

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

DANIEL T. WARREN,

Plaintiff,

vs.

I-2004-5270

**GEORGE E. PATAKI, as Governor of the State of New York
MICHAEL J. HOBLACK, JR., as Chairman of the New York
State Racing and Wagering Board, and
WAYNE E. BENNETT, as Superintendent of the New York
State Division of State Police,**

Defendants.

ANSWER

Defendants, by their attorney, Eliot Spitzer, New York State Attorney General, Peter

B. Sullivan, Assistant Attorney General, of counsel, answer the complaint as follows:

1. Deny the allegations of paragraphs 10, 11, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, and 43.
2. Deny knowledge or information sufficient belief as to the allegations of paragraphs 1, 2, and 3.
3. Deny the allegations of paragraphs 8, 12, 14, 15, 16, 17, 18, 19, 23, and 37 as characterizations of law.
4. Deny so much of paragraph 13 as alleges that the compact was executed on September 10, 2002, and as alleges that it purports to be a compact.
5. Deny so much of paragraph 22 as alleges that in every case a "24/7" presence is maintained.

6. Admit so much of paragraph 24 as refers to a letter, and deny any characterization of that letter's contents, which speak for themselves.

7. With respect to the allegations of paragraph 25, deny any allegation that the defendants have not taken or do not intend to take appropriate action in light of the decision.

8. With respect to the allegations of paragraphs 40, 41, and 42, admit that negotiations have taken place and that tax issues have been part of such negotiations, and deny that any binding agreements have been reached or that any negotiations have contemplated any agreement which would be in any way unlawful.

First Defense

9. Plaintiff lacks standing to sue, with respect to all or part of the complaint.

Second Defense

10. The complaint must be dismissed, in total or in part, because the action is not ripe.

Third Defense

11. The action is barred, in whole or in part, by laches.

Fourth Defense

12. The action is barred, in whole or in part, by the applicable statute of limitations.

Fifth Defense

13. The action cannot proceed because of the absence of an indispensable party, *i.e.*, the Seneca Nation of Indians and, to the extent of the complaint is interpreted to challenge any other compacts, the tribes which are parties to those compacts.

Sixth Defense

14. The complaint fails to state a cause of action.

Seventh Defense

15. The plaintiff lacks standing to enforce the order or judgment of any action to which he is not a party.

Eighth Defense

16. By having failed to object to any compact upon its submission to the Secretary of the Interior, and by having failed to challenge the Secretary's approval of any such compact, the plaintiffs has waived any challenge to the terms of any such compact and is estopped from now making any such challenge.

Ninth Defense

17. The Court lacks jurisdiction and authority to compel any public official to pursue criminal or other enforcement action.

Tenth Defense

18. The United States Department of the Interior has approved any compact challenged by the plaintiff, pursuant to the Indian Gaming Regulatory Act ("IGRA"), and so any such compact is valid..

Eleventh Defense

19. This Court lacks jurisdiction to review the terms of any such compact, as such jurisdiction is limited to an action under IGRA in federal court.

Twelfth Defense

20. Some or all of the actions challenged by the plaintiff have been approved by the New York State Legislature.

WHEREFORE the answering defendants demand judgment denying in all respects the relief sought by plaintiff and dismissing the complaint or, alternatively, declaring that the Seneca Gaming Compact challenged by the plaintiff is valid.

Buffalo, NY
June 23, 2004

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Defendants
BY:
PETER B. SULLIVAN
Assistant Attorney General
of Counsel
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A F F I R M A T I O N

PETER B. SULLIVAN, an attorney admitted to practice before this Court and the Courts of the State of New York, affirms under the penalties of perjury:

That he is an officer of the State of New York, to wit, an Assistant Attorney General; that he is representing the defendants herein as attorney; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except to the matters herein stated to be alleged upon information and belief, and that as to those matters, he believes them to be true.

Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge are based upon information provided by agencies and officials of the State of New York.

PETER B. SULLIVAN

Dated: June 23, 2004