

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DANIEL T. WARREN,

Plaintiff,

06-CV-00226

Hon. John T. Elfvig

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
OF THE SENECA NATION OF INDIANS

The Seneca Nation of Indians (the “Nation”) respectfully requests leave to submit the accompanying Brief Amicus Curiae seeking dismissal of this action on the grounds that the Nation and the State of New York (the “State”) are necessary and indispensable parties to the action who cannot be joined due to their sovereign immunity, warranting dismissal pursuant to Federal Rule of Civil Procedure 19.

This case (1) directly challenges the validity of the Nation-State Gaming Compact executed pursuant to the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 et seq., which Compact authorizes gaming in the Nation’s Niagara Falls and Buffalo Creek Territories; (2) challenges the restricted fee status of the Nation’s lands within the Niagara Falls and Buffalo Creek Territories; (3) challenges the Nation’s governmental authority over these Territories; and (4) challenges the validity of the Nation’s Gaming Ordinance. The Nation and the State—as the only two parties to the Compact—have significant governmental and economic interests in its validity. In addition, the Nation has a significant governmental interest in its authority over the Niagara Falls and Buffalo Creek Territories, and in the status of its title to parcels within those

Territories. However, neither the Nation nor the State is a party to this action, and they may not be joined to it because of their sovereign immunity. In this situation, Rule 19 and clear Second Circuit precedent require the dismissal of the suit. The Nation requests leave to submit the attached Brief Amicus Curiae setting forth in greater detail the grounds for dismissal.

DATED this 14th day of August, 2006.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF THE SENECA NATION OF INDIANS

The Seneca Nation of Indians (the “Nation”) respectfully submits this Brief *Amicus Curiae* on the grounds that the Nation and the State of New York (“the State”) are necessary and indispensable parties to this action, their joinder is barred by the doctrine of sovereign immunity, and that, under clear Second Circuit precedent, this action must therefore be dismissed pursuant to Federal Rule of Civil Procedure 19.

INTRODUCTION AND STATEMENT OF INTEREST

The present lawsuit represents nothing less than a frontal assault on: (1) the Nation-State Gaming Compact which authorizes gaming in the Nation’s Niagara Falls and Buffalo Creek Territories; (2) the Nation’s governmental authority over those Territories; (3) the restricted fee status of the Territories; and (4) the validity of the Nation’s gaming ordinance.¹ Plaintiff Daniel T. Warren (“Plaintiff”) claims that the Compact violates the Indian Regulatory Gaming Act

¹ A similar lawsuit challenging gaming in the Buffalo Creek Territory, *CACGEC v. Norton*, 06-CV-0001, is currently pending before Judge William M. Skretny of this District. That suit, like this one, challenges the validity of the Nation-State Compact, the Nation’s governmental authority over the Buffalo Creek Territory, and the validity of the Nation’s gaming ordinance. The Nation has also filed an amicus brief in the *CACGEC* case seeking dismissal pursuant to Rule 19.

