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Arizona House of Representatives Phoenix, Arizona 85007

Friday, September 18, 2015

COMMITTEES:

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NATURAL RESOURCES,
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JUDICIARY

LEGISLATIVE COUNCIL

Honorable Governor Doug Ducey
Office of the Governor
State of Arizona
1700 West Jefferson St.
Phoenix, Arizona 85007

Honorable Mark Brnovich
Attorney General
State of Arizona
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007

Subject: Dollar General Corporation v. Mississippi Band of Choctaw Indians,
United States Supreme Court No. 13-1496

Dear Governor Ducey and Attorney General Brnovich;

I am greatly dismayed that the Arizona Attorney General's Office, and thereby the State of Arizona, has joined United States Supreme Court proceedings as an amicus curiae supporting the Petitioner in *Dollar General Corp. v. Mississippi Band of Choctaw Indians*, broadly opposing Indian Nations' civil adjudicatory jurisdiction over non-Indians on Indian Nation lands. I raise concerns on behalf of my Native American constituents who reside on the eight Indian Nations located within LD 7.

The State has joined in support of the Petitioner despite the fact that the State of Mississippi has made the policy decision that on-reservation torts arising in Mississippi should not consume State resources and are better addressed by tribal institutions. The State of Mississippi is submitting an amicus brief in support of the Tribe. Arizona's decision to sign on to Oklahoma's amicus brief flies in the face of Mississippi's sovereign prerogatives on how to interact with Indian Nations within Mississippi's borders. This is disrespectful; Arizona should stay out of Mississippi's tribal affairs decisions.

The Oklahoma approach that Arizona has joined is also inconsistent with Arizona's own approach to Indian Nation issues. In the State of Arizona, there are 23 separate and distinct sovereign Indian Nations. Each Nation has historically recognized sovereign authority and sovereign rights over its land, its citizens, and those who come on to the Nations. Indian people are citizens of the State.

I hope that the State's decision to sign on to the Oklahoma is a simple mistake. It is emphatically one that can still be and should be corrected. When Oklahoma circulated an

eleventh-hour draft of its brief and offered States virtually no time to review it and consider the issues, many states did not know that Mississippi is actually supporting the Mississippi Band of Choctaw in the case.

I am concerned that the State joining on the side of the Petitioner will have significant long-term adverse impacts on the present and future relationships between Indian Nations and the State. The State and State leaders have always respected the sovereignty of Indian Nations and dealt with Indian Nations on a government-to-government basis.

The following are of significant concern:

First, the issue is being raised by non-Indians who choose to do business on Indian Nation lands. These are not casual travelers through Indian Nations. They are not forced to come on to Indian Nations or are inadvertently there. They have chosen to enter Indian Nations to make a buck. They have entered into binding agreements to do so.

In fact, the circumstances of the Dollar General case are particularly egregious and offensive. Dollar General maintains a lease of Mississippi Choctaw trust lands. Dollar General operates a retail store on those trust lands and volunteered to participate in a tribal youth employment program. Dollar General was sued in Mississippi Choctaw Tribal Court on negligence and vicarious liability theories by a 13-year-old tribal member and his parents after the Dollar General Store manager allegedly sexually assaulted the child during his participation in the store's tribal youth employment program.

Dollar General and Oklahoma have taken the extreme position that tribal institutions have no role in addressing sexual violence against tribal children, even when the State involved, Mississippi, has expressly determined otherwise. Arizona has signed on to this outrageous position.

Second, all the concerns raised by the Petitioner about unfamiliar forums and unfamiliar laws apply, in spades, to Indian Nation citizens and Indian Nation entities. Since the formation of the United States, Indian Nation citizens and Indian Nation entities have been forced to pursue legal claims in unfamiliar and historically unfriendly federal and state courts in distant communities with unfriendly non-Indian juries. The divestiture of civil jurisdiction over non-Indians would have the same effects Indian Nations experienced with the divestiture of criminal jurisdiction over non-Indians - claims not pursued and justice denied.

Third, should the Petitioner prevail, the unintended consequences would be many and could be severe. You should not assume that business will proceed as usual, with only a divestiture of jurisdiction from the Indian Nation courts. Indian Nation governments will be less likely to engage in commercial transactions with non-Indian entities and less likely to employ non-Indians on Indian Nations.

Indian Nation governments might well be forced to condition entry of Indian Nations, requiring non-Indians to not enter Indian Nations without first stopping and expressly consenting to Indian Nation court jurisdiction; entry may be denied if they fail to consent. Visa and passports might follow. As you know state roads and federal interstates cross Indian Nations. The resulting traffic problems could be considerable.

Fourth, the willingness of Indian Nation governments to enter into cooperative arrangements with the State, over issues such as gaming and taxation, is premised on a mutual respect for the other's sovereignty. This apparent mistrust of Indian Nation courts goes to the

core of that respect. Absent that respect, the desire to engage in cooperative arrangements will diminish.

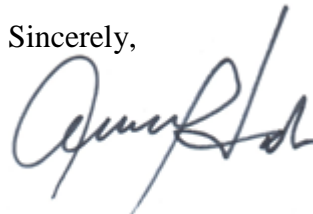
I urge you to reconsider your decision. I request your offices to immediately meet and consult with Indian Nation leaders and recommit to a relationship of mutual respect and respect of sovereign rights. Towards that end, I urge Attorney General Brnovich to withdraw from the offensive Oklahoma brief immediately.

Tribal institutions must have a role in protecting tribal children from on-reservation sexual violence. The *Dollar General* case is about the rape of a young Indian boy. The State of Arizona should seek justice for that boy and tell the Supreme Court that it wrong that a child cannot seek justice in his home judicial system simply because he lives on an Indian reservation.

Further, I urge the Governor to join the State of Mississippi's amicus curiae brief in support of the Mississippi Band of Choctaw Indians. I understand the State of Mississippi's brief is due October 22 and that Mississippi is willing to meet and discuss its approach with any State interested in supporting its position. I urge you to support Mississippi.

I welcome the opportunity to discuss this with you further and offer my assistance concerning the amicus curiae brief. Please call my office if you have any questions or wish to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Albert Hale', with a stylized flourish at the end.

Albert "Ahbihay" Hale, Esq.
State Representative – LD 7

- c. file
- Members, AZ Senate
- Members, AZ House of Representatives
- AZ Congressional Delegation
- ITCA
- AIGA
- The Navajo Nation