submitted to this Court on April 16, 2024 (Certification Order) [ECF No. 195]; *see also* Order Certifying Question of Law to the

Supreme Court of Okla., *Cherokee Nation v. U.S. Dep't of the Interior*, No. 122,108 (Okla. Apr. 16, 2024).

ARGUMENT AND AUTHORITIES

This Court has the inherent authority to control its docket, which necessarily includes the discretion to order briefing, set a briefing schedule, and schedule oral argument in any proceeding before the Court. *See, e.g., Winters v. City of Okla. City*, 1987 OK 63, ¶ 8, 740 P.2d 724, 726.

The Rules of this Court provide, in relevant part, that “[u]pon the filing in this Court of an order certifying a question of law to this Court pursuant to 20 O.S. § 1601, et seq., and receipt of the record from the certifying court, this Court may in its discretion set a briefing schedule.” 12 O.S. ch. 15, app. 1, Okla.Sup.Ct.R. 1.10(f). The Rules of this Court also confirm the Court’s discretion to allow oral argument. *See* 12 O.S. ch. 15, app. 1, Okla.Sup.Ct.R. 1.9.

This Court has frequently ordered briefing in certified question proceedings *sua sponte* or upon request by a party. *See, e.g., Order, Hamilton v. Northfield Ins. Co.*, No. 117,707 (Apr. 29, 2019); *Order, Foutch v. Turn Key Health, LLC*, No. 117,107 (Jul. 5, 2018); *Order, Odom v. Penske Truck Leasing Co.*, No. 116,554 (Nov. 28, 2017); *Order, Siloam Springs Hotel, LLC v. Century Sur. Co.*, No. 114,872 (Apr. 11, 2016); *Order, Cline v. Okla. Coal. for Reprod. Just.*, No. 111,939 (Jul. 16, 2013).

The Governor respectfully submits that additional briefing and an opportunity to be heard at oral argument will materially benefit the Court in resolving the certified question.

First, the certified question presented to this Court involves issues of significant public importance. The underlying dispute arises between two publicly elected executive officials holding offices created by the Oklahoma Constitution. *See* Certification Order at 1-2; Okla.

Const. art. VI, §§ 1-2. And the issue concerns the proper distribution and exercise of executive rights, authority, and privileges under Oklahoma law. *See* Certification Order at 2-3. Thus, the certified question presents an issue of obvious public concern, and the Court's opinion on the certified question could have significant government-wide impact, now and well into the future.

Additionally, the underlying dispute implicates significant professional and ethical considerations, including a client's right to be represented by counsel of choice, direct his or her own defense, and present that defense to the court. [*See* ECF No. 186 at 4].

Second, the issues presented by the certified question are complex, requiring interpretation and application of Oklahoma's Constitution, statutes, and rules of professional conduct. The Governor respectfully submits that additional briefing will benefit the Court as it considers these intricate issues.

Third, the parties did not have an opportunity to fully brief these issues in the federal district court litigation. The underlying dispute prompting the certified question arose from a Motion to Strike a Notice of Appearance—not a dispositive motion, judgment, or other merits proceeding. The relevant briefing totaled approximately 22 pages, which is a fraction of the total pages allowed for merits briefing under this Court's rules. *Compare* [ECF Nos. 176, 178, 179, 180] *with* 12 O.S. ch. 15, app. 1, Okla.Sup.Ct.R. 1.11(b). Thus, the Court would materially benefit from additional briefing and oral argument that is “strictly limited to the question certified.” 12 O.S. ch. 15, app. 1, Okla.Sup.Ct.R. 1.10(f).

Finally, granting the relief requested would not materially prejudice any party or result in undue delay.

For the convenience of the Court, the Governor offers the following proposed briefing schedule, subject to ordinary page limits provided by the Rules of the Court:

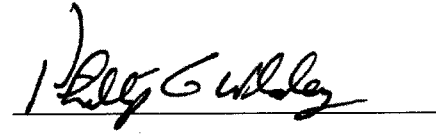
EVENT	DEADLINE
Governor's Opening Brief Due	30 days from the date of the Court's Order
Attorney General's Response Brief Due	30 days from the filing of the Opening Brief
Governor's Reply Brief Due	20 days from the filing of the Response Brief

AG Drummond has purported to enter an appearance in the underlying federal district court litigation, and Governor Stitt seeks relief from that action. Accordingly, the Governor stands in the position of the petitioner in the present dispute. The Governor therefore respectfully requests the opportunity to be heard first in briefing and at oral argument. Allowing the Governor to file the opening brief is especially appropriate given that only the Governor—not the Attorney General—is a party to the underlying federal district court proceeding.

CONCLUSION

For the foregoing reasons, the Governor respectfully requests this Court enter an order setting a briefing schedule and setting this case for oral argument.

Respectfully submitted,



Jeffrey B. Wall, [D.C. Bar # 500301]*
Judson O. Littleton, [D.C. Bar # 1027310]*
Zoe A. Jacoby, [D.C. Bar #1673642]*
SULLIVAN & CROMWELL LLP
1700 New York Avenue, NW, Suite 700
Washington, DC 20006
Phone: (202) 956-7500
Fax: (202) 956-7676
wallj@sullcrom.com
littletonj@sullcrom.com
jacobyz@sullcrom.com

and

Phillip G. Whaley, OBA No. 13371
Matthew C. Kane, OBA No. 19502
Patrick R. Pearce, Jr., OBA No. 18802
RYAN WHALEY
400 North Walnut Avenue
Oklahoma City, OK 73104
Phone: (405) 239-6040
Fax: (405) 239-6766
pwhaley@ryanwhaley.com
mkane@ryanwhaley.com
rpearce@ryanwhaley.com

***Counsel for Defendant
Governor J. Kevin Stitt***

**pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

This certifies that on this 16th day of May, 2024, a true and correct copy of the foregoing instrument was mailed via first class U.S. mail, postage prepaid, to the following:

Gentner F. Drummond
Garry M. Gaskins, II
OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA
313 N.E. 21st Street
Oklahoma City, OK 73105
Counsel for the Attorney General

Colin Cloud Hampson
Frank Sharp Holleman, IV
SONOSKY, CHAMBERS, SACHSE, ENDRESON
& PERRY, LLP
145 Willow Street, Suite 200
Bonita, CA 91902
Counsel for Plaintiffs

Meredith Presley Turpin
THE CHICKASAW NATION
Office of Executive Counsel
2021 Arlington Street
Ada, OK 74820

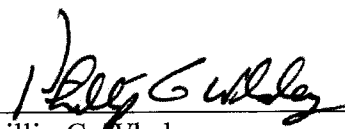
Brian Danker
CHOCTAW NATION OF OKLAHOMA
1802 Chukka Hina
Durant, OK 74701
Counsel for Plaintiff Choctaw Nation

and

Stephen Greetham
GREETHAM LAW, P.L.L.C.
Office of Senior Counsel
512 N. Broadway, Suite 205
Oklahoma City, OK 73102
Counsel for Plaintiff Chickasaw Nation

Chad C. Harsha
CHEROKEE NATION-ATTORNEY GENERAL
OFFICE
P.O. Box 1533
Tahlequah, OK 74465
Counsel for Plaintiff Cherokee Nation

Kristofor R. Swanson
Matthew M. Marinelli
DOJ-ENRD
Natural Resources Section
P.O. Box 7611
Washington, DC 20044
***Counsel for Defendant U.S. Dep't of
Interior***



Phillip G. Whaley