



ORIGINAL

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,

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Case No. 122,108

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUN - 5 2024

JOHN D. HADDEN
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**GOVERNOR'S RESPONSE TO ATTORNEY GENERAL'S MOTION TO STRIKE
OR EXPEDITE BRIEFING SCHEDULE**

Nine days after this Court entered a briefing schedule that Attorney General Drummond chose not to object or respond to, he has now moved to strike that briefing schedule in order to avoid briefing a question of Oklahoma constitutional and statutory law that AG Drummond asked a federal district court to certify to this Court. The Attorney General's motion comes too late and makes little sense. This Court should deny the motion and maintain the briefing schedule it adopted in its order of May 22, 2024.

First, AG Drummond has no legitimate reason for waiting to raise his objections until more than a week after the Court entered a briefing schedule. Before the Governor filed his motion requesting a briefing schedule, the Governor's counsel reached out to Solicitor General Gaskins multiple times to obtain AG Drummond's position on that motion. On May 14, the Governor's counsel left a voicemail for SG Gaskins on the Office of the Attorney General's main line. And on May 15, the Governor's counsel followed up with SG Gaskins by email. SG Gaskins did not respond to either the voicemail or the email. The Governor then filed his motion in this Court on May 16, and AG Drummond did not file a response. This Court should not reconsider its May 22 briefing order based on such untimely objections now raised by AG Drummond.

Second, AG Drummond offers no persuasive reason why this Court should not receive the benefit of full briefing of the issue he persuaded a federal district court to certify to this Court. AG Drummond does not dispute that the certified question involves issues of significant importance under Oklahoma law—he agrees throughout his motion that the certified question is an “important” one that there is a “pressing need for this Court to resolve.” Mot. 1, 3, 5. Yet he inexplicably asks this Court to resolve this “vital issue[]” without the benefit of full briefing, *see* Mot. 4 (while at the same time trying to smuggle merits arguments into his motion to strike, *see* Mot. 2). That makes no sense. The importance of the issue counsels in favor of *more* comprehensive briefing, not less. Of course, if AG Drummond prefers to rest on his submission to the federal district court, he is free to do so. But the Governor maintains that the parties should have the opportunity to develop their arguments in order to best assist the Court in resolving the certified question, and the Court evidently agreed when setting the briefing schedule.

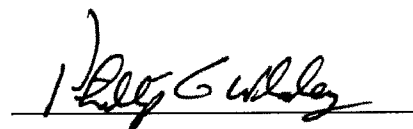
AG Drummond is also wrong to contend that the parties’ briefing in the federal district court is sufficient to resolve the certified question. Mot. 3. There is obviously a difference between briefs addressing whether a federal court should certify a question of Oklahoma law to this Court and briefs addressing how this Court should *resolve* the certified question. The key question for purposes of certification is whether the disputed question is dispositive and, in the federal court’s view, not already settled by controlling state law. [*See Cherokee Nation v. U.S. Dep’t of the Interior*, No. 20-cv-2167-TJK (D.D.C. Marc. 21, 2024), ECF No. 190 at 4]. By contrast, briefing to this Court will focus on answering the disputed question itself—a question about which the federal district court remained “genuinely uncertain” following the certification briefing. [*See id.* at 8]. Although the Governor did not believe certification to this

Court was necessary—and does indeed believe the answer to the certified question is clear under Oklahoma law, *see* Mot. 2-3—AG Drummond successfully persuaded the federal court otherwise, making his request to now avoid briefing in this Court especially puzzling. Again, AG Drummond may not wish to say anything more than he already did to the federal court, but the Governor respectfully submits that further briefing directly addressing the certified question will assist the Court in resolving it.

Finally, AG Drummond’s arguments that the Court should strike or expedite the briefing schedule to avoid additional “delay,” *see* Mot. 3, ring particularly hollow given AG Drummond’s own delay in raising this issue. AG Drummond took office on January 9, 2023. Only after nearly seven months in office did AG Drummond attempt to enter an appearance for Governor Stitt in the federal litigation. [*See* ECF No. 176]. AG Drummond then waited an additional two months after filing his “Notice of Appearance” before filing his motion asking the federal court to certify a question of state law to this Court. [ECF No. 183]. Any delay is of AG Drummond’s own making, and he has identified no prejudice he or anyone else will suffer from allowing this Court the time to receive full briefing addressing the certified question on the schedule it already entered. That is particularly true given that the federal district court stayed the case pending resolution of the certified question. [D.D.C. Minute Order of March 21, 2024].

For the foregoing reasons, Governor Stitt respectfully asks this Court to deny AG Drummond’s motion and adhere to the briefing schedule set forth in its order of May 22, 2024.

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 5th day of June, 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

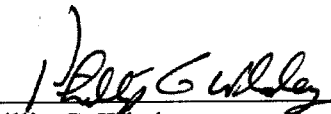
Brian Danker
CHOCTAW NATION OF OKLAHOMA
1802 Chukka Hina
Durant, OK 74701
Counsel for Plaintiff Choctaw Nation

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