

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) JANE DOE; )  
 (2) JOHN DOE; )  
 (3) MARY ROE; )  
 (4) RICHARD ROE, individually and on )  
 behalf of )  
 (5) BABY DOE, )

Plaintiffs,

vs.

Case No. 2015-CV-471-JED-FHM

(1) SCOTT PRUITT, in his official capacity as )  
 Oklahoma Attorney General; )  
 (2) TODD HEMBREE, in his official capacity )  
 as Cherokee Nation Attorney General; and )  
 (3) ED LAKE, in his official capacity as the )  
 Director of the Department of Human )  
 Services. )

Defendants.

**DEFENDANT TODD HEMBREE’S RESPONSE  
IN OPPOSITION TO PLAINTIFF’S MOTION TO PROCEED  
UNDER PSEUDONYMS**

Defendant Cherokee Nation Attorney General Todd Hembree (“Attorney General”), has no objection to the use of pseudonyms in public filings and open court proceedings in this action. However, the Attorney General does object to the use of pseudonyms to excuse the Plaintiffs from their constitutional burden of proving standing based on Cherokee Nation membership or to deny the Defendants the right to challenge that proof. The Attorney General has sought dismissal of this action on abstention and merits grounds through his motion to dismiss, filed contemporaneously herewith. Accordingly, determination of the issue of identity disclosure for standing purposes could be abated until after the adjudication of the Motion to Dismiss. If granted, that Motion to Dismiss, which does not involve identity issues, should moot the disclosure of identity for standing purposes.

The threshold issue of standing is an essential and unchanging part of the case or controversy requirement of Article III of the Constitution. *Horne v. Flores* 557 U.S. 433, 445 (2009). In any federal case, the party bringing the suit must establish standing to prosecute the action. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 11 (2004). The elements of standing are not merely pleading requirements but rather are an indispensable part of the plaintiff's case, and each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, with the manner and degree of evidence required at successive stages of litigation. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

To prove standing, the Plaintiffs must prove their allegations that the biological mother is an enrolled member of the Cherokee Nation (Am. Compl. ¶ 3) and that the minor child is eligible for membership in the Cherokee Nation (Am. Compl. ¶ 7). Without such proof, the minor child is not an Indian child under the Oklahoma Indian Child Welfare Act ("OICWA")<sup>1</sup>, 10 O.S. § 40 et seq., OICWA does not apply to the termination of the parental rights at issue<sup>2</sup> and, as a result, the Plaintiffs have no standing to challenge the application of OICWA to them.

Since the Plaintiffs must prove the biological mother's Cherokee Nation membership to establish standing, the Defendants must be able to challenge and test such an indispensable part of the Plaintiffs' case. Without knowledge of the biological mother's identity to compare to the Nation's membership records, the Defendants will be unable to test the essential standing

---

<sup>1</sup> An "Indian Child" is an unmarried or not emancipated person who is over the age of 18 years and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. 10 O.S. § 40.2(2).

<sup>2</sup> 10 O.S. § 40.3 (A) makes OICWA applicable to all child custody proceedings involving any Indian child except for those arising from divorce proceedings or adjudications of delinquency not involving a request for termination of parental rights. 10 O.S. § 40.4 makes clear that OICWA's reference to child custody proceedings includes voluntary proceedings. An adoption is such a proceeding.

allegation. Accordingly, the Motion to Proceed under Pseudonyms, if addressed, should be denied to the extent Defendants are prevented from learning Jane Doe's identity and comparing that identity to Cherokee Nation records.<sup>3</sup>

Respectfully submitted,

/s/ Graydon D. Luthey, Jr.

David E. Keglovits, OBA #14259; CNB #435

dkeglovits@gablelaw.com

Graydon D. Luthey, Jr., OBA #5568; CNB #395

dluthey@gablelaw.com

Amelia A. Fogleman, OBA #16221; CNB #493

afogleman@gablelaw.com

**GABLEGOTWALS**

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, Oklahoma 74103-4217

(918) 595-4800

and

Chrissi R. Nimmo

chrissi-nimmo@cherokee.org

Office of the Attorney General

215 South Muskogee Avenue, 2nd Floor

Tahlequah, Oklahoma 74465-0948

(918) 453-5000, Ext. 6998

**ATTORNEYS FOR DEFENDANT TODD HEMBREE,  
IN HIS OFFICIAL CAPACITY AS CHEROKEE  
NATION ATTORNEY GENERAL**

---

<sup>3</sup> The Motion's factual and legal support for secreting from the Defendants proof as to standing is nonexistent. Plaintiffs offer no evidentiary support for their supposition that a sovereign government's officials who daily deal with adoption confidentiality will fail to keep identities confidential. Likewise, Plaintiffs offer no decision under OICWA, the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., or any other similar statute that plaintiffs challenging such acts need not disclose to defendants the identity on which plaintiffs base their standing.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of October, 2015, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Paul E. Swain  
*pswain@swainlaw.com*

Mithun S. Mansinghani  
*mithun.mansinghani@oag.ok.gov*

Rebecca Murphy  
*becki@murphyfrancy.com*

/s/ Graydon D. Luthey, Sr.