

CASE Nos. 07-7068 & 15-7041

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PATRICK DWAYNE MURPHY,

Petitioner/Appellant,

v.

Case Nos. 07-7068 & 15-7041

TERRY ROYAL, Warden,
Oklahoma State Penitentiary,

DEATH PENALTY CASE

Respondent/Appellee.

**MOTION FOR PERMISSION TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE**

Pursuant to Federal Rule of Appellate Procedure 29(g), the Muscogee (Creek) Nation and Seminole Nation of Oklahoma (the “Nations”) respectfully move for permission to participate in oral argument as amicus curiae in the above captioned matter. The Nations request ten minutes of argument time (in addition to the time currently allotted to the parties) to address the question of whether the Creek Nation’s Reservation was disestablished by the 1901 Creek Allotment Act. Petitioner Murphy has consented to this Motion. Respondent Royal has not.¹

¹ This Court has granted oral argument to amici in prior cases. *See, e.g., Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1154 (10th Cir. 2010); *Fernandez v. INS*, 113 F.3d 1151, 1151 n.1 (10th Cir. 1997); *United States ex rel. Fine v. Advanced Scis.*, 99 F.3d 1000, 1003 n.1 (10th Cir. 1996).

The parties and this Court have acknowledged the strength of the Nations' interests in and the importance of their arguments to the resolution of this question. On August 3, 2016, this Court granted the Nations' unopposed motion to file an over-length amici curiae brief. After the Nations filed their brief, the State on September 20, 2016 moved for an extension of time to file its brief, noting the "importance of the [Indian Country jurisdiction] questions presented" and the need to present "a very thorough response which includes substantial historical information." The State further suggested that separate briefing would be warranted specifically in order to respond to Amici's arguments. On October 3, 2016, this Court *sua sponte* granted the parties additional words in lieu of separate briefing, and the State devoted a full 50 pages of its brief to arguing that the Creek Allotment Act diminished the reservation lands at issue in this case, including a significant number of arguments directly addressing points raised by Amici.

The Nations' interests in this matter are clear. The reservation status question directly concerns Amicus Muscogee (Creek) Nation's sovereignty over its allotted reservation, and its governmental, economic, and historical interests in those lands.² Thus, unlike the typical amicus participant, the Nations' fundamental interests are under direct attack and will be squarely affected by the decision in this

² Given the historical parallels between the Muscogee (Creek) Nation and Seminole Nation, the Court's resolution of this issue could significantly impact the rights of both Nations.

case. *See N. Arapaho Tribe v. Harnsberger*, 697 F.3d 1272, 1279 (10th Cir. 2012) (stating that an Indian tribe “has an interest relating to the . . . Indian Country status” of its reservation lands, and that “[a] determination of that status in the absence of the [tribe] would [affect] the ability of the [tribe] to protect that interest.” (quotation marks omitted)). The Nations respectfully submit that this question should not be reached without their input at oral argument. *See Arizona v. California*, 460 U.S. 605, 615 (1983) (“Indians’ participation in litigation critical to their welfare should not be discouraged”).

For the foregoing reasons, the Nations respectfully request that this Court allow the Nations to participate in oral argument in this critical matter.

Dated this 2nd day of February, 2017.

Respectfully Submitted,

/s/ David A. Giampetroni

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2017, I electronically filed the foregoing using the court's CM/ECF system which will send notification of such filing to the following:

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, ESET Endpoint Antivirus, Version 5.0.2254.0, last updated February 2, 2017 at 11:11:30 a.m., and according to the program are free of viruses.

Date: February 2, 2017

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