

IN THE SUPREME COURT OF THE CHEROKEE NATION

DAVID CORNSILK)	
Petitioner,)	
)	
v.)	Case No. SC-2018-04
)	
TODD HEMBREE,)	
Attorney General)	
of the Cherokee Nation)	
Respondent)	

CHEROKEE NATION
 SUPREME COURT
 HENRY L. BIRD, COURT CLERK
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 FILED

**IN RE: THE MATTER OF THE OPINION OF CHEROKEE NATION
ATTORNEY GENERAL, 2016-CNAG-04**

Amicus Curiae

COMES NOW, S. Joe Crittenden, citizen by blood of the Cherokee Nation and Deputy Principal Chief of the Cherokee Nation, (hereafter “Crittenden”), and hereby requests this Court allow the Petitioner to file this Amicus Curiae brief in the above captioned suit. Black’s Law Dictionary, 7th ed. defines Amicus Curiae as “A person who is not a party of a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter.”

The Judgment of the District Court, entered April 6, 2018, in CV-2018-12, directly affects the fundamental rights and protections Crittenden enjoys under the Constitution of the Cherokee Nation. The District Court’s ruling, if allowed to stand, would prevent Crittenden from seeking re-election to the office he currently holds in the 2019 general election period. Thus, Crittenden is certainly “a person who has a strong interest in the subject matter” before the Supreme Court and respectfully requests the Court accept this brief.

I. Facts Relevant to the Terms of Deputy Principal Chief S. Joe Crittenden

A summary of the 2019 general election is set forth below for the purpose of illustrating the timeline of events that precipitated the swearing in of S. Joe Crittenden as Principal Chief. This case presents novel issues that are simply without precedent. Crittenden urges this Court to consider the

consequences that the unique history of the 2011 general election put into play, which most likely may never be repeated again. This is clearly a case of first impression and the facts must be weighed in tandem with the clear language of the Constitution as well as the framers intent.

1. Crittenden was one of several candidates for the office of Deputy Principal Chief in the general election held on June 25, 2011. Crittenden advanced to the run-off election held on July 23, 2011, where he was certified as the winner by the Cherokee Nation Election Commission ("Election Commission") and eligible to be sworn in to office on August 14, 2011, as Deputy Principal Chief.
2. The general election for Principal Chief was also held on June 25, 2011, between two candidates. On June 26, 2011, Bill John Baker was declared the winner by the Election Commission. On June 27, 2011, Chad Smith was certified as the winner by the Election Commission. On June 30, 2011, a Recount was conducted by the Election Commission and Baker was declared the winner. On July 10, 2011, the Supreme Court conducted a "numeric count of the absentee envelopes received and a numeric count of the number of absentee ballots counted. On July 16, 2011, the Supreme Court conducted a manual recount of the ballots. On July 21, 2011, the Supreme Court found that the winner of the 2011 election for Principal Chief could not be determined by mathematical certainty and held that the election be "vacated and held for naught" and characterized it as "invalid" and ordered a new election be held.
3. Principal Chief Chad Smith set the "do over election" for principal chief for September 24, 2011.
4. Attorney General Diane Hammons' issued a formal opinion on July 22, 2011, holding that the office of principal chief would be vacant on August 14, 2011, and should be filled under the "provisions of the Cherokee Constitution by the temporary assumption of that office by the Deputy Principal Chief." See 2011-CNAG-01.

5. The very next day, after the Hammons Attorney General's opinion, on July 23, 2011, S. Joe Crittenden was certified the winner by the Election Commission.
6. On August 14, 2011, S. Joe Crittenden took the oath of office as deputy principal chief. Immediately thereafter he took the oath of office as principal chief and began serving as the Principal Chief. The oath taken by Crittenden was that of "Principal Chief" and not as "Acting Principal Chief."
7. Crittenden played no role in which oath or oaths he was administered by Supreme Court Justice Darrell Dowty. While it is unknown which party(ies) made the decision to administer the oath of Principal Chief to Crittenden on August 14, 2011, it was certainly ratified by the action of this very court.
8. On August 22, 2011, the Supreme Court ruled that Freedmen could not vote in the September 24, 2011, election for principal chief. The Election Commission immediately sent letters to all Freedmen informing them they could not vote.
9. Shortly thereafter the District of Columbia District Court, a federal court, disagreed and found that the Election Commission had caused such confusion among the Freedmen voters that it ordered the Nation to extend the voting period for an additional five days to conclude on October 8, 2011, allowing Freedmen the opportunity to vote. *See, Order in Cherokee Nation v Nash*. The Election Commission expanded the federal court's ruling and allowed all Cherokees, not just Freedmen, to vote during the extended period.
10. From October 8-11, the Election Commission engaged in a "Tabulation Project" and announced the final election results on October 11, 2011, declaring Baker the winner by 1575 votes.
11. Smith appealed the certification of Baker as the winner to the Supreme Court and on October 19, 2011, the Supreme Court rejected Smith's challenge to the certified results of the Election Commission and Baker was sworn into office as principal chief later that evening.

