IN THE SUPREME COURT OF THE CHEROKEE NATION

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

OBJECTION TO MOTION TO INTERVENE

COMES NOW Appellant, Cherokee Nation Attorney General, Todd Hembree, by and through the undersigned counsel, and objects to Proposed Intervenor's ("Applicant") Motion to Intervene.[1] Appellant asks this Court to deny the Applicant's Motion to Intervene and in support thereof, states as follows:

STATEMENT OF FACTS

On February 19, 2018, Appellee filed a Petition for Declaratory Judgment against Attorney General Hembree, purporting to challenge whether or not Cherokee Nation Attorney General Opinion No. 2016-CNAG-04 was in contravention to the 1999 Constitution of the Cherokee Nation and the political term limits contained therein. On April 6, 2018, the Cherokee Nation District Court rendered judgement on this issue. On April 13, 2018, Attorney General Hembree initiated an appeal of the District Court's judgment by filing a Petition in Error with this Court. That same day, after the Petition in Error had been filed with this Court, Applicant

[1] The Cherokee Nation will abstain from addressing Applicant's Motion to Dismiss until this Court determines whether Applicant may intervene. Cherokee Nation reserves all arguments and defenses as to Applicant's Motion to Dismiss.

filed a Motion to Intervene, Reconsider, and Objection to Hembree's Motion to Withdraw Motion to Dismiss, and Motion to Dismiss *in the District Court*. Applicant now seeks to intervene on appeal in this Court.

APPLICANT'S MOTION TO INTERVENE SHOULD BE DENIED

Applicant has failed to show that he is entitled to intervene as of right on appeal. It is well established that where intervention was not sought below,[2] intervention on appeal will be permitted "only in an exceptional cases for imperative reasons." *Hutchinson v. Pfeil,* 211 F.3d 515, 519 (10th Cir. 2000) (quotations omitted). Accordingly, a party seeking intervention on appeal must satisfy the prerequisites of Rule 24(a). *See, e.g., Warren v. Comm'r,* 302 F.3d 1012, 1014–15 (9th Cir. 2002); *Bldg. and Constr. Trades Dep't v. Reich,* 40 F.3d 1275, 1282–83 (D.C.Cir. 1994). Under Rule 24(a), in order to intervene as of right, an Applicant must show, upon timely application, an interest sufficient to merit intervention, that absent intervention his interest may be impaired, and that the present parties do not adequately represent his interests. Fed. R. Civ. P. 24(a)(2); *Coalition of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996).

While Applicant's motion to intervene on appeal in this Court was timely, he fails to identify an interest not already represented by the current parties that would allow or require an intervention as of right inquiry under Rule 24(a). Due to this deficiency, Applicant cannot claim an interest in jeopardy of impairment or that the present parties do not adequately represent his interests, as he has not identified one. Therefore, Applicant in not entitled to intervention as of right on appeal under Rule 24(a).

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[2] Applicant may argue that he sought intervention below; however, it was after judgment was rendered and the case had been appealed. The District Court was without jurisdiction to grant intervention after the judgment had been appealed. Further, Applicant makes no argument as to why he could not have sought timely intervention in the matter below.

Further, Applicant misconstrues this Court's Rules, erroneously citing CNSC Rule 47 to provide an unlimited right of intervention at any stage of litigation. In fact, CNSC Rule 47 only applies to the original jurisdiction of the Supreme Court, not appeals.[3] Therefore, contrary to Applicant's assertion, CNSC Rule 47 also offers no persuasive authority to permit Applicant's attempt to intervene at this stage.

Notably, Applicant admits that he is seeking "to intervene to fully apprise the Court of the law in this matter." (April 24, 2018 Motion p. 4). CNSC Rule 62 allows a non-party to file an amicus curiae brief, confined to those issues raised on appeal, upon proper consent, invitation, or leave of the Court. The function of an amicus curiae is to call the Court's attention to law or facts or circumstances in a matter then before it that may otherwise escape its consideration. 4 Am. Jur. 2d Amicus Curiae § 6. This Court's Rules offer a clear avenue by which non-parties may participate in the Court's decision making process in CNSC Rule 62. Therefore, Applicant should not be allowed to intervene since he may fully accomplish his stated intentions through filing an amicus curiae brief.

CONCLUSION

Applicant is not entitled to intervene as he failed to seek timely intervention prior to appeal and no imperative reason exists to justify Applicant's intervention on appeal now. If Applicant truly wishes, as his own admission suggests, to inform this Court of pertinent law relevant to the narrow issue on appeal, an established process exists through which Applicant may submit an amicus curiae brief, to which Cherokee Nation would have no objection. Therefore, Applicant should avail himself to this process and intervention should be denied.

[3] Rule 50 begins the Supreme Court Rules applicable to appeals.

Respectfully submitted,

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