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# Sequoyah v. TVA, 6th Circuit, Docket No. 79-1633: Motion for Leave to Appear and to File Memorandum as Amici Curiae

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NO. 79-1633

AMMONETA SEQUOYAH, RICHARD CROWE, )  
GILLIAM JACKSON, Individually and )  
representing other Cherokee Indians )  
similarly situated; the EASTERN )  
BAND OF CHEROKEE INDIANS; and the )  
UNITED KETOOAH BAND OF CHEROKEE )  
INDIANS, )  
 )  
Appellants, )  
 )  
v. )  
 )  
TENNESSE VALLEY AUTHORITY, )  
 )  
Appellees. )  
\_\_\_\_\_ )

MOTION FOR LEAVE TO APPEAR AND TO FILE MEMORANDUM AS AMICI CURIAE

The National Council of Churches of Christ in U.S.A., American Baptist Churches U.S.A., United Presbyterian Church in the U.S.A., American Civil Liberties Union and Center for Constitutional Rights move for leave to file the attached memorandum and to participate as amici curiae.

The National Council of Churches of Christ in the U.S.A, is a cooperative agency of thirty-one (31) Protestant and Eastern Orthodox national religious denominations, with an aggregate membership of more than forty (40) million Americans. The National Council of Churches has involved itself in a wide range of religious freedom cases including Wisconsin v. Yoder, 406 U.S. 205 (1972), Anderson v. Laird, 316 F.Supp. 1081 (D.D.C. 1970), Native American religious cases and

and other cases where constitutional religious freedoms have been threatened.

The American Baptist Churches in the U.S.A. is composed of four (4) principal national agencies and thirty-seven (37) regional, city and state organizations in the United States, who represent more than 6,000 congregations on matters pertaining to their relationship with the government of the United States of America, its agencies and departments, as they affect our churches, administrative units and integrated and affiliate agencies engaged in Baptist Mission activities. Among Baptists, religious liberties is a fundamental and sacred principle. Religious liberty is also a fundamental legal right protected by the First and Fourteenth Amendments to the Constitution of the United States. It is the opinion of the American Baptist Church in the U.S.A. that the principle of religious liberty is jeopardized by the decision of the U.S. District Court for the Eastern District of Tennessee in Sequoyah v. TVA which is on appeal in this case.

The United Presbyterian Church in the U.S.A. (UPC) is composed of 8,500 congregations representing more than 2.6 million persons in all fifty (50) States. The headquarters for the United Presbyterian Church in the U.S.A. is at 475 Riverside Drive, New York, New York, 10027. It is the churchwide policy of the UPC to advocate issues of concern within the Native American community specifically in the area of human and civil rights. For these reasons, the UPC is particularly concerned with the unique religious freedom issues presented in this litigation.

The ACLU is a non-profit organization with over 200,000 members dedicated to the defense and advancement of the Bill of Rights and

other inherent rights. For more than 50 years, the ACLU has espoused these causes, in large part through the development and presentation of civil liberties positions in litigation. The ACLU has, in particular, conducted extensive study, research, analysis, and litigation in the areas of the Establishment Clause, the Free Exercise Clause, and the Freedom of Speech and Assembly provisions of the First Amendment of the United States Constitution. In regard to the questions presented in the Sequoyah v. TVA litigation, the ACLU has both analyzed and litigated the precise issue of religious activities and federal lands. See, for example, Allen v. Morton, 495 F.2d 65 (D.C. Cir. 1973).

The Center for Constitutional Rights (CCR) is a non-profit tax-exempt legal and educational corporation dedicated to advancing and protecting the rights and liberties guaranteed by the Bill of Rights to the United States Constitution. During its fourteen (14) year history, CCR has litigated on behalf of Native Americans who were deprived of the use and possession of their traditional lands. The CCR has also actively litigated on behalf of persons who turn to the courts to protect their First Amendment rights to freely exercise their religious beliefs. For these reasons, CCR is particularly concerned about the serious constitutional issues raised in this action.

The accompanying memorandum of amici curiae contributes a valid dimension to the pending matter before this Court. The issue is of wide-spread and urgent concern to all organizations and individuals who are interested in the free exercise of religion. The unique vantage point of amici affords a helpful perspective to the fundamental constitutional issues presented to this Court.

For the foregoing reasons, the moving parties urge this Court to grant them leave to file the accompanying memorandum and to participate as amici curiae.

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NO. 79-1633

SEQUOYAH, et al.,

APPELLANTS,

v.

TVA,

APPELLEE.

AMICI CURIAE  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPELLANTS' BRIEF

The Cherokee have presented an important substantive case of constitutional rights of religious practice.

The constitutional rights raised by the Cherokees in this case, and their treatment in this Court, will set precedents for the free exercise of religion far beyond the valley of the Little Tennessee River.

The appellants Cherokee Indians have presented a substantial case based upon the exercise of First Amendment religious rights in the Valley. Several sites within the Tellico project area have sacred importance to the Cherokees, but most particularly the city-site, Echota. Over the years Cherokees have looked to Echota as the source of their religion, and, despite the White man's occupation of the Valley lands, individual Cherokees and their holy men have returned to Echota for religious pilgrimages, the making of medicine and the renewal of sacred powers. (Affidavits of Ammoneta Sequoyah, Lloyd Sequoyah, Dr. Duane King, Dr. Albert Wahrhaftig attached as Exhibits to Plaintiffs Memorandum

dum In Support of Application for Temporary Restraining Order and/or Preliminary Injunction.) (See also, the 1762 map annexed to this memorandum, showing the valley's sites, all of which would be destroyed by the Tellico impoundment.)

The sacredness of several particular sites in this case, and their importance to the present active practice of the Cherokee religion, were admitted by TVA and assumed by the district court. Slip Op. at 5.

The impoundment of the valley clearly would destroy Echota, and a fortiori eradicate the free exercise of the Cherokee religion in the most sacred site of the Cherokee culture. Access to sacred sites has been specifically recognized by Congress as part of the "inherent right of freedom to believe, express, and exercise" traditional religions. P.L. 95-341 (1978). Yet the TVA is now proceeding toward imminent impoundment of this last unflooded stretch of river and its sacred features.

On the merits, the district court's dismissal of the case is based upon an untenable First Amendment theory.

The district court's opinion dismissing this action is based upon the novel and disturbing theory that citizens' First Amendment free exercise rights depend upon their owning property interests in the land. The sum total of the judge's holding dismissing these admitted constitutional rights is the statement that

Since plaintiffs claim no...legal property interests in the land in question...a free exercise claim is not stated here.[Id. at 7, emphasis added.]

This theory finds no support in First Amendment cases generally. Cantwell v. Connecticut, 310 U.S. 296 (1940) and its progeny; A Quaker Action Group v. Hickle, 421 F.2d 1111 (D.C. Cir. 1969). It flies in the face of the specific intent of the Indian Religious Freedom Act of 1978, P.L. 95-341, which was designed in large part to permit Native American religious practices on federal lands. See, Hearings, Sen. R. No. 95-709, 95th Cong., 2nd Sess., (1978). The district judge's opinion, moreover, fails even to mention the "compelling state interest" test which requires that any burdens on the Cherokees' free exercise of religion be justified by a "compelling state interest in the regulation of a subject within the State's constitutional power to regulate." NAACP v. Button, 371 U.S. 415, 438, (1963); Sherbert v. Verner, 374 U.S. 398 (1963; Wisconsin v. Yoder, 406 U.S. 205 (1972).

As to future considerations in Congress, where this balance has never been addressed, we note that the present economic merits of the Cherokees' position are also substantial. When this case again comes to Congress, as it should and will if the courts exercise their function as adjudicators of constitutional rights, the preservation of Cherokee religious sites will be balanced with the economic advantages already on the record favoring non-reservoir project area development. See, Comptroller General of the United States, TVA's Tellico Dam Project: Costs, Alternatives, and Benefits, EMD-77-58 (1977); Staff Report, Endangered Species Committee, Tellico Dam and Reservoir, U.S.



Department of Interior, Jan. 19, 1979. But the measured processes of our lawmaking system will not work unless the courts enforce the Constitution and laws as they exist.

TVA v. Hill, 437 U.S. 153, 194-195 (1978).

Given the admitted constitutional rights and their imminent destruction, prompt judicial consideration is essential.

It would be nothing short of an abdication of the legal process if the appellants Cherokee Indians were not permitted to argue their substantial constitutional case until it is too late. The substantiality of the case--and its precedential importance to all who look to the judicial process as the primary protector of the First Amendment rights of all Americans--make it imperative that this case be heard on its merits.

#### Conclusion

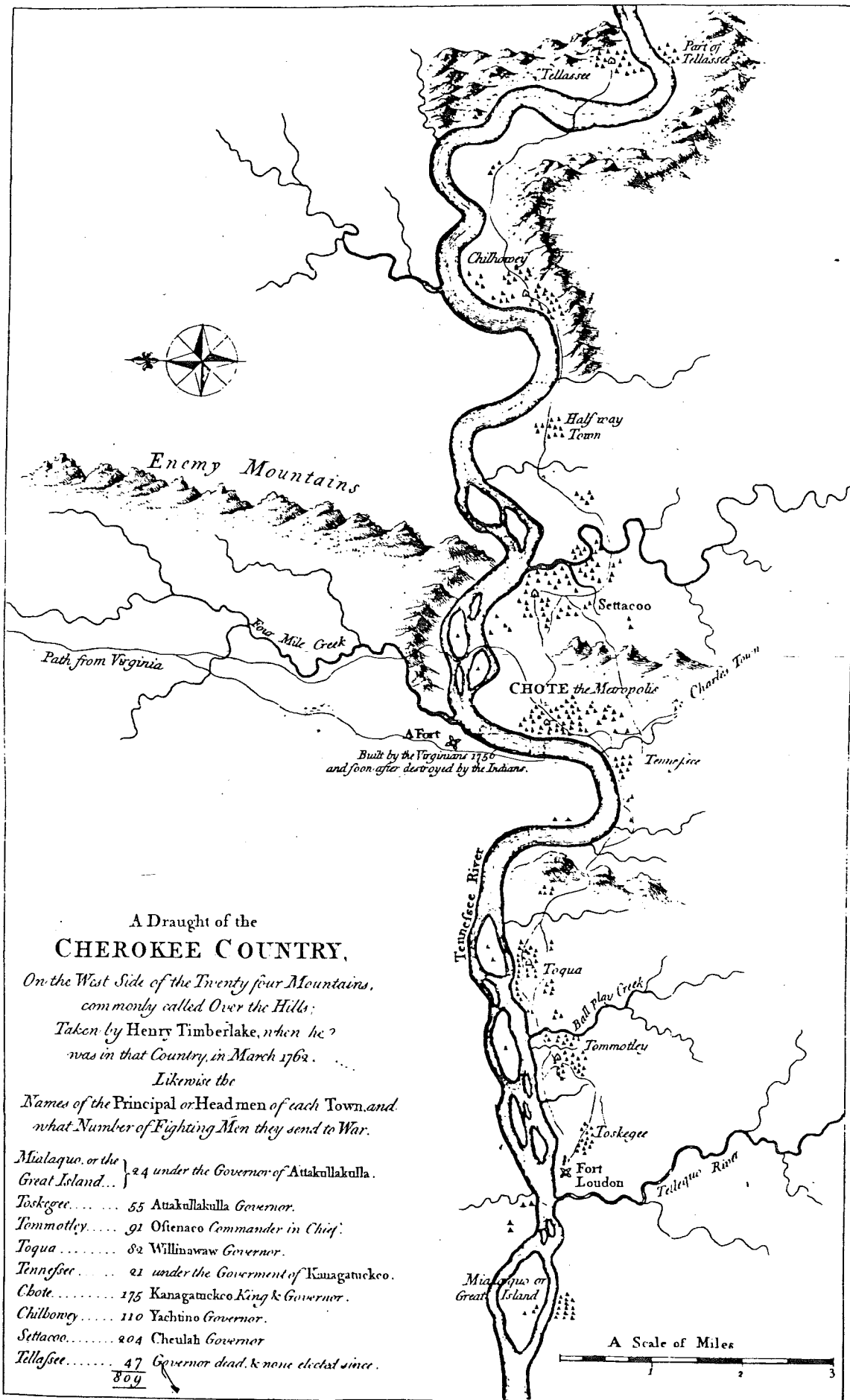
Accordingly, amici curiae earnestly request the court to give this case a meaningful hearing, at the earliest possible time, and to support the First Amendment freedoms for which, in our system, the courts stand as primary defenders.

Respectfully submitted,

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A Draught of the  
**CHEROKEE COUNTRY,**

*On the West Side of the Twenty four Mountains,  
 commonly called Over the Hills;*

*Taken by Henry Timberlake, when he  
 was in that Country, in March 1762.*

*Likewise the*

*Names of the Principal or Head men of each Town, and  
 what Number of Fighting Men they send to War.*

Mialago, or the Great Island...	24	under the Government of Attakullakulla.
Toskegee.....	55	Attakullakulla Governor.
Tommotley.....	91	Ostenaco Commander in Chief.
Toqua.....	82	Willinawaw Governor.
Tennessee.....	21	under the Government of Kanagatuckeo.
Chote.....	175	Kanagatuckeo King & Governor.
Chilhowey.....	110	Yachtino Governor.
Settahoo.....	204	Cheulah Governor
Tellasee.....	47	Governor dead, & none elected since.
	<u>809</u>	

A Scale of Miles



CERTIFICATE OF SERVICE

This is to certify that the undersigned attorney has this date served the attached Motion and Memorandum on behalf of amici curiae upon the attorney for the Appellee by deposition two copies in the United States Mail, first class, postage prepaid.

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