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# Sequoyah v. TVA, 6th Circuit, Docket No. 79-1633: Amici Curiae Memorandum of Points and Authorities in Support of Appellants' Motion for Injunction Pending Appeal

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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 79-16-33

AMMONETA SEQUOYAH, et al.,                    )  
  )  
  Plaintiffs-Appellants,    )  
  )  
  v.    )  
  )  
TENNESSEE VALLEY AUTHORITY,                )  
  )  
  Defendants-Appellee.            )  
\_\_\_\_\_

AMICI CURIAE MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF APPELLANTS'  
MOTION FOR INJUNCTION PENDING APPEAL

The Cherokees have filed three motions with this Court, all of which seek to prevent irreparable injury and the mooting of fundamental constitutional claims before an appeal on the merits can be heard.<sup>1/</sup> Because of the serious nature of the Constitutional claims presented in this case and the far-reaching impact this case will have on the religious freedom and cultural survival of Indian tribes and Native Hawaiians in this country, Amici support all three motions. Amici adopt the brief of the Cherokees referenced to at page 6 of their Petition for Rehearing.

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<sup>1/</sup> These motions are: 1) Motion to Expedite Hearing filed November 26, 1979; 2) Petition for Rehearing; and 3) Motion for Injunction Pending Appeal, filed November 26, 1979.

This memorandum addresses the Cherokee's Motion for Injunction Pending Appeal. While the other motions mentioned above and relief sought therein are related, the issues concerning burials and burial remains deserve special comment.

Respect for the dead and their final resting places is so deeply ingrained in western society, that any significant departure from accepted mores bears close scrutiny. This is particularly true where, as in this case, a federal agency is involved.

Like the Cherokee Tribe, the majority of Indian tribes were removed from their original homeland by the federal government and placed onto reservations. These aboriginal lands were, in many instances, subsequently acquired by the United States and placed under the control of various federal agencies. As a result, a number of tribal burial grounds or cemeteries are presently under the control of various federal agencies leaving Natives dependent upon the United States for the proper care and protection of these areas.

Amici are aware of TVA's treatment of the Cherokee bodies and burial remains. As Natives, Amici deplore what can only be termed grave robbing and fear the precedent which will be established if the TVA's actions are permitted to stand. Amici believe that from the standpoint of public policy Natives should be secure in their right to judicial review of federal actions which constitute grave desecration to insure that they are afforded constitutional protection in this highly sensitive area, particularly where race and religion are involved.

The Cherokees have moved this Court for an order enjoining the Tennessee Valley Authority (TVA) from flooding gravesites located within the Tellico Project Area until such time as the TVA reinters the Cherokee remains and burial possessions removed by TVA in violation of rights secured to the Cherokees by the First and Fifth Amendments to the United States Constitution. As pointed out in the Cherokee brief, all the elements for an injunction pending appeal are present.

The disinterment and desecration by TVA of more than one thousand Indian bodies constitutes the largest atrocity committed by federal agents against an Indian tribe within recent memory. As in other organized religions, death, burial and respect for the dead play a major role in traditional Native religions and call into play a host of deeply rooted beliefs, practices and ceremonies. This claim was not considered by the court below when it dismissed the case. The Cherokee plaintiffs are entitled to present evidence at trial that the wholesale desecration of its tribal burial grounds violates tribal religious beliefs and practices and to request appropriate relief to redress the First Amendment violations complained of. Moreover, the alleged disparate racial treatment of the bodies by TVA constitutes a prima facie case of invidious racial discrimination. The reinterment by TVA of white bodies removed from the Tellico Project Area in accordance with state law and with due regard to the religious convictions and mores of white Americans is in stark contrast with the treatment accorded Cherokee remains and bears strict scrutiny. Amici

fear that if such treatment is permitted to stand, then no Native grave, particularly those located on federal lands, will be free from desecration and discriminatory treatment at the pleasure of the federal government.<sup>2/</sup>

CONCLUSION

Unless this Court grants the Cherokee motion, the tribal gravesites will be flooded making reinterment impossible, and the serious constitutional questions raised on this appeal will be mooted. Amici urge this Court to consider this appeal on its merits. At stake are policy questions regarding the use of federal lands which involve considerations of human decency.

Respectfully submitted,

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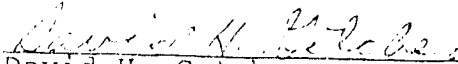
Counsel for Amici

<sup>2/</sup> If TVA's action is permitted to stand, federal precedent is also established for the exhuming and removal of bodies of citizens of other races without regard to fundamental human decency.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on this 7th day of December, 1979, he served the attached Motion and Memorandum on Appellees by mailing two true and exact copies, U. S. Mail, postage prepaid to:

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