



**ORIGINAL**

**FILED  
SUPREME COURT  
STATE OF OKLAHOMA**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**APR 16 2024**

**JOHN D. HADDEN  
CLERK**

THE CHEROKEE NATION et al.,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR et al.,

*Defendants.*

**#122108**

Civil Action No. 20-2167 (TJK)

**ORDER CERTIFYING QUESTION OF LAW  
TO THE SUPREME COURT OF OKLAHOMA**

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Recorded _____
Marshall _____
Remolds _____
Cert mailed _____
Updated _____

The United States District Court for the District of Columbia, pursuant to the Revised Uniform Certification of Questions of Law Act, Okla. Stat. tit. 20, § 1601 *et seq.*, hereby certifies to the Oklahoma Supreme Court the following question of law which is determinative of an issue in the above-entitled case now pending before this Court, and which appears to be unanswered by controlling precedent of the Supreme Court or the Court of Criminal Appeals of Oklahoma.

**I. Question of Law**

May the Attorney General of Oklahoma, under Title 74, Section 18 of the Oklahoma Statutes, “take and assume control” of the “defense of the state’s interests,” Okla. Stat. tit 74 § 18b(A)(3), in the instant case before this Court—in which the Governor of Oklahoma is named as a defendant in his official capacity for his role in entering into certain tribal-gaming contracts on behalf of the State of Oklahoma—over the objection of the Governor, who is vested with “Supreme executive power” under Article VI, Section 2 of the Oklahoma Constitution, and when the Governor has already exercised his authority under Title 74, Section 6 of the Oklahoma Statutes to “employ counsel to protect the rights or interests of the state,” Okla. Stat. tit 74 § 6?

## II. Factual Background

The instant case before this Court was brought in August 2020 by four Native American tribes who each operate casinos in Oklahoma under a tribal-gaming compact with Oklahoma under the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 *et seq.* In their operative complaint, they seek to have set aside four tribal-gaming compacts for casino operations that four other Native American tribes entered into with Oklahoma that were submitted to the U.S. Secretary of the Department of the Interior for approval and that were approved through the Secretary’s inaction by operation of law. Plaintiffs allege that the Governor of Oklahoma played a role in violating their rights under the IGRA because these compacts were not lawfully entered into by the Governor and violated Oklahoma law in other ways. Since the suit began, the Governor has been represented by retained counsel, whom he represents he hired under Title 74, Section 6 of the Oklahoma Statutes, which allows him to “employ counsel to protect the rights or interests of the state.” Okla. Stat. tit 74 § 6. And in October 2021, the Governor filed an answer in his official capacity as the Governor of the State of Oklahoma, with the State of Oklahoma as the real party in interest, in which he disputes that any of the compacts at issue are invalid or violate Oklahoma law.

In July 2023, the Attorney General of Oklahoma entered an appearance in the case, claiming authority under Oklahoma law to “take and assume control” of the “defense of the state’s interests,” Okla. Stat. tit 74 § 18b(A)(3), because in his view, the compacts at issue were invalid. In addition, he represented, the Oklahoma Supreme Court has “clearly and unambiguously” held that the Governor had no authority to unilaterally enter into them, citing *Treat v. Stitt*, 473 P.3d 43 (Okla. 2020); and *Treat v. Stitt*, 481 P.3d 240 (Okla. 2021). Thus, he argued, the Governor had abrogated his constitutional duty to “cause the laws of the State to be faithfully executed.” Okla. Const. art. VI, § 8. The Governor objected, arguing that the Attorney General does not have the

statutory authority to replace the counsel he had already hired, and even if the Attorney General did have this statutory authority, doing so would violate the Oklahoma Constitution, which vests the Governor with "Supreme executive power." Okla. Const. art. VI, § 2.

### **III. Acknowledgment of Authority to Reformulate Question**

Pursuant to Oklahoma Statute Title 20, Section 1604(A)(3), the Court acknowledges that the Oklahoma Supreme Court may reformulate this question presented.

### **IV. Designated Docket Entries**

The following docket entries have been designated by the Court, in consultation with the parties, to be sent alongside this Certification Order: ECF Nos. 1, 26, 28, 29, 55, 60, 61, 62, 63, 65, 66, 67, 68, 104, 106, 107, 110, 113, 114, 115, 116, 119, 121, 122, 123, 124, 126, 127, 140, 154, 157, 168, 176, 177, 178, 179, 180, 183, 186, 187, 190.

### **V. Names and Addresses of Counsel of Record**

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**Defendant**

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/s/ Timothy J. Kelly  
TIMOTHY J. KELLY  
United States District Judge

Date: April 8, 2024

**ECF  
DOCUMENT**

I hereby attest and certify that this is a printed copy of a document which was electronically filed with the United States District and Bankruptcy Courts for the District of Columbia.

Date Filed: April 8, 2024

ANGELA D. CAESAR, CLERK

By: 

Jean-Claude Dwyer  
Operations Supervisor