

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARILYN VANN, RONALD MOON,)
HATTIE CULLERS, CHARLENE WHITE,)
And RALPH THREAT,)

Plaintiffs,)

v.)

GALE A. NORTON, Secretary of the United)
States Department of the Interior; UNITED)
STATES DEPARTMENT OF THE)
INTERIOR,)

CHEROKEE NATION OF OKLAHOMA)

CHADWICKE SMITH, Individually and in)
His Official Capacity)

John Does, Individually and in their official)
capacity)

Defendants,)

Case No.: 1:03cv01711 (HHK)

Judge: Henry H. Kennedy

Docket Type: Civil Rights
(non-employment)

Date Stamp: 08/11/03

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
LEAVE TO FILE SURREPLY**

Plaintiff, by and through its counsel, submits this memorandum in support of its Motion for Leave to File Surreply to the Reply to Defendants' Response to Limited Intervenor Cherokee Nation's Motion to Dismiss ("Surreply"). This case involves the fundamental right of Plaintiffs to vote in the Cherokee Nation elections. The just adjudication of these rights is a matter of sufficient importance that further briefing should be allowed in order that the Court may have the benefit of all the information necessary to render a decision on Intervenor Cherokee Nation's Motion to Dismiss.

ARGUMENT

In May, 2003, the Cherokee Nation held an election for tribal officials and also to amend its Constitution, removing federal approval for any subsequent constitutional amendments.

Plaintiffs, a representative group of approximately 25,000 Cherokees of African descent who can trace directly to ancestors listed on the Dawes Rolls, collectively known as the Cherokee Freedmen, were denied the right to vote in the election. Plaintiffs sought relief by asking the Bureau of Indian Affairs to not recognize the election as the Tribe did not comply with the 1970 Principal Chiefs Act as required by law and stated in two letters from Bureau of Indian Affairs Asst. Secretary Neil McCaleb to Cherokee Principal Chief Chadwicke Smith. Although the BIA had refused to recognize a factually similar election in 2000 when the Seminole Nation did not permit the Seminole Freedmen from voting and the BIA took the initial stance with the Cherokee, the BIA reversed its position and issued a letter to Principal Chief Chadwicke Smith stating that the BIA had no authority to recognize the election of the Cherokee officials and that issue was reserved for Cherokee tribunals.

Plaintiffs filed suit in this Court against Gale Norton and the United States Department of Interior. The Cherokee Nation of Oklahoma has obtained the right to intervene in the present litigation and has filed a motion to dismiss. The motion to dismiss and reply filed by the Cherokee Nation were devoted largely to the argument that this Court lacks jurisdiction to hear the instant suit.

Plaintiffs wish to submit their Surreply Memorandum in order to supplement its position that the jurisdiction of the Court to hear this matter is well founded. Plaintiffs believe that the Court would benefit from having access to the additional information contained in Plaintiffs' Surreply. Plaintiffs additionally contend that access to the fundamental right to vote is a sufficiently compelling issue that the Court should consider all available information before rendering its decision on the motion to dismiss. If the case at bar is dismissed, Plaintiffs' civil rights will be subject to continuing and direct harm. Before rendering a decision on the motion

to dismiss, Plaintiffs respectfully request that the Court grant their motion and consider the substantive import of the Surreply attached thereto.

Dated: November 15, 2005

Respectfully submitted,

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