ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE CHEROKEE NATION, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,

Defendants.

Case No. 122,108

OKLAHOMA ATTORNEY GENERAL'S BRIEF-IN-CHIEF

GENTNER DRUMMOND, OBA #16645
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In compliance with the Court's Order of June 7, 2024, the Attorney General hereby submits his Brief-in-chief on the certified question from *Cherokee Nation v. U.S. Department of the Interior*, No. 1:20-cv-02167 (D.D.C.) ("DC Gaming Litigation"). The Attorney General respectfully submits that this Court should conclude, in response to the District Court's certified question, that the Attorney General may:

> "take and assume control" of the "defense of the state's interests," 74 O.S. § 18b(A)(3), in the DC Gaming Litigation—in which the Governor of Oklahoma is named as a defendant in his official capacity for his role in entering into certain tribal-gaming contracts on behalf of the State of Oklahoma—over the objection of the Governor, who is vested with "Supreme [E]xecutive power" under Article VI, Section 2 of the Oklahoma Constitution, and when the Governor has already exercised his authority under Title 74, Section 6 of the Oklahoma Statutes to "employ counsel to protect the rights or interests of the state," 74 O.S. § 6.

Order Certifying Question of Law to the Okla. Supreme Ct. at 1.

INTRODUCTION

The Attorney General appears in this case to do what the Governor will not: Protect the interests of the State and defend the holdings of its Supreme Court. This Court has made clear: "In the absence of explicit legislative or constitutional expression to the contrary, [the Attorney General] possesses complete dominion over every litigation in which he properly appears in the interest of the State . . . ." *State ex rel. Derryberry v. Kerr-McGee Corp.*, 1973 OK 132, ¶ 20, 516 P.2d 813, 818. There is no explicit legislative or constitutional expression to the contrary available to the Governor in the DC Gaming Litigation. The controlling legislative command here is that "the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest" in litigation. 74 O.S. § 18b(A)(3). As this Court has twice held that the Governor lacked authority to enter into the agreements at issue in the DC Gaming Litigation, the duty of the Attorney General to represent the State's interests could not be clearer. Neither the Governor's "Supreme Executive power" under Article VI, Section 2 of the Oklahoma Constitution, nor his authority under Title 74, Section

6 of the Oklahoma Statutes to "employ counsel to protect the rights or interests of the state," permits him to speak for the State by ignoring State law.

BACKGROUND

The certified question in this case arose because the Oklahoma Attorney General was compelled to assume control of Oklahoma's interests in the DC Gaming Litigation to put an end to the Governor's neglect of his duty to "cause the laws of the State to be faithfully executed," OKLA. CONST. art. 6, § 8, and enforce two decisions of this Court that are binding on the Governor. In 2020, the Governor entered "into new tribal gaming compacts with the Comanche Nation and Otoe-Missouria Tribes." *Treat v. Stitt*, 2020 OK 64, ¶ 2, 473 P.3d 43, 44 (*Treat I*). "The tribal gaming compacts were submitted to the United States Department of the Interior, and the Department of the Interior deemed them approved by inaction, only to the extent they are consistent with the Indian Gaming Regulatory Act (IGRA)." *Id.* In submitting the gaming compacts to the United States Department of the Interior, the Governor was required to certify that "he is authorized under State law to enter into the compact[s]." 25 C.F.R. § 293.8(c). Attorney General Mike Hunter opined officially that the Governor lacked authority to enter into these compacts. 2020 OK AG 8. This Court then agreed that the Governor lacked authority and concluded that the "tribal gaming compacts Governor Stitt entered into with the Comanche Nation and Otoe-Missouria Tribes are invalid under Oklahoma law." *Treat I*, 2020 OK 64, ¶ 8, 473 P.3d at 45.

"While *Treat I* was pending before this Court, the Executive branch entered into two additional compacts with the United Keetoowah Band of Cherokee Indians and the Kialegee Tribal Town." *Treat v. Stitt*, 2021 OK 3, ¶ 2, 481 P.3d 240, 241 (*Treat II*). These purported compacts were also "submitted . . . to the United States Department of the Interior." *Id.* Even though this Court's opinion in *Treat I* was originally issued on July 21, 2020, "the Department of the Interior

deemed [the two new compacts] approved by inaction, only to the extent they are consistent with the Indian Gaming Regulatory Act (IGRA)." *Id.* This Court again concluded that the Governor lacked authority and "the new tribal gaming compacts are invalid under Oklahoma law." *Id.* ¶ 12, 481 P.3d at 244.

After twice being told by this Court—the final arbiter of Oklahoma law—that he had no authority to execute the subject gaming agreements, the Governor had a constitutional duty to honor this Court's binding precedent and "cause the laws of the State to be faithfully executed . . . ." OKLA. CONST. art. 6, § 8. He did just the opposite. Turning his back on decisions that bind him, he sought to use federal law to commandeer the State and force it to honor agreements that undeniably violate Oklahoma law. Specifically, after the Cherokee Nation, Chickasaw Nation, Choctaw Nation, and Citizen Potawatomi Nation sued the United States Department of the Interior, the Governor, and others in the DC Gaming Litigation over the illegal gaming compacts, the Governor has continued to vigorously argue that the federal court should disregard Oklahoma law and find the illegal tribal gaming compacts are still fully enforceable. *See, e.g.*, Doc. 154-1 at 17–23.[1]

By July 2023, the Attorney General plus both branches of the Legislature were justifiably alarmed by the Governor's actions in the DC Gaming Litigation, purportedly on behalf of the State of Oklahoma. On his own initiative and at the urging of the Oklahoma House of Representatives and the Oklahoma Senate, the Attorney General entered an appearance in the DC Gaming Litigation "for J. Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma, solely for the purpose of protecting the interests of the State of Oklahoma." Docs. 176 and 177. The Governor moved to strike the Attorney General's (and Solicitor General's) appearance in the DC Gaming Litigation. Doc. 178. After the Governor's request to strike was

[1] The "Doc." citations refer to the docket entries in the DC Gaming Litigation.

fully briefed, the certified question of who rightfully represents the State of Oklahoma in the DC Gaming Litigation followed. Doc. 195.

ARGUMENTS AND AUTHORITIES

I. The Attorney General Has Authority to Take and Assume Control of the State's Defense in the DC Gaming Litigation from the Governor.

As this Court has squarely held: "The Attorney General, by statute, 74 O.S.1971 [§] 18 is the Chief Law Officer of the State. In the absence of explicit legislative or constitutional expression to the contrary, **he possesses complete dominion over every litigation in which he properly appears in the interest of the State, whether or not there is a relator or some other nominal party**." *Derryberry*, 1973 OK 132, ¶ 20, 516 P.2d at 818 (emphasis added).

In the DC Gaming Litigation, the Governor was sued in his official capacity, Doc. 26 at ¶ 15, which effectively makes this a suit against the State. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office . . . [a]s such, it is no different from a suit against the State itself.") (citation omitted). And the Attorney General properly entered an appearance for the State to protect its interests, as he was plainly authorized to do. In 1995, 74 O.S. § 18b(A)(3) was amended to permit the Attorney General to appear in litigation involving the interests of the State on his or her own initiative.[2] In addition, consistent with 74 O.S. § 18b(A)(3), the Oklahoma House of Representatives and Senate both requested the Attorney General take and assume control of the State's interest in the DC Gaming Litigation. Docs. 176-

[2] Corporation Commission—Oil and Gas—Revenue and Taxation—Apportionment of Excise Tax Monies, 1995 Okla. Sess. Law Serv. ch. 328, § 12; *see also State ex rel. Pruitt v. Steidley*, 2015 OK CR 6, ¶¶ 15–16, 349 P.3d 554, 558 (recognizing that the authority of the Attorney General in 74 O.S. § 18b was expanded in 1995).

1 and 176-2.[3] Therefore, absent an "explicit legislative or constitutional expression to the contrary, [the Attorney General] possesses complete dominion" over the DC Gaming Litigation, *i.e.*, the Attorney General may make the exclusive litigation decisions on behalf of the State in the DC Gaming Litigation. *Derryberry*, 1973 OK 132, ¶ 20, 516 P.2d at 818. There are none here—as shown below—and that resolves the certified question in this case.

A. Section 18b of Title 74 Gives the Attorney General Express Discretion to Take and Assume Control of Any Litigation Involving the State.

The Oklahoma Constitution provides that: "The Executive authority of the state shall be vested in a Governor, . . . Attorney General, . . . and other officers provided by law and this Constitution, each of whom . . . shall perform such duties as may be designated in this Constitution or prescribed by law." OKLA. CONST. art. 6, § 1(A). Thus, Oklahoma does not consolidate all executive power in a single officer. The Constitution instead divides power among the executive officers and reserves the Legislature's power to prescribe those officers' duties. *Wentz v. Thomas*, 1932 OK 636, ¶ 27, 15 P.2d 65, 69. The Constitution's establishment of the office of Attorney General carries with it all the common-law powers associated with that office, modified as necessary to be consistent with the Oklahoma Statutes and Constitution. *Derryberry*, 1973 OK 132, ¶ 27, 516 P.2d at 819. As a result, "[i]n the absence of explicit legislative or constitutional expression to the contrary, [the Attorney General] possesses complete dominion over every litigation in which he properly appears in the interest of the State . . .." *Id.* ¶ 20, 516 P.2d at 818.

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[3] The Speaker of the Oklahoma House and President Pro Tempore of the Oklahoma Senate both have authority to engage legal counsel on behalf of their respective bodies. *See* Okla. House Rule 1.6, *available at* https://dgbf0g52sf9l0.cloudfront.net/House_Rules_59th_Oklahoma_Legislature_2023_2024_49464075f1.pdf?updated_at=2023-02-28T23:08:02.268Z (stating "[t]he Speaker may authorize or engage legal counsel on behalf of the House"); Senate Rule 2.4(A), *available at* https://oksenate.gov/senate-rules#l-rule-2-4 (stating "[t]he President Pro Tempore shall be the chief executive officer of the Senate and shall prescribe all policies not otherwise provided by law or by the rules."). This authorized them to request the Attorney General to take legal action in the case, on behalf of each of their respective legislative chambers.

That conclusion is confirmed by the Legislature's exercise of its power to "prescribe[] by law" the powers of the Attorney General, by expressly providing that "the Attorney General as the chief law officer of the state" has the power and duty:

> To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, **the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein**.

74 O.S. § 18b(A)(3) (emphasis added). The statute contains neither exceptions nor caveats, *i.e.*, it does not say the Attorney General may act "except if the Governor objects" or "as long as the Governor has not retained legal counsel." Therefore, under the plain and unambiguous terms of 74 O.S. § 18b(A)(3), the Attorney General can properly appear in, and take control of, litigation involving the State from anyone, including the Governor.

B. Oklahoma's Constitution Does Not Limit the Attorney General's Power to Take and Assume Control of the State's Defense in Litigation.

The Governor has previously suggested that the Oklahoma Constitution's reference to the Governor's having "Supreme Executive power" somehow means that he can overrule the Attorney General—Oklahoma's "chief law officer," 74 O.S. § 18—in litigation. But this Court's repeated pronouncements on the scope of the Governor's power under the Constitution rejects that suggestion.

This Court has had to remind the Governor multiple times recently about the limitations on his power under Oklahoma's constitutional framework. Just three months ago, in the most recent *Stitt v. Treat* case, this Court once again reiterated that "[t]he Governor is without authority to exercise a discretion not validly and specifically granted by the statutory law and not within the power conferred upon the Chief Executive by the Constitution." *Stitt v. Treat*, 2024 OK 21, ¶ 21,

546 P.3d 882, 891 (*Treat III*) (quoting *Ritter v. State*, 2022 OK 73, ¶ 15, 520 P.3d 370, 379). As the Court also recently explained in *Ritter*, on which *Treat III* relied,

> Oklahoma's historical underpinnings were economically conservative. Fearing excessive power in the hands of one individual, the framers of the Oklahoma Constitution intentionally created a weak state chief executive. The Governor's authority is limited by the Constitution, because *the Chief Executive may exercise only the power specifically granted by the Legislature.* The Governor *is without authority* to exercise a discretion not validly and specifically granted by the statutory law *and* not within the power conferred upon the Chief Executive by the Constitution.

2022 OK 73, ¶ 15, 520 P.3d at 379 (emphasis added).

This Court illustrated the application of this rule in *Treat III*, concluding that because compacting with Indian tribes is not expressly mentioned in the Constitution, the Governor's compacting authority is limited to that provided to him by Oklahoma statutory law. 2024 OK 21, ¶ 21, 546 P.3d at 891. Similarly, here, there is nothing in the Oklahoma Constitution expressly addressing the filing of or defending litigation by the State, or more importantly, providing the Governor authority to overrule the Attorney General in litigation. As a result, the Governor's authority in litigation is limited to what he is allowed to do under Oklahoma statutory law. And as just explained, Oklahoma law prescribes that the Attorney General is the officer with discretion to "take and assume control of" litigation involving the interests of the State. 74 O.S. § 18b(A)(3). Therefore, the power of the Attorney General is supreme in litigation involving the interests of the State.

The Governor's past efforts to rely on Article 6, Section 2 have threatened to eviscerate the power of the Attorney General and undermine the Legislature. As the federal district court in the DC Gaming Litigation observed:

> [T]aken to its logical conclusion, Governor Stitt's position [that the Oklahoma Constitution's allowance for shared power among executives should bend to his prerogative] would mean that there is no sphere in which the Attorney General—an independently elected constitutional officer—may act to prosecute or defend the interests of the state against the wishes of the Governor. Whatever "Supreme Executive power" means under the Oklahoma Constitution; the Court is skeptical that it sweeps that broadly.

Doc. 190 at 8. The Oklahoma Constitution prevents this result by dividing power among the executive officers and reserving the Legislature's power to prescribe those officers' powers. *Wentz*, 1932 OK 636, ¶ 27, 15 P.2d at 69. If the Governor could prevent the Attorney General from defending the State's interests, he would undermine one of the key powers of the Attorney General—one that the Legislature has said he may wield. "Supreme Executive power" refers only to the power held by the Governor within his sphere; it is not a sword that he may use to lop off the powers of other constitutional officers.

In any event, whatever the scope of the Governor's share of executive power, it cannot be read to extinguish his obligation to "cause the laws of the State to be faithfully executed." OKLA. CONST. art. 6, § 8. Yet that is what he seeks to do here: prevent the Attorney General from taking over litigation to advocate for the State to comply with this Court's rulings.

Therefore, the Court should reject the Governor's constitutional arguments, which would essentially make the Attorney General's obligation to protect the interests of the State subservient to the Governor's will. Nothing in the Oklahoma Constitution authorizes that hierarchy, much less expressly precludes the Attorney General from taking and assuming control of litigation involving the State over the Governor's objection.

C. Sections 6 and 18c of Title 74 Do Not Give the Governor the Ability to Overrule the Attorney General in this Litigation.

The Governor will likely continue to claim that his ability to employ counsel in 74 O.S. § 6 "to protect the rights or interests of the state" means that the Attorney General cannot take and assume control litigation of the State's interest from the Governor. But the Attorney General's power to "take and assume control" of litigation of the State's interests, 74 O.S. § 18b(A)(3) authorizes the Attorney General to do just that. Furthermore, the Governor cannot claim that

defiance of this Court's rulings in cases to which he was a party somehow "protect[s] the rights or interests of the state."

Over a century ago, the Legislature prescribed that the Governor has the statutory authority to employ counsel. *See id.* § 6.[4] But that authority was gap-filling, and provided a method by which the State's interests could be protected when the State's typical legal representative was disqualified or unable to act, *see Viers v. State*, 1913 OK CR 250, 134 P. 80, 86, or by which the Governor could appoint counsel when necessary to assist, not supersede, the State's typical legal representative, *see State v. Hudson*, 1929 OK CR 287, 279 P. 921, 922.

However, that authority does not diminish the Attorney General's own power over litigation, as "[i]n the absence of explicit legislative or constitutional expression to the contrary, [the Oklahoma Attorney General] possesses complete dominion over every litigation in which he properly appears in the interest of the State." *Derryberry*, 1973 OK 132, ¶ 20, 516 P.2d at 818. There is no explicit legislative or constitutional expression that the Governor can supersede the Attorney General's complete dominion over litigation. Just the opposite, the more recently enacted statute–74 O.S. § 18b(A)(3)–clearly and unambiguously states that the Attorney General has the power, on his own initiative, to "take and assume control of the prosecution or defense of the state's interest" in litigation. Consequently, while the Governor is free to employ legal counsel, if the Attorney General concludes it is in the best interests of the State, the Attorney General has the express power and duty to take and assume control of the State's interests in the litigation (even if the Governor has previously employed legal counsel in the case). These provisions do not directly conflict—but if they did, Section 18b(A)(3) is the more recent enactment and therefore

[4] Regardless, as explained below, the Governor has abdicated his legislative authorization to retain counsel for the State because he is not seeking to "to protect the rights or interests of the state." *Id.*

controls against the older Section 6. *See Duncan v. Okla. Dep't of Corr.*, 2004 OK 58, ¶ 6, 95 P.3d 1076, 1079 (citing *Milton v. Hayes*, 1989 OK 12, 770 P.2d 14, 15).

When the Legislature wished to give the Governor the power to employ counsel that displaced other prosecutors, it knew how to do so. In 1908, around the time it enacted 74 O.S. § 6, the Legislature passed a law, 1908 Okla. Sess. Laws 594, authorizing the Governor to appoint counsel to enforce prohibition laws "and the other laws of the state." *See Childs v. State*, 1910 OK CR 230, 113 P. 545, 546. That law, since repealed, provided that the special counsel "shall have all the powers of county attorneys in their respective counties" and that the Governor could "call upon the Attorney General or his assistant" to enforce the prohibition laws "in lieu of, or in addition to," the appointed counsel. *Id.* Therefore, the Legislature plainly knows how to authorize the Governor to appoint counsel who can take the place of the Attorney General. In contrast, Section 6 does not provide such authority to the Governor; it does not mention the Attorney General at all. In 1995, the Legislature *expanded* the Attorney General's Section 18b power to "assume control" of litigation while leaving the Governor's Section 6 authority untouched. Therefore, 74 O.S. § 6 does not give the Governor license to overrule the Attorney General in litigation.

The Governor may also continue to selectively quote 74 O.S. § 18c(A) to create the impression that his ability to employ legal counsel in 74 O.S. § 6 somehow supersedes the Attorney General's ability to take control of litigation of the State's interests. This is a misrepresentation of law. Subsection A of Section 18c offers only the general instruction that: "Except as otherwise provided by this subsection, no state officer, board or commission shall have authority to employ or appoint attorneys to advise or represent said officer, board or commission in any matter." 74 O.S. § 18c(A)(1). This subsection then discusses which state officers, boards, and commissions

have authority to retain legal counsel without obtaining the permission of the Attorney General. The Governor is identified in Section 18c(A) as one of the parties permitted to retain legal counsel.

The bare ability to employ legal counsel is fundamentally different than the Attorney General's discretion to "take and assume control" of litigation of the State's interests. Accordingly, the Governor's authority to retain counsel has no effect on the Attorney General's authority to assume control of litigation of the State's interests in this or any other proceeding. Therefore, 74 O.S. §§ 6 and 18c do not in any way give the Governor license to overrule the Attorney General's "complete dominion" over litigation involving the interests of the State.

D. Even if 74 O.S. § 6 Were Relevant to the Attorney General's Authority to Take and Assume Control of the DC Gaming Litigation, the Governor Nevertheless Lacks Authority to Retain Legal Counsel on Behalf of the State in This Case.

The Governor's statutory authority to employ counsel is limited to efforts "to protect the rights or interests of the state." 74 O.S. § 6. As previously discussed, in an unprecedented attempt to undermine Oklahoma's sovereignty, the Governor inexplicably sought to use federal law to force Oklahoma to honor illegal agreements with Tribal Nations. *See, e.g.*, Doc. 154-1. The Governor is not seeking "to protect the rights or interests of the state" when he asks a federal court to disregard Oklahoma law and binding precedent of this Court. There can be no legitimate State interest in enforcing compacts this Court ruled were unlawful. Consequently, the Governor lacks authority to retain counsel to represent the State in this matter pursuant to 74 O.S. § 6. This compelled the action by the Attorney General to take and assume control of the State's defense in the DC Gaming Litigation.

E. Oklahoma's Express Grant of Power to the Attorney General to Take and Assume Control of Litigation Controls over Any Contradictory Common-Law Limitations.

The Governor will likely rely on cases such as *Riley v. Cornerstone Cmty. Outreach, Inc.*, 57 So. 3d 704, 728–29 (Ala. 2010), to argue that an attorney general at common law did not have the

power to overrule the king. Of course, Oklahoma has no king,[5] nor even a unitary executive. Although the "common law duties and powers" of the attorney general attach themselves to the Attorney General of Oklahoma, they do so only "[i]n the absence of express statutory or constitutional restrictions" and only "as far as they are applicable and in harmony with our system of government." *Derryberry*, 1973 OK 132, ¶ 25, 516 P.2d at 818–19. And the Oklahoma Constitution provides that the executive authority of the State "shall be vested in a Governor [and] Attorney General . . . each of whom . . . shall perform such duties as may be designated in this Constitution or prescribed by law." OKLA. CONST. art. 6, § 1(A). The Legislature, which prescribes the law, *see* OKLA. CONST. art. 5, §§ 1, 36, "**has the power to** not only **add to [the Attorney General's powers and duties]**, but may lessen or limit the common law duties which attached to the office under common law."[6] *State ex rel. Cartwright v. Ga.-Pac. Corp.*, 1982 OK 148, ¶ 6, 663 P.2d 718, 720 (emphasis added).

Here, the Oklahoma Legislature has clearly and unambiguously done so, by prescribing that "the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest" in litigation. 74 O.S. § 18b(A)(3). Again, there is nothing in this statute that limits the Attorney General's power to take and assume the prosecution or defense of litigation, even if the Governor objects. As a result, regardless of any common-law limitation on an attorney general's power to

[5]Nor does it have a governor with powers like that of the Governor of Alabama, whose powers were at issue in *Riley*, *see* 57 So. 3d at 722–23 (quoting *Op. of the Justs.*, 156 So. 2d 639, 642–43 (Ala. 1963) (concluding that the Governor of Alabama may exercise executive power to prevent court-ordered school desegregation "even in the absence of a specific grant of authority by the legislature").

[6] While this quote comes from this Court's description of the differing views between states over the powers vested in attorneys general, the remainder of the opinion makes clear that this is the view adopted in Oklahoma. *Id.* ¶¶ 8–12, 663 P.2d at 721 (discussing the modifications made by the Legislature to the Oklahoma Attorney General's common law powers).

take and assume litigation in other states, Oklahoma's Legislature has modified and expanded its Attorney General's ability to take and assume control of litigation.

F. The Rules of Professional Conduct Do Not Prohibit the Attorney General's Actions in This Case.

The Governor may also assert that it would somehow violate the Rules of Professional Conduct for the Attorney General to take over the case from the Governor due to their conflicting views on how it should be litigated. The Governor's prior arguments suggest that he believes that he personally is the Attorney General's client. Thus, the Governor believes the Attorney General must abide his "decisions concerning the objectives of representation" and must consult with him "as to the means by which they are to be pursued." Doc. 178 at 4 (citing 5 O.S., ch. 1, app. 3-A, Rule 1.2).

The obvious flaw in this argument is that the Attorney General has not sought to represent the Governor's personal interests in the DC Gaming Litigation. The Attorney General in the DC Gaming Litigation, just like all other litigation involving his office, is simply seeking to represent the State of Oklahoma's interests. *See* Doc. 176 at 4 (the Attorney General entered his appearance "solely for the purpose of protecting the interests of the State of Oklahoma"). After all, the Governor has admitted in the DC Gaming Litigation that the State of Oklahoma is the real party in interest. Doc. 110 at 1. Thus, the Attorney General's client is the State of Oklahoma, not the Governor. *See State ex rel. Nesbitt v. Dist. Ct. of Mayes Cty.*, 1967 OK 228, ¶ 17, 440 P.2d 700, 707 (when the Attorney General appears in a case to defend the State's interests, the nominal party cannot "by any acts of her own, unsanctioned and acquiesced in by the Attorney General," defeat his decisions on how to litigate the case for the State), *overruled on other grounds by Palmer v. Belford*, 1974 OK 73, 527 P.2d 589. To be sure, as a matter of wisdom and respect, the Attorney General will often consult with and take into consideration the views of the officeholders he represents in their official capacities, including the Governor. But the Attorney General is not required to defer

to their positions—especially not when they conflict with Oklahoma law. Accordingly, there is no conflict of interest or requirement that the Attorney General abide by the Governor's litigation objectives.

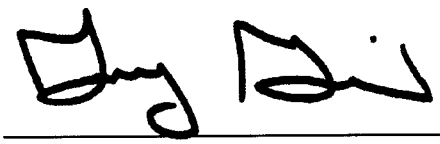
Thus, the Attorney General can assume control of litigation involving the State if he deems it advisable. Once he assumes control of the litigation, he has "complete dominion" over the State's interest in the litigation, including overruling the Governor's litigation objectives.

CONCLUSION

For these reasons, the Attorney General respectfully requests the Court answer the certified question from the DC Gaming Litigation as follows:

> The Attorney General may "take and assume control" of the "defense of the state's interests," 74 O.S. § 18b(A)(3), in the DC Gaming Litigation—in which the Governor of Oklahoma is named as a defendant in his official capacity for his role in entering into certain tribal-gaming contracts on behalf of the State of Oklahoma—and the Attorney General may do so over the objection of the Governor, who is vested with "Supreme Executive power" under Article VI, Section 2 of the Oklahoma Constitution, and after the Governor has already exercised his authority under Title 74, Section 6 of the Oklahoma Statutes to "employ counsel to protect the rights or interests of the state," 74 O.S. § 6.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July 2024 a true and correct copy of the foregoing instrument was mailed by depositing it in the U.S. Mail, postage prepaid to the following:

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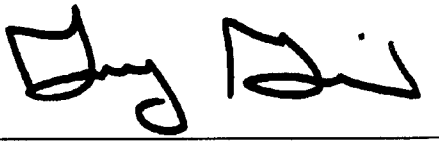

GARRY M. GASKINS, II