

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

DANIEL T. WARREN,

Plaintiff,

vs.

GEORGE E. PATAKI as Governor of the State of
New York and his successors in office, and

MICHAEL J. HOBLOCK, 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

Index # _____

VERIFIED COMPLAINT

Plaintiff, Daniel T. Warren, as and for his complaint for declaratory and injunctive relief pursuant to State Finance Law Article 7-a and CPLR § 3001 against the defendants herein allege:

AS AND FOR PLAINTIFF’S FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS HEREIN

1. Plaintiff, Daniel T. Warren is a resident of the Town of West Seneca, County of Erie and State of New York.
2. Plaintiff pays sales taxes on all purchases made within the State of New York including all applicable sales and excise taxes on all purchases together with income taxes.
3. Plaintiff is a duly registered voter in the County of Erie and State of New York.
4. Defendant George E. Pataki is currently the duly elected Governor of the State of New York.
5. Defendant Michael J. Hoblock, Jr. is the current and duly appointed Chairman of the New York State Racing and Wagering Board, that is a duly constituted board and instrumentality of the State of New York organized and existing by virtue of the laws of the State of New York with facilities located in the Town of Hamburg, County of Erie and State of New York.
6. Defendant Wayne E. Bennett is the current and duly appointed Superintendent of the New York State Division of State Police, that is a duly constituted instrumentality of the State of New York organized and existing by virtue of the laws of the State of New York with facilities located in the County of Erie and State of New York.

- 1 7. On October 24, 2001 the Legislature passed bill S5828 & A9459 which ultimately became law
2 and recorded in Chapter 383 of the Laws of 2001.
- 3 8. This bill was for twenty seven different purposes ranging from providing low cost electricity to
4 businesses dislocated by the events of 9-11 to establishing tourism councils.
- 5 9. The portion of this bill/act which is the subject of this action is Part B. This part added a new §
6 12 to the Executive Law, Added a New Section 99-h to the State Finance Law, and amended
7 section 225.30 of the Penal Law.
- 8 10. Part B of Chapter 383 of the Laws of 2001 is a private and/or local bill.
- 9 11. Part B of Chapter 383 of the Laws of 2001 is a special law.
- 10 12. Executive Law § 12 as enacted purports to delegate to the Governor the authority to negotiate
11 and enter into a tribal-state compact under the Indian Gaming Regulatory Act.
- 12 13. On or about the 10th day of September, 2002 a compact was executed by Governor Pataki and
13 the President of the Seneca Nation of Indians that purports to be a compact under the Indian
14 Gaming Regulatory Act that will permit Class III gaming at three locations in the State of New
15 York.
- 16 14. By the terms of this compact the State is required to expend funds and dispose of state property
17 to assist in the acquisition of property for the Seneca Nation of Indians.
- 18 15. The compact also requires that the State of New York reach agreements with the host
19 municipalities to compensate them for the increase in expenses they will incur as a result of
20 locating a Class III gaming facility therein.
- 21 16. The compact contains a provision where the fee title to the Niagara Falls Convention Center
22 and its land will be transferred to the Seneca Nation for \$1.00. The Nation will then lease the
23 convention center back to the state for \$1.00 a year for 21 years. The State then sub-leases the
24 convention center to the Seneca Gaming Corporation for \$1.00 a year for 21 years. At the end
25 of 21 years the Seneca Nation will pay the State the balance of the general obligation bonds
pledged in connection with the convention center as of July 1, 2002.
17. The compact also provides that a Casino will be located within the County of Erie, New York.

1 18. The compact also requires the State to use its powers of eminent domain to assist in acquiring
2 property for the Seneca Nation of Indians to locate the subject gaming casinos.

3 19. The compact also requires the State to give to the Seneca Nation of Indians exclusive rights to
4 install and operate gaming devices including slot machines within a defined geographic area.

5 That area is defined as “(i) to the east, State Route 14 from Sodus Point to the Pennsylvania
6 border with New York, (ii) to the north, the border between New York and Canada, (iii) to the
7 south, the Pennsylvania border with New York, (iv) to the west the border between New York
8 and Canada and the border between Pennsylvania and New York.”

9 20. In 1993 the New York State Racing and Wagering Board was given authority to regulate Class
10 III Indian gaming in the State.

11 21. According to the New York State Racing and Wagering Board, it “maintains a constant twenty-
12 four hour presence within the gaming facilities of the three Class III facilities to maintain the
13 integrity of all activities conducted in regard to Class III gaming, and to insure the fair and
14 honest operation of such gaming activities. Additionally, the State conducts background
15 investigations on all employees of the casino and enterprises who conduct gaming related
16 business with the casino to ensure their suitability.”

17 22. The New York State Division of State Police conduct the abovementioned background
18 investigations and maintains a 24/7 presence at each location offering Class III gaming.

19 23. That a judgment Supreme Court (Teresi, J.), entered April 12, 2001 in Albany County in
20 Saratoga County Chamber of Commerce v. Pataki and affirmed by the New York Court of
21 Appeals, 100 N.Y.2d 801, 798 N.E.2d 1047, 766 N.Y.S.2d 654 1470 (N.Y. June 12, 2003) that
22 declared the Tribal-State Compact between the St. Regis Mohawk Tribe and the State of New
23 York dated October 15, 1993 void and unenforceable.

24 24. By letter dated May 17, 2004 Assistant Attorney General Robert A. Seigfried conceded in the
25 matter of Peterman v. Pataki, Index# 99-533, New York Supreme Court, Oswego County, that
the decision in Saratoga County Chamber of Commerce v. Pataki is controlling in relation to
the compact between the Oneidas and the State of New York and therefore it is void and

1 unenforceable under state law. Attached hereto and marked as Exhibit "A" is a copy of this
2 letter.

3 25. Upon information and belief that despite this ruling and the denial of their Petition to the U.S.
4 Supreme Court for Certiorari, defendants do not intend to either institute an appropriate action
5 to enjoin illegal Class III gaming or cease expending taxpayers money to provide the 24/7
6 presence of state personnel at either the Turning Stone Casino or the Akwesasne Mohawk
7 Casino.

8 26. The defendants are therefore acting in violation of a judgment, as modified, affirmed by the
9 State's highest court.

10 27. The legislature is without authority to authorize the State to expend its moneys to implement
11 these casino-gambling compacts, including the expenditure of funds to pay State Police
12 personnel providing security and State Racing and Wagering Board employees regulating the
13 casinos on a 24-hour basis.

14 28. On or about October 24, 2002, the United States Department of the Interior announced that it
15 would, in accordance with § 11(d)(8)(C) of IGRA, neither approve or disapprove the Class III
16 gaming compact between the Seneca Nation of Indians and the State of New York and that the
17 compact is considered to have been approved, but only to the extent that its terms comply with
18 the requirements of IGRA.

19 29. This act and compact was not lawfully ratified by the Legislature of the State of New York and
20 is therefore null and void.

21 30. This act and compact is illegal and unconstitutional in that it is in violation of Article I § 9 of
22 the New York State Constitution which provides that no "gambling, except lotteries operated by
23 the state and * * * pari-mutuel betting on horse races * * * shall hereafter be authorized or
24 allowed within this state".

25 31. This act is illegal and unconstitutional in that the State Legislature exceeded its power by
ratifying this special law in violation of the Home Rule provisions of Article IX of the New
York State Constitution and the laws of the State of New York.

- 1 32. This act is illegal and unconstitutional in that the State Legislature exceeded its power as
2 limited by Article III § 15 of the State Constitution which provides “No private or local bill,
3 which may be passed by the legislature, shall embrace more than one subject, and that shall be
4 expressed in the title.”
- 5 33. This act is illegal and unconstitutional in that the State Legislature exceeded its power as
6 limited by Article III § 17 of the State Constitution which prohibits the legislature from passing
7 any private or local bill “Granting to any private corporation, association or individual any
8 exclusive privilege, immunity or franchise whatever.”
- 9 34. This act and compact is illegal and unconstitutional in that it loans the State’s money or credit
10 to or in aid of any individual, or public or private corporation or association, or private
11 undertaking in violation of Article VII § 8 of the State Constitution.
- 12 35. The compact is void as illegal in that the state will receive money from gambling activities in
13 violation of various provisions of New York Penal Law Article 225 and 18 USC §§ 1166, 1955
14 and is otherwise against the public policy of the State of New York as expressed in various laws
15 of this State which include, but is not limited to, The Donnelly Act (General Business Law §
16 340) and The Organized Crime Control Act (Article 460 of the New York Penal Law).
- 17 36. The authorization and execution of this compact permitting gambling is not authorized under
18 Article I § 9 of the State Constitution without amending the Constitution deprived plaintiff of
19 his right to vote on this important public policy as envisioned by the delegates of the last
20 constitutional convention.
- 21 37. IGRA makes class III gaming lawful on Indian lands only if such activities are: (1) authorized
22 by an ordinance or resolution adopted by the governing body of the Indian tribe and the
23 Chairman of the National Indian Gaming Commission; (2) located in a State that permits such
24 gaming for any purpose by any person, organization, or entity; and (3) conducted in
25 conformance with a Tribal-State compact entered into by the Indian tribe and the State and
approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1), (3)(B).

1 38. The compact is not valid under the IGRA in that it fails the requirement that it be located in a
2 State that permits such gaming for any purpose by any person, organization, or entity.

3 39. The compact is not valid under the IGRA in that the State was without power to enter into a
4 tribal-state compact.

5 40. Upon information and belief the Governor is negotiating with unnamed Indian Nations and
6 Tribes in order to enter into compacts for the three remaining casinos purportedly authorized
7 under Executive Law § 12.

8 41. Upon information and belief these proposed agreements include a “tax compact” whereby sale s
9 taxes will not be collected from non-Indians on Indian Land.

10 42. This “tax compact” whether de jure or de facto is illegal and unconstitutional because it is in
11 violation of New York Constitution Article XVI in that it contracts away or surrenders New
12 York’s power of taxation.

13 43. There is no adequate remedy at law.

14 **WHEREFORE**, plaintiff prays for an Order and Judgment of this court:

- 15 A) Declaring Part B of Chapter 383 of the Laws of 2001 a special law;
16 B) Declaring Part B of Chapter 383 of the Laws of 2001 a local law;
17 C) Declaring that the New York State Legislature exceeded its powers in enacting Part
18 B of Chapter 383 of the Laws of 2001;
19 D) Declaring that Part B of Chapter 383 of the Laws of 2001 unconstitutionally
20 amended the State Constitution and deprived plaintiff his right to vote as
21 guaranteed by Article XIX, Article I § 1, and Article II § 1 of the New York
22 Constitution;
23 E) Declaring Executive Law § 12 unconstitutional;
24 F) Declaring the amendments to Penal Law § 225.30 unconstitutional;
25 G) Declaring that the Governor did not have lawful authorization to enter into any
Compact that permits Class III gaming;

- 1 H) Declaring the compact entered into between the Seneca Nation of Indians and the
2 State of New York, and any other compact between the State of New York and any
3 Indian nation or tribe, to the extent that it authorizes Class III gaming as null and
4 void because it is illegal, unconstitutional and in violation of the public policy of
5 the State of New York;
- 6 I) Declaring the compact entered into between the Seneca Nation of Indians and the
7 State of New York is illegal and unconstitutional in that it violates the New York
8 Constitution Article VII § 8;
- 9 J) Declaring that any agreement to not collect sales tax from non-Indians on Indian
10 land is null and void in that it unconstitutionally contracts away or surrenders the
11 State's power to tax in violation of Article XVI of the New York Constitution;
- 12 K) Declaring that the New York State Racing and Wagering Board is without authority
13 and jurisdiction to regulate, perform any services for, or maintain a presence at any
14 commercial gambling operation;
- 15 L) Enjoining the defendant George E. Pataki as Governor of the State of New York to
16 commence an action pursuant to 25 USC § 2710(d)(7)(A)(ii) to enjoin such Class
17 III gaming that has been commenced pursuant to the terms of this compact and any
18 other compact;
- 19 M) Enjoining the defendants to enforce New York Penal Law Article 225 on Indian
20 Land in accordance with 25 USC § 232 and to refer such activity to the District
21 Attorney for the County in which it is occurring as well as to the appropriate federal
22 law enforcement agency for its review for possible violations of federal law which
23 includes, but is not limited to 18 USC §§ 1955, 1166;
- 24 N) Enjoining the defendants from expending any money, assets or its right of eminent
25 domain of the State as required by the compact, or to maintain a presence at any
location that conducts Class III gaming.
- O) Together with the costs and disbursements of this action.

1 State of New York)
County of Erie) ss:
2 City of Buffalo)

3 I Daniel T. Warren, am the Plaintiff in the within action. I have read the foregoing complaint
and know the contents thereof. The contents are true to my own knowledge except as to matters
4 therein stated to be alleged upon information and belief, and as to those matters I believe them to be
true.
5

6 _____
Daniel T. Warren

7 Sworn to before me this
__ day of May, 2004

8
9 _____
Notary Public

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25