IN THE DISTRICT COURT OF THE CHEROKEE NATION

DAVID CORNSILK	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CV 2018-122**
	)	
	)	
TODD HEMBREE,	)	
Attorney General of the Cherokee Nation	)	
	)	
Respondent	)	

MOTION TO INTERVENE, AND RECONSIDER, AND OBJECTION TO HEMBREE'S MOTION TO WITHDRAW MOTION TO DISMISS, AND MOTION TO DISMISS

COMES NOW Michael Moore, and moves the Court for leave to (1) intervene in the above case to protect the interests of the Cherokee Nation, (2) to reconsider the Court's Judgment entered April 6, 2018,[1] (3) objects to Attorney General Hembree's ("Hembree") March 26, 2018 Motion to Withdraw Objection to Standing and to Strike Hearing ("Motion To Withdraw Objections") and (4) rule on Hembree's March 1, 2018 Motion to Dismiss in the above case, and moves to dismiss Petitioner Cornsilk's ("Cornsilk") Petition. See Exhibit "1," Motion to Withdraw Objections.

The Court must dismiss this case because (1) the court has no subject matter jurisdiction, (2) it is not ripe for decision, and (3) both Cornsilk and Hembree are requesting the court to issue an advisory opinion regarding the interpretation of certain election laws, which is prohibited by

[1] The Supreme Court has routinely considered Motions for Reconsideration. The JAT reconsidered its decision where a Motion to Reconsider was filed seven months after its first decision in *Watkins v. Cherokee Nation, et al.*, JAT-02-01 (2/20/04), Also see *Olaya v. Baker*, SC 2013-05, November 24, 2013 Motion for Reconsideration; *Anglen v. Council*, SC 2013-03, March 1, 2013 Motion for Reconsideration. The District Court has routinely considered Motions to Dismiss after Judgment. See *Byrd v. CNB*, CV 2014-293, Cherokee Nation Businesses' May 20, 2016 Motion to Reconsider granted by Judge Fite on October 17, 2016: *Merrell v. CNB*, CV 2014-499, Cherokee Nation Businesses' January 16, 2017 Motion to Reconsider granted by the Court on May 5, 2017 by Judge Jackson.

the Cherokee Nation Supreme Court in *In Re: Legislative Act 39-05, Cherokee Nation and Cherokee Nation Tribal Council*, SC 07-01 and *McCall v. Baker* S.C.-15-01, 2016. See Exhibits "3" and "4".

INTRODUCTION

Intervenor is a citizen of the Cherokee Nation by blood. CNSC Rule 47 provides that any person desiring to intervene, may intervene, to such extent and upon such terms the Court deems proper. On March 1, 2018, Hembree a political appointee and employee of Principal Chief Baker, filed a Special Limited Entry of Appearance and Motion to Dismiss Cornsilk's Petition for Declaratory Judgment ("Motion to Dismiss"). On March 26, 2018, Hembree, through his Assistant Attorney General Nimmo ("Nimmo"), reversed his March 1, 2018 Motion to Dismiss arguments and positions on issues of sovereign immunity, standing, ripeness and failure to state a cause of action that he expressed in his Motion to Dismiss -tantamount to a feigned action.

As such, Hembree has failed to represent the interests of the Cherokee Nation and follow the law. Therefore, Intervenor seeks to intervene to fully apprise the Court of the law in this matter because the Attorney General has abandoned his duty.

Contrary to law, Cornsilk and Hembree are now in concert requesting this Court to prematurely decide Baker, Crittenden and Vasquez's eligibility to run in the upcoming elections "to clear the path" for Baker and Crittenden to run for a third term in office in violation of the Cherokee Nation Constitution. This Court should follow the law as first expressed in Hembree's Motion to Dismiss, but later retracted by his Motion to Withdraw Objections and dismiss this case.

ARGUMENT

I. This Court has *sua sponte* duty to examine its jurisdiction.

On March 1, 2018, Hembree moved this court to dismiss on jurisdictional grounds and Cornsilk did not respond or object. Rather than filing a Motion for Default or Deem its Motion to Dismiss Confessed, the Nation filed a Motion to Withdraw Objections agreeing that this court had jurisdiction over the matter.

The court's jurisdiction must be reviewed at any stage of the proceedings. In *Stites v. DUIT Const. Co.,* 1995 OK 69, 903 P.2d 293, 297, the Oklahoma Supreme Court held:

> Moreover, jurisdictional issues must be revisited, on motion or sua sponte, at any stage of proceedings. *Lincoln Bank and Trust v. Tax Com'n,* Okl., 827 P.2d 1314, 1318 n. 14 (1992); *Cate v. Archon,* Okl., 695 P.2d 1352, 1356 n. 12 (1985); *Spain v. Kernell,* Okl., 672 P.2d 1162, 1164–1165 (1983). *See also Bryan v. Seiffert,* 185 Okl. 496, 94 P.2d 526, 531–532 (1939).

Although it appears that Cornsilk and Hembree now agree, this court's jurisdiction cannot be conferred by consent or agreement. In *City of Lawton v. Int'l Union of Police Associations, Local 24,* 2002 OK 1, ¶ 10, 41 P.3d 371, 376, the Oklahoma Supreme Court held:

> The parties *in essence* would have this court overlook its lack of jurisdiction over the appealed case because they *now appear to agree that the appeal should not be dismissed.* Jurisdiction cannot be conferred by consent or agreement of the parties or even by one's failure to complain.
>
> It is every court's duty to inquire *sua sponte* into its own cognizance and into that of the tribunal whence the cause came.[24] Jurisdictional inquiries into appellate or certiorari cognizance may be considered at any stage of the proceedings.[25] *Footnote 23- Dickson v. Dickson,* 1981 OK 142, 637 P.2d 110, 112; *Merchants Delivery Service v. Joe Esco Tire Co.,* 1972 OK 82, 497 P.2d 766, 767; *Bryan, supra* note 20 at 531–32. *Footnote 24- Lincoln Bank and Trust v. Tax Com'n,* 1992 OK 22, 827 P.2d 1314, 1318 n. 14; *Cate v. Archon,* 1985 OK 15, 695 P.2d 1352, 1356 n. 12; *Spain, supra* note 20 at 1164–65; *Bryan, supra* note 20 at 531–32. (Emphasis in original.)

Therefore, Intervenor moves the court to reconsider its April 6, 2018 Judgment, on grounds this court does not have jurisdiction over the subject matter. In *Stites,* the Oklahoma