



GENTNER DRUMMOND
ATTORNEY GENERAL

July 25, 2023

Via U.S. Mail and Email

The Honorable J. Kevin Stitt
Governor, State of Oklahoma
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105
Kevin.Stitt@gov.ok.gov

Governor Stitt:

This letter is to inform you that I am exercising my authority and fulfilling my duty as Attorney General to represent the interests of the State of Oklahoma in *The Cherokee Nation, et al. v. United States Department of the Interior, et al.*, U.S District Court for the District of Columbia Case No. 20-2167. Pursuant to the enclosed requests made by Speaker of the House Charles A. McCall and President Pro Tempore of the Senate Greg Treat, and in accordance with the authority vested in my office, I have signed the enclosed entry of appearance in the above referenced matter.

As you should fully understand, this long-running and costly litigation is a direct result of your refusal to follow Oklahoma law. The four tribal gaming compacts you signed were invalid from the start because you did not have the approval or authorization from the Oklahoma Legislature to enter the gaming compacts. You need not take my word for it: *See* Attorney General No. 2020-8, 2020 WL 2304499 (Okla. A.G. May 5, 2020); *Treat v. Stitt*, 2020 OK 64, 473 P.3d 43 (Okla. 2020); and *Treat v. Stitt*, 2021 OK 3, 481 P.3d 240 (Okla. 2021). Moreover, you knew that you lacked authority under Oklahoma law when you submitted these invalid compacts to the Secretary of the Interior in an attempt to sidestep the separation of powers enshrined in the Oklahoma Constitution. Yet, you continue to direct state resources to high-priced outside counsel in defense of these invalid compacts. I cannot allow this unlawful conduct to continue unchecked.

Oklahoma's relationship with our tribal partners has suffered greatly as a result of your divisive rhetoric and refusal to follow the law. The citizens you were elected to serve are the ones who suffer from this irresponsible approach. Instead of working in partnership with tribal leaders to enact compacts that benefit all four million Oklahomans, you insist on costly legal battles that only benefit the elite law firms you hire. Millions of dollars of state resources have been squandered on these futile efforts.

A handwritten signature in blue ink, appearing to be "G. Stitt".

Fortunately, I am merely one of a broad coalition of state leaders who sincerely wish to repair the damage you have done to state-tribal relations. The first and most critical step in that process is simple: we must follow the law. As Oklahoma's duly elected Attorney General, that is exactly what I intend to do.

Accordingly, pursuant to 74 O.S. § 18b, I am exercising my authority and fulfilling my duty to represent the interests of the State of Oklahoma. It is my hope that you will acknowledge my exercise of statutory duties as an opportunity to discontinue state expenditures for costly outside counsel who continue to defend these indefensible compacts. Regardless of what actions you may take in this matter, I will faithfully fulfill my duty to uphold the law and act in the best interests of the State.

Respectfully,



GENTNER DRUMMOND

Oklahoma Attorney General

Enclosures:

Request to OAG Drummond from the Honorable McCall

Request to OAG Drummond from the Honorable Treat

Notice of Appearance of Oklahoma Attorney General

Charles A. McCall
State Representative
Atoka, Coal, Johnston &
Murray Counties
District 22
Atoka, OK



State Capitol Building
2300 N. Lincoln Blvd., Room 401
Oklahoma City, OK 73105

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House of Representatives
Office of the Speaker
STATE OF OKLAHOMA

July 21, 2023

The Honorable Gentner Drummond
State of Oklahoma – Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Gentner.Drummond@oag.ok.gov

General Drummond,

The Oklahoma House of Representatives has received your letter requesting that the legislature support your decision to intervene in litigation on behalf of the State of Oklahoma because you believe the Governor has exceeded his constitutional authority.

We trust that you made such a request based upon legal research conducted by your office and you believe that this is the right thing to do for Oklahoma citizens in your capacity as the Attorney General. We also have received the Senate's letter requesting that you intervene. I have forwarded both to my caucus and while we believed you could intervene in federal litigation without legislative approval, you have taken the position that you cannot and therefore need our approval.

Based on the above understanding and facts, the House calls on you to act in the way you as Attorney General believe to be in the best interest of Oklahoma and if that means intervening then we call on you to act in accord with the letter you sent us and proceed on behalf of the state under 74 O.S. §18b(A)(3).

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles A. McCall".

Speaker Charles A. McCall
Oklahoma House of Representatives

Oklahoma State Senate

Greg Treat

President Pro Tempore



July 18, 2023

Via Email

The Honorable Gentner Drummond
Attorney General of the State of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105

Re: *The Cherokee National et al., v. United States Department of Interior et al.*

Dear Attorney General Drummond:

I am writing to express my support and request for your intervention on behalf of the State of Oklahoma in the federal lawsuit, *The Cherokee National et al., v. United States Department of Interior et al.*, U.S. District Court for the District of Columbia, Case No. 20-2167 (the "Federal Lawsuit").

Once again, the legislative branch is compelled to intervene because of the actions of a Governor who refuses to respect Oklahoma law and the Constitutional restraints on his power. As a conservative, I believe that rights not specifically delegated to the federal government belong to the states. But it has become clear, once again, that the Governor disagrees with this bedrock principle as has spent thousands (if not millions) of Oklahoma taxpayer dollars to argue for the supremacy of a federal statute in direct opposition to Oklahoma law and two decisions of our Supreme Court.

As you are aware, in 2020 the Legislature was forced to file two separate lawsuits against Governor Stitt related to his execution of four illegal tribal gaming compacts. *Treat v. Stitt*, 2020 OK 64 ("*Treat I*"), *Treat v. Stitt*, 2021 OK 3 ("*Treat II*"). After extensive briefing and argument, the Oklahoma Supreme Court unequivocally declared not once—but twice—that Governor Stitt's actions were unlawful and that the Governor's compacts were unauthorized (and thus "*invalid*") under Oklahoma law. All four million Oklahomans should be treated equally under the law. Nobody – not even the Governor – is above the law.

But in the aftermath of *Treat I* and *Treat II*, despite the clear directives issued from our highest state court, Governor Stitt has continued in his efforts to have compacts approved by the United States federal government. This action has resulted in four tribal nations filing the legal action at issue today, *Cherokee Nation, et al. v. DOI*, against the Governor and the federal government, seeking to have the four gaming compacts set aside due to the fundamental illegality of the agreements under Oklahoma law.

Throughout the three prolonged years of litigation, Governor Stitt has purported to represent the interests of the State of Oklahoma—yet while so doing, he has asked a federal court in Washington D.C. to

ignore Oklahoma law and the binding decisions by the Oklahoma Supreme Court. **It has thus become clear that the Governor has a conflict: he can either choose to represent the interests of the state or his own personal interests, and I believe he has made his decision clear.**¹

In one telling example, Governor Stitt declares that "Oklahoma Supreme Court's decisions cannot overrule" the federal government's actions in approving the compacts. At another point in the same document, Governor Stitt fundamentally seeks to undermine Oklahoma law by suggesting that federal law should trump state law related to gaming compacts, stating:

State-law decisions—and at a minimum decisions like the *Treat* opinions that postdate the Secretary's approval—are not a basis for a court to unwind compacts that are in effect under IGRA. Those decisions have no relevance to the question whether these compacts remain "in effect" under 25 U.S.C. § 2710(d)(1) as a matter of federal law.

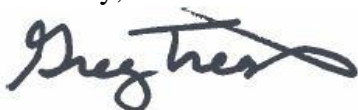
Indeed, under the Governor's theory (similar to his positions in *Treat I* and *II* that were unequivocally rejected by the Oklahoma Supreme Court), once he signed the illegal compacts they became "a creature of federal law" that "cannot thereafter be undone by a State's attempt to disavow its obligations under that agreement."

In short, the Governor has used the Federal Lawsuit to argue that Oklahoma law can be ignored because he believes federal law endows him with the singular authority to unilaterally bind the state to illegal gaming compacts—an argument that is in clear violation of the separation of powers and deeply at odds with the very notion of federalism.² He clearly is in no position to represent the state's interest in this matter.

As a proud supporter and advocate of federalism, I can no longer stand by and watch Oklahoma taxpayer dollars be spent on high-dollar east coast law firms in pursuit of Governor Stitt's personal agenda at the expense of the state's interests. I have taken an oath of office to defend the Constitution of the State of Oklahoma, and that includes making sure that Oklahoma's elected officials do the same. Okla. Const. art. XV, § 1.

For the foregoing reasons, I have no other option but to request that you intervene in the lawsuit, through whatever means you deem necessary, to defend the interests of the State. I believe the Attorney General possesses this power independent of this request under 74 O.S. § 18b, but please consider this my formal request under § 18b(A)(3) on behalf of the Oklahoma State Senate to assume control of the defense of the state's interest in *Cherokee Nation, et al. v. DOI, et al.* with all required speed and diligence.

Sincerely,



Greg Treat
President Pro Tempore

¹ Governor Stitt may choose, however unwisely, to retain his own counsel to continue to push his personal agenda, but I do not believe such counsel can or should represent the State's interest in the litigation.

² It is without question that Governor Stitt's use of taxpayer resources to fund a legal defense that advocates for a violation of Oklahoma law stands in stark contrast to his Constitutional duty to "cause the laws of the State to be faithfully executed". Okla. Const. art. VI, § 8.

As Oklahoma Attorney General, I have the authority to take and assume control of the defense of the State's interests in this case. The United States Supreme Court has generally consulted state law to determine the proper designee to represent the State's interests in federal court. *See Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019). The Oklahoma Constitution provides that: "The Executive authority of the state shall be vested in a Governor... Attorney General... and other officers provided by law and this Constitution... and shall perform such duties as may be designated in this Constitution or prescribed by law." Okla. Const. art. VI, § 1. As it relates to the State's involvement in litigation, Oklahoma law currently provides that "the Attorney General as the chief law officer of the state" has the power and duty:

To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein.

Okla. Stat. Ann. tit. 74, § 18b(A)(3) (emphasis added).¹

Therefore, my Office clearly has the power to assume and control the State's defense in this case on my own initiative.

Regardless, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, on behalf of their respective caucuses, have also requested that I

¹ It should be noted that this statute was amended in 1995 to add the language permitting my Office to appear "in any action in which the interests of the state or the people of the state are at issue," i.e., my Office can now appear in litigation on my own initiative. CORPORATION COMMISSION—OIL AND GAS—REVENUE AND TAXATION—APPORTIONMENT OF EXCISE TAX MONIES, 1995 Okla. Sess. Law Serv. Ch. 328 (S.B. 233) (WEST); *see also State, ex rel., Pruitt v. Steidley*, 2015 OK CR 6, ¶ 15, 349 P.3d 554, 558 (recognizing that the authority of the attorney general in Okla. Stat. Ann. tit. 74, § 18b was expanded in 1995). Consequently, the limited case law interpreting my Office's power prior to 1995 has been rendered obsolete.

assume the control and defense of the State's interests in this case.² Therefore, there is no question that Oklahoma law provides that I am the proper designee to represent the State's interests in this case.³

I am mindful that it is an extraordinary act for an Oklahoma Attorney General to exercise Okla. Stat. Ann. tit. 74, § 18b(A)(3) to assume control of litigation being defended by Oklahoma's Governor. I do not take this action lightly. However, I see no other option because the Governor has inexplicably abrogated his constitutional duties in this case. The Governor has a constitutional duty to "cause the laws of the State to be faithfully executed." Okla. Const. art. VI, § 8. Other than criminal matters, the Oklahoma Supreme Court is the final arbiter of Oklahoma law. *Robinson v. Fairview Fellowship Home For Senior Citizens, Inc.*, 2016 OK 42, ¶ 13, 371 P.3d 477, 483 ("This Court is the ultimate authority on the interpretation of the laws of this State").

Here, the Oklahoma Supreme Court has clearly and unambiguously ruled that the Governor had no authority to unilaterally execute the compacts at issue in this case. *Treat v. Stitt*, 2020 OK 64, 473 P.3d 43 (Okla. 2020); and *Treat v. Stitt*, 2021 OK 3, 481 P.3d 240 (Okla. 2021). Therefore, the Governor's continued attempts to enforce the illegal compacts in this Court ignore settled Oklahoma law. Accordingly, the Governor's actions in this case violate his constitutional duty to faithfully execute Oklahoma law.

Moreover, I have a statutory duty "[t]o monitor and evaluate any action by the federal government... to determine if such actions are in violation of the Tenth Amendment to the

² See July 18, 2023 Letter from Greg Treat, President Pro Tempore of Oklahoma Senate to the Honorable Gentner Drummond, attached hereto as Exhibit "A"; and July 21, 2023 Letter from Charles A. McCall, Speaker of Oklahoma House of Representatives to the Honorable Gentner Drummond, attached hereto as Exhibit "B."

³ It should be noted that the Letter from the Speaker of Oklahoma House of Representatives (Ex. B) suggests that I have expressed an inability to take over the litigation without support of the Legislature. To be clear, as outlined in this Entry of Appearance, I believe that I can take this action on my own initiative. However, due to the extraordinary nature of my actions in this case, I felt it was prudent to obtain the consent of the Legislature before entering an appearance in this case.

Constitution of the United States.” Okla. Stat. Ann. tit. 74, § 18b(A)(25). In an unprecedented betrayal of Oklahoma’s sovereignty, the Governor has inexplicably aligned himself with the federal government in seeking to use federal law to force Oklahoma to honor illegal compacts that unquestionably violate Oklahoma law. The President Pro Tempore of the Oklahoma Senate recently aptly summarized the problem with the Governor’s actions:

In short, the Governor has used th[is] Federal Lawsuit to argue that Oklahoma law can be ignored because he believes federal law endows him with the singular authority to unilaterally bind the state to illegal gaming compacts— an argument that is in clear violation of the separation of powers and deeply at odds with the very notion of federalism.

Exhibit A. Therefore, as the chief law officer of Oklahoma, I am compelled to take this extraordinary action to put an end to the Governor’s betrayal of his duty to “cause the laws of the State to be faithfully executed” and prevent the Governor’s continued evisceration of Oklahoma’s Tenth Amendment rights.

Accordingly, I deem it advisable and in the best interests of the State of Oklahoma to take and assume control of the defense of the State’s interests in the above-entitled cause.

Thus, pursuant to LCvR 83.6(a), I enter my appearance as counsel in this case for J. Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma, solely for the purpose of protecting the interests of the State of Oklahoma.⁴

I am registered in this Court’s Electronic Filing System.

July 25, 2023.

s/ Gentner F. Drummond
GENTNER F. DRUMMOND, OBA #16645
Attorney General
GARRY M. GASKINS, II OBA #20212
Solicitor General
OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

⁴ To be clear, my client in this case is the real party in interest, the State of Oklahoma, not the Governor.

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