IN THE SUPREME COURT OF THE CHEROKEE NATION

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

MOTION TO INTERVENE AND DISMISS APPEAL

COMES NOW Michael Moore, ("Moore") and moves the Court to intervene and dismiss this appeal on the following grounds: on the day Appellant/Respondent Hembree's ("Hembree") Petition in Error filed in this court, a timely Motion to Intervene, and Reconsider, and Objection to Hembree's Motion to Withdraw Motion to Dismiss, and Motion to Dismiss (4/13/18) was filed and pending. Additionally, the case before the District Court and this Court should be dismissed due to: (1) lack of jurisdiction, (2) they are unripe for review; and (3) impermissible parties are requesting an advisory opinion contrary to the precedence of this Court.

BRIEF IN SUPPORT OF MOTION TO INTERVENE

I. MOORE MAY INTERVENE ON APPEAL

Moore is a citizen of the Cherokee Nation ("Nation") and he may intervene on appeal. In "*Acree v. Republic of Iraq*, 370 F.3d 41, 50 (D.C. Cir. 2004), The DC Circuit Court of Appeals held that "Post-judgment intervention is often permitted...where the prospective intervenor's interest did not arise until the appellate stage" and where "intervention would not unduly prejudice the existing parties." Also see *United Airlines Inc. v. McDonald*, 432 U.S. 385 (1977).

In *Stallworth v. Monsanto Co.*, 558 F.2d 257 (5th Cir.1977), the Fifth Circuit Court of Appeals noted that "whether the request for intervention came before or after the entry of judgment was of limited significance." *Id.* at 266. Courts have also allowed parties to intervene while an appeal is pending when judicial economy and some strong public interest warrants it, and there is no prejudice to other parties. See *Bates v. Jones*, 127 F.3d 870, 873-74 (9th Cir. 1997), *Drywall Tapers & Pointers of Greater New York, Local Union 1974 of I.U.P.A.T., AFLCIO v. Nastasi & Assocs. Inc.*, 488 F.3d 88, 94 (2d Cir. 2007) (recognizing "authority for granting a motion to intervene in the Court of Appeals").

Therefore, for reasons identified in the below Motion to Dismiss, this Court should allow Moore to intervene in this appeal and consider his Motion to Dismiss.

II. IN THE ALTERNATIVE, THIS COURT SHOULD REMAND THIS CASE FOR THE DISTRICT COURT TO DECIDE THE MOTION TO INTERVENE FILED IN THE DISTRICT COURT.

In the alternative, appellate courts may remand to allow the district court to address a motion to intervene (e.g., *Hobson v. Hansen*, 44 F.R.D. 18, 21 (D.D.C. 1968) (D.C. Circuit held appeal in abeyance and remanded to allow district court to consider intervention motions filed during the appeal)), or it may remand with directions to permit intervention (e. g., *Atkins v. State Bd. of Ed. of North Carolina*, 418 F.2d 874, 876 (4th Cir. 1969)).

The circumstances of this case are that in his March 1, 2017 Motion to Dismiss, Hembree adamantly opposed Cornsilk's Petition. On March 26, 2018, Hembree completely reversed his legal positions and withdrew his Motion to Dismiss Cornsilk's Petition. On April 6, 2018, the Court entered its order (an advisory opinion) responding to Cornsilk's questions and agreeing with Hembree's retreated position. On April 13, 2018, Moore filed his Motion to Intervene in the

District Court. Moore's Motions to Intervene and Dismiss were timely before the District Court and this Court.

A party may seek reconsideration pursuant to FRCP 59 (twenty-eight days after entry of order) to "amend findings of fact and conclusions law or make new ones and direct the entry of a new judgment," or "on grounds mistake, inadvertence, surprise or excusable neglect pursuant to FRCP 60. Therefore, this Court should allow Moore to intervene in this appeal or in the alternative,remand this case to the District Court to rule on his Motion to Intervene filed therein.

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL

I. BACKGROUND

On April 13, 2018, Moore, moved the District Court for leave to (1) intervene in the above case to protect the interests of the Cherokee Nation, (2) to request reconsideration the Court's Judgment (Judgment or Order?) entered April 6, 2018,[1] (3) objected to Attorney General Hembree's 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 (5) moved to dismiss Petitioner Cornsilk's ("Cornsilk") Petition.

This Court must dismiss this Appeal 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 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.

[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.