

ORIGINAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

THE CHEROKEE NATION, et al.,

*Plaintiffs,*

v.

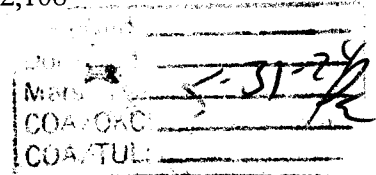
UNITED STATES DEPARTMENT OF THE  
INTERIOR, et al.,

*Defendants.*

MAY 31 2024

JOHN D. HADDEN  
CLERK

Case No. 122,108



**OKLAHOMA ATTORNEY GENERAL'S MOTION TO STRIKE THE  
BRIEFING SCHEDULE OR, IN THE ALTERNATIVE, EXPEDITE  
THE BRIEFING SCHEDULE**

Oklahoma Attorney General Gentner Drummond respectfully requests this Court strike the briefing schedule or, in the alternative, expedite the briefing schedule set forth in its order issued May 22, 2024. The Attorney General strongly believes additional briefing in this matter is unnecessary. The federal district court issued a thorough memorandum opinion, part of which clearly sets forth the Oklahoma statutes at issue and the lack of "established and controlling law" necessary to resolve this certified question. Memorandum Opinion & Order, *Cherokee Nation v. U.S. Dep't of the Interior*, No. 20-2167 (TJK) (D.D.C. Mar. 21, 2024), ECF No. 190 at 5–8. And the Attorney General and Governor filed a combined seven briefs in *Cherokee Nation* related to the present issue. See ECF Nos. 176, 178–80, 183, 186–87. Additionally, the parties have recently thoroughly briefed these issues in a district court case involving a nearly identical dispute, *Oklahoma v. KLEO*, No. CJ-2024-619 (Okla. Cnty. Dist. Ct. Jan. 30, 2024). Finally, there is a pressing need for this Court to resolve the important question of who speaks for the State of Oklahoma in litigation. Therefore, the Attorney General requests the Court rule based on the extensive briefs already submitted on this issue or, in the alternative, issue an abbreviated briefing schedule.

In support of his motion, the Attorney General shows as follows.

- A. It was not until the Governor requested this Court for a briefing schedule and oral argument that he characterized the issues related to the certified question as “complex.”**

Before moving for a briefing schedule on May 16, 2024, the Governor had characterized the question before this Court as a simple one. *Compare* Governor’s Mot. at 4 (“the issues presented by the certified question are complex”) *with id.* at 2 (“the question whether AG Drummond was entitled to seize control of the federal district court litigation was not a difficult one under Oklahoma law” (emphasis added) (citing ECF No. 186 at 2)). Specifically, the Governor previously argued that there was no need to burden this Court with a certified question because “Oklahoma law provides in no uncertain terms that the Governor has the authority to retain counsel to represent him in litigation and that he wields the ‘Supreme Executive power’ and cannot be overruled by inferior executive officers.” ECF No. 186 at 2. The U.S. District Court noted the dubiousness of this argument because “taken to its logical conclusion, Governor Stitt’s position would mean that there is *no* sphere in which the Attorney General—an independently elected constitutional officer—may act to prosecute or defend the interests of the state against the wishes of the Governor.” ECF. No. 190 at 8. Certainly, “Supreme Executive power” does not “sweep[] that broadly.” *Id.*

Whether complex or not, this Court’s adjudication of the certified question, unless reformulated, will involve consideration of two sections of Title 74 and one section of the Oklahoma Constitution. ECF No. 195 at 1. The Governor made no proposed edits to the formulated question, ECF No. 192, and otherwise provided no “established and controlling law,” ECF No. 190 at 8, which would resolve the question of law after having at least four previous opportunities to do so. ECF Nos. 178, 180, 186, 192. Thus, the Governor’s own written word and practices before the U.S. District Court do not provide support for his new claim that the issue

before this Court is complex. The Attorney General respectfully asks this Court to either strike the briefing schedule or issue an abbreviated briefing schedule because it already possesses the arguments of the parties in relation to the certified question. The Governor does not need several additional months to brief issues that were heretofore simple.

**B. The Attorney General presented his arguments to the U.S. District Court in support of his authority and duty to take and control litigation when in the interest of the state and its people. To the extent the Governor believes his arguments to the contrary were left underdeveloped, it was not for lack of opportunity.**

The Governor's claim that "the parties did not have an opportunity to fully brief" issues related to the certified question before the U.S. District Court is incorrect and perplexing. Governor's Mot. at 4. The Attorney General filed notice of his appearance on July 25, 2023. *See* ECF No. 176. In that filing, the Attorney General provided the legal basis for granting him authority to take and control litigation. *Id.* Following that, the parties filed a combined six more briefs containing argument related to this certified question. *See* ECF Nos. 178–80, 183, 186–87. More than eight months passed after the Attorney General filed his notice of appearance before the U.S. District Court ultimately certified the question of law to this Court. *See* ECF No. 195. The Governor never complained of a lack of opportunity to develop his arguments before the federal court, and it is only before this Court that he claims the numerous previous opportunities to brief were insufficient. That claim should be given no credence because it lacks support in the record.

The U.S. District Court no doubt believed the briefing was adequate to justify its certification order. Otherwise, the court would not have been able to craft the thorough analysis in its memorandum opinion justifying its order to certify this question of law. *See* ECF No. 190. This Court's decision in this important matter should not be delayed five additional months because the Governor now incorrectly claims he lacked adequate opportunity to develop his arguments in three prior briefs he filed on this issue with the U.S. District Court.

**C. This Court's decision will resolve vital issues in active litigation involving state and tribal interests, which justifies the Attorney General's request to eliminate, or in the alternative, accelerate briefing.**

The Governor previously expressed concern in the U.S. District Court for any delay that certification may cause, ECF No. 186 at 5. Yet, his request for additional briefing necessarily results in further delay. One would expect that if his concerns were earnest, the Governor would have utilized his several opportunities to fully develop his arguments before the U.S. District Court, *supra* Section B. By operation of the Governor's claimed inability to fully develop his arguments below and request for additional briefing, resolution in this matter and others is further delayed. The Attorney General simply asks that the delay be shortened for the sake of resolution of these important pending matters.

**D. If the Court remains inclined to permit additional briefing, the Attorney General suggests that the parties be given 20 days to file simultaneous briefs on the certified question and 10 days to file any response.**

The Attorney General, not the Governor, sought certification of the subject question to this Court. *See* ECF No. 183. As a result, to the extent additional briefing were required, it does not make sense for the Governor to file the first brief in this case. Nevertheless, as a compromise, the Attorney General suggests that the parties be ordered to file simultaneous briefing in this matter.

As to the timing, the Attorney General believes that 20 days is more than adequate time for the parties to file their opening briefs. In addition to the seven briefs filed with the U.S. District Court, the Attorney General and yet another outside attorney hired by the Governor recently completed thorough briefing on these issues in an Oklahoma County District Court case, *Oklahoma v. KLEO*, No. CJ-2024-619 (Okla. Cnty. Dist. Ct. Jan. 30, 2024). In *KLEO*, the Attorney General entered his appearance on behalf of Oklahoma on February 12, 2024, and dismissed with prejudice frivolous claims purportedly initiated by the Governor's office that had been repudiated

by independent federal and state audits. In response, the Governor's hired counsel raised the same arguments implicated in the certified question. Therefore, the Attorney General believes the parties can easily summarize the prior briefing on these issues in 20 days and respond to the arguments already raised by the parties 10 days thereafter.

### **CONCLUSION**

WHEREFORE, Oklahoma Attorney General Gentner Drummond respectfully requests this Court strike its prior briefing schedule or, in the alternative, expedite its previous briefing schedule ordering the Governor and the Attorney General to file simultaneous opening briefs within twenty (20) days of issuance of the expedited order with response briefs, if any, filed within ten (10) days after the conclusion of the opening brief deadline.

Respectfully Submitted,



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GENTNER DRUMMOND, OBA #16645

*Attorney General*

GARRY M. GASKINS, II, OBA #20212

*Solicitor General*

KYLE PEPPLER, OBA #31681

WILLIAM FLANAGAN, OBA #35110

*Assistant Solicitors General*

OFFICE OF THE ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Phone: (405) 521-3921

[garry.gaskins@oag.ok.gov](mailto:garry.gaskins@oag.ok.gov)

*Counsel for the State of Oklahoma*

## CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May 2024 a true and correct copy of the foregoing instrument was mailed by depositing it in the U.S. Mail, postage prepaid to the following:

Jeffrey B. Wall  
Judson O. Littlejohn  
Zoe A. Jacoby  
SULLIVAN & CROMWELL LLP  
1700 New York Avenue, NW, Suite 700  
Washington, DC 20006  
*Counsel for the Governor*

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

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*

Phillip G. Whaley  
Matthew C. Kane  
Patrick R. Pearce, Jr.  
RYAN WHALEY  
400 North Walnut Avenue  
Oklahoma City, OK 73104  
*Counsel for the Governor*

Meredith Presley Turpin  
THE CHICKASAW NATION  
Office of Executive Counsel  
2021 Arlington Street  
Ada, OK 74820  
*Counsel for Plaintiff Chickasaw Nation*

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



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GARRY M. GASKINS, II