SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

DANIEL T. WARREN, Plaintiff, vs. **GEORGE E. PATAKI, MICHAEL J. HOBLOCK, JR. AND WAYNE E. BENNETT.** Defendants	**MEMORANDUM OF LAW** **Index #** 2004-5270

STATEMENT OF FACTS

By decision dated June 17, 2003 the New York Court of appeals in Saratoga County Chamber of Commerce v. Pataki, held that the tribal-state compact between the State of New York and the St. Regis Mohawks was void and unenforceable because the Governor violated the separation of powers doctrine in negotiating and binding the State to its terms in the absence of legislative authorization..

By letter dated May 17, 2004, Assistant Attorney General Robert A. Siegfried conceded in Peterman v. Pataki, Index #99-533, Supreme Court of the State of New York, Oneida County, that the decision in *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 798 N.E.2d 1047, 766 N.Y.S.2d 654 (N.Y. 06/12/2003) is controlling and the court is bound by the doctrine of stare decisis (Complaint Ex. A). Therefore, the tribal-state compact between the Oneida Indian Nation of New York and the State of New York is void and unenforceable because it lacked legislative authorization as well.

Since these occurrences the State has continued to expend state assets to maintain a 24/7 presence at the Turning Stone Casino and the Akwesasne Mohawk Casino for State Police and State Racing and Wagering Inspectors and for the State Police to conduct background criminal checks on the casinos prospective employees.

In at least one Memorandum of Understanding, that has been subsequently rejected, Defendant Pataki agreed to contract and surrenders the State's power of taxation upon non-

members on Indian Land[1]. Recently Defendant Pataki announced a settlement in the Cayuga Land Claim. This settlement calls for the Cayuga Nation of New York to relinquish all claims to land in exchange for the rights to operate a Class III casino together with a tax parity agreement.

ARGUMENT

It is well settled that in order to be entitled to a preliminary injunction, a movant must clearly demonstrate (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor (see, e.g., *Doe v Axelrod*, 73 N.Y.2d 748, 536 N.Y.S.2d 44, 532 N.E.2d 1272; *Doe v Poe*, 189 A.D.2d 132, 595 N.Y.S.2d 503).

LIKELIHOOD OF ULTIMATE SUCCESS ON THE MERITS

Standing

Plaintiff can maintain this claim as a citizen taxpayer action pursuant to State Finance Law, article 7-A, which authorizes "any person, who is a citizen taxpayer *** [to] maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property ***" (§ 123-b [emphasis added]; Complaint ¶¶ 2, 26 & 27).

Plaintiff also has common law taxpayer standing. The complaint alleges that the Legislature and the Governor acted ultra vires in authorizing, negotiating and entering into the tribal-state compact permitting Class III gaming in this State as well as tax compacts or price parity agreements. It specifically alleges that the defendants' actions in enacting Part B of Chapter 383 of the Laws of 2001 and in negotiating these tax compacts or price parity agreements exceeded their authority as limited by the State Constitution. In challenges regarding the defendants action there will be few if anyone that can claim concrete injury as a result of the

[1] The exhibits, attached to the Complaint and the Plaintiff's affidavit, are admissible as original evidence as admissions of a party. (see, *Reed v. McCord*, 160 NY 330, 341; *Matter of Rhodes v. Biggs*, 203 AD2d 46).

alleged illegal acts. As the New York Court of Appeals has recently stated in *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 798 N.E.2d 1047, 766 N.Y.S.2d 654 (N.Y. 06/12/2003) "It follows that our doctrines governing standing must be sensitive to claims of institutional harm. Actions of this type can serve as a means for citizens to ensure the continued vitality of the constraints on power that lie at the heart of our constitutional scheme (cf. Dairylea Corp. v Walkley, 38 NY2d 6, 10 [1975]; Committee for an Effective Judiciary v State, 679 P2d 1223, 1227 [Mont 1984]; State ex rel. Howard v Oklahoma Corporation Commission, 614 P2d 45, 52 [Okla 1980]). Thus, where a denial of standing would pose "in effect * * * an impenetrable barrier to any judicial scrutiny of legislative action," our duty is to open rather than close the door to the courthouse (see Boryszewski, 37 NY2d at 364; see also State ex rel. Clark v Johnson, 904 P2d 11 [NM 1995]; Rios v Symington, 833 P2d 20 [Ariz 1992]; State ex rel. Sego v Kirkpatrick, 524 P2d 975, 979 [NM 1974])." The Court went on to state "Here, the citizen-taxpayer plaintiffs argue that the expenditure of State funds and the use of State regulatory personnel for the casino violate the New York Constitution. If standing doctrine precludes them from bringing this suit, the casino will remain operating indefinitely whether or not the 1993 compact was constitutional. Standing is properly satisfied here, lest procedural hurdles forever foreclose adjudication of the underlying constitutional issue. We next address the statute of limitations argument."

With respect to the challenge of the tax/price parity agreements or tax compacts plaintiff has voter standing. The issue of voter standing, however, requires a more detailed analysis. New York has a judicially adopted "zone of interest" test for legal standing (*Matter of Dairylea Coop. v Walkley*, 38 N.Y.2d 6, 9). To obtain standing, a plaintiff must show that the governmental action complained of will cause him injury in fact and that the interest he advances is arguably within the zone of interest to be protected by statute. As to the second requirement, the class of persons entitled to judicial review of the validity of governmental action is broadly defined and standing should be denied only where there is a clear legislative intent to negate judicial review

or there is no injury in fact (see, *Matter of District Attorney of Suffolk County*, 58 N.Y.2d 436, 442; *Matter of Goldberg v Axelrod*, 104 A.D.2d 520, 520-521, lv denied 64 N.Y.2d 602).

If as plaintiff alleges these agreements surrender or contracts away the State's power of taxation then plaintiff meets both requirements for voter standing because this agreement can only be authorized by the people (*Matter of Roosevelt Raceway v. Monaghan*, 9 N.Y.2d 293, 308-309; app. dsmd. 368 U.S. 12) and it is within the zone of interests protected by Article XVI of the State Constitution.

The Seneca Nation of Indians is not an Indispensable Party

The Seneca Nation is not an indispensable party. It has been noted that a contrary ruling would put Indian gaming compacts beyond constitutional challenge or review (see *Saratoga County Chamber of Commerce v Pataki*, 275 AD2d 145, 151-154 [2000] ["Saratoga I"]). While the Appellate Division acknowledged that the Tribe's interests would be affected by the suit, it determined that, on balance, the Tribe's absence should not prevent the suit from going forward. The Court also rejected the State's statute of limitations, standing and laches defenses (see id. at 154-158). Additionally the relief sought in this suit will provide the Seneca Nation the opportunity to protect its interests in federal court if it so chooses. Part of the relief requested against the Defendants is that they commence an action pursuant to 25 USC § 2710(d)(7)(A)(ii) to enjoin such illegal gaming that has been commenced pursuant to the terms of this illegal compact and any other compact adjudicated illegal or unconstitutional (Complaint's Ad Damnum Clause ¶ L). Lastly the Seneca Nation was given notice of this action so it could appear to protect its interests if it so desires.

Alternatively, if this Court decides that this action cannot proceed without the Seneca Nation as a Party, movant requests leave pursuant to CPLR § 1003 to amend the Complaint to name the Ricky Armstrong and G. Michael "Mickey" Brown as a party defendants and to serve the Amended Complaint with a Supplemental Summons upon them. (*Thompson Water Works*

Company v. Diamond, 44 A.D.2d 487, 356 N.Y.S.2d 130). Although these new defendants may assert sovereign immunity, they may equally as well not assert it and appear in this action. It is at that point the court should address this issue. In any event the claim of sovereign immunity is not a bar to this court exercising jurisdiction over the Seneca Nation of Indians due to the following.

Indian nations and tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories. *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831). The powers of Indian tribes are "'inherent powers of a limited sovereignty which has never been extinguished.'" *United States v. Wheeler*, 435 U.S. 313, 322 (1978) (quoting F. Cohen, Handbook of Federal Indian Law 122 (1945)). When the tribes were incorporated into the territory of the United States and accepted the protection of the Federal Government, they necessarily lost some of the sovereign powers they had previously exercised. In Wheeler, the Supreme Court explained: "The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." 435 U.S., at 323 (citations omitted). Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).

Officers of a sovereign may not act in excess of their lawful authority. For when they do they will not be acting on behalf of the sovereign they allegedly represent, and will thereby be stripped of the immunity conferred to that sovereign. As the United States Court of Appeals for the Second Circuit held in *Garcia v. Akwesasne Housing Authority*, 268 F.3d 76 (2d Cir. 10/03/2001) “Although the AHA itself cannot be made to pay damages and cannot even be named as a defendant, Garcia can still obtain injunctive relief against it by suing an agency officer in his official capacity. See Santa Clara Pueblo v. Martinez, 436 U.S. at 59 (citing the doctrine of Ex parte Young, 209 U.S. 123 (1908)); Puyallup Tribe v. Dep't of Game, 433 U.S.

165, 171-72 (1977); Bassett v. Mashantucket Pequot Tribe, 204 F.3d at 358-59 (2d Cir. 2000); cf. Board of Trustees v. Garrett, 121 S. Ct. 955, 968 n.9 (2001) (even though state sovereign immunity precludes damages suits against states under Title I of the Americans with Disabilities Act, the doctrine of Ex parte Young permits private plaintiffs to sue a state "for injunctive relief")."

Mr. Armstrong as President of the Seneca Nation of Indians and Mr. Brown as Chairman of the Seneca Niagara Gaming Corp. will be violating state and federal law if the subject compact is ruled illegal and unconstitutional (New York Penal Law Article 225 and 18 USC § 1166, 1957; 25 USC §§ 232, 233). Therefore they would be acting in excess of the sovereign's authority and will not be protected by its immunity.

Secondly, since the relief requested is prospective declaratory and injunctive relief it appears the majority of the limited case-law on this issue supports the view that IGRA waived tribal sovereign immunity in the narrow category of cases where compliance with IGRA's provisions is at issue and where only declaratory or injunctive relief is sought. See *Montgomery v. Flandreau Santee Sioux Tribe*, 905 F. Supp. 740, 745 (D.S.D. 1995) ("The Court has subject matter jurisdiction to consider whether defendants [tribes] have complied with [IGRA]."); *Calvello v. Yankton Sioux Tribe*, 899 F. Supp. 431, 438 (D.S.D. 1995) ("[F]ederal courts may find a waiver of tribal sovereign immunity for the purpose of enforcing the provisions of the IGRA where prospective injunctive relief, and not monetary relief, is sought."); *Maxam v. Lower Sioux Indian Community of Minnesota*, 829 F. Supp. 277 at 281 (holding that, by engaging in gaming, tribe waives sovereign immunity for narrow purpose of determining compliance with IGRA); *Ross v. Flandreau Santee Sioux Tribe*, 809 F. Supp. 738, 745 (D.S.D. 1992) ("Engaging in gaming pursuant to the IGRA constitutes an express waiver of sovereign immunity on the issue of compliance with the IGRA."); *Cohen v. Little Six, Inc*., 543 N.W.2d 376, 380 (Minn. Ct. App. 1996) ("LSI's operation of a gaming hall subjects it to a non-tribal court's authority to enforce compliance with the IGRA, not claims for money damages."), aff'd 561 N.W.2d 889 (Minn. 1997), petition for cert. filed, 65 U.S.L.W. 3839 (June 9, 1997) (No. 96-1962). But see

Davids v. Coyhis, 869 F. Supp. 1401, 1408-09 (E.D. Wis. 1994) (explicitly rejecting the reasoning of Ross and Maxam).

Therefore, sovereign immunity is not a bar at this stage of the litigation.

New York Law Controls on Compact's Validity

Whether or not a state has entered into a valid tribal-state compact is a question of state law (*Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir.), cert. denied, 65 U.S.L.W. 3713 (U.S. Oct. 6, 1997)). State law also determines if a state has any authority to enter into such a compact as well. The court in *In re Indian Gaming Related Cases Chemehuevi Indian Tribe*, 331 F.3d 1094 (9th Cir. 2003) stated "The State already had no obligation to conclude compacts with tribes permitting slot machines and banked card games, see Rumsey, 64 F.3d at 1258; the decision [Hotel Employees & Restaurant Employees International Union v. Davis, 21 Cal.4th 585 at 601, 981 P.2d 990, 88 Cal.Rptr.2d 56.] meant it now also lacked the authority to do so."

Part B of Chapter 383 of the Laws of 2001 is ultra vires and unconstitutional

In America the sovereign powers reside in the people who have delegated certain of these powers to the Federal Government and have prohibited some to the States reserving all others to the States respectively, or to themselves. (See U. S. Const., 9th and 10th Amdts.; N. Y. Const., art. I, § 14.)

Generally, our Legislature has plenary power for all purposes of civil government "[E]xcept as restrained by the constitution, the legislative power is untrammeled and supreme * * *. Nothing is subtracted from the sum of legislative power, except that which is expressly or by necessary implication withdrawn" (*In re Thirty-Fourth St. Ry. Co*., 102 N.Y. 343, 350-351). "A State Legislature possesses all powers of law-making inherent in sovereignty except as curtailed

by State or Federal Constitution expressly or by necessary implication". (*Trade Accessories v. Bellet,* 184 Misc. 962, 965.)

The principles which are applicable to this case are familiar indeed. Legislative enactments are presumed to be constitutional, i.e., they are presumed to be supported by facts known to the Legislature (*Lincoln Bldg. Associates v. Barr*, 1 N.Y.2d 413, 415; *East New York Sav. Bank v. Hahn*, 293 N. Y. 622, 627-628, affd. 326 U.S. 230*; United States v. Carolene Prods. Co*., 304 U.S. 144, 152; Borden's Co. v. Baldwin, 293 U.S. 194, 210). While this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt (*Defiance Milk Prods. Co. v. Du Mond*, 309 N. Y. 537, 540-541; *Matter of Fay*, 291 N. Y. 198, 206, 207; *Lindsley v. Natural Carbonic Gas Co*., 220 U.S. 61, 79). The presumption of constitutionality cannot save the acts complained of since their unconstitutionality is patent and no explanation or justification is forthcoming.

Executive Law § 12 is in conflict with the New York Constitution

The Legislature owes its existence to the Constitution. All of its powers, and the limitations on its powers, spring from it. The Constitution forbids gambling, except for limited exceptions, and prohibits commercialized gambling. It reads:

> "[E]xcept as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, and except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, shall hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section" (NY Const art I, § 9 [1]).

As the Appellate Division, Third Department held that "Under the circumstances, we conclude that the commercialized Las Vegas style gambling authorized by the compact is the

antithesis of the highly restricted and 'rigidly regulated' (NY Const, art 1, § 9 [2]) forms of gambling permitted by the NY Constitution and statutory law and New York's established public policy disfavoring gambling (see, Ramesar v State of New York, 224 AD2d 757, 759, lv denied 88 NY2d 811; accord, Matter of New York Racing Assn. v Hoblock, 270 AD2d 31, 33-34)." *Saratoga County Chamber of Commerce Inc. v. Pataki*, 293 A.D.2d 20, 740 N.Y.S.2d 733 (05/02/2002).

Gambling (or lotteries as it was called) was first banned in the Second Constitution of the State of New York ("The 1821 State Constitution") in Article VII § 11 which provided "No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law." The Third Constitution of the State of New York ("The 1846 Constitution") in Article I § 10 provided "nor shall any lottery hereafter be authorized, or any sale of lottery tickets allowed within this state." The Fourth Constitution of the State of New York ("The 1894 Constitution") in Article I § 9 provided "nor shall any lottery or the sale of lottery tickets, pool-selling, book making, or any other kind of gambling hereafter be authorized or allowed within this State; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section." The Constitutional Convention of 1938 did not write a new Constitution. It did succeed in getting voter approval of a number of significant amendments to the Constitution none of which affected the prohibition on gambling. Article I § 9 was amended on November 7, 1939 by a vote of 1,225,495 to 594,811 to permit pari-mutuel betting on horse races. This provision of the State Constitution was next amended on November 5, 1957 to permit the conduct of bingo games by certain organizations under state regulation and local government supervision by a vote of 1,818,353 to 1,175,820. Then on November 8, 1966 this provision was amended by a vote of 2,464,898 to 1,604,694 to permit state lotteries for the support of education in this state. The next amendment to this provision passed on November 4, 1975 to permit the limited conduct of

certain games of chance by religious, charitable or certain non-profit organizations by a vote of 1,497,217 to 1,491,943. The last amendment to this provision was on November 6, 1985 by a vote of 1,803,103 to 1,387,489 to permit the dollar amounts of prizes for certain games of chance, now restricted by the constitution, may be changed by the legislature. A recent attempt to amend this provision of the State Constitution was initiated in 1995 when the legislature passed Senate Bill S5557. This bill proposed amending the State Constitution to permit casino gambling in certain cities and counties of the State. This bill did not pass the in the 1997 session of the legislature and died there.

Article I § 9(2) permits "(a) bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random; (b) games in which prizes are awarded on the basis of a winning number or numbers, color or colors, or symbol or symbols determined by chance from among those previously selected or played, whether determined as the result of the spinning of a wheel, a drawing or otherwise by chance." This provision further provides "The legislature shall pass appropriate laws to effectuate the purposes of this subdivision, ensure that such games are rigidly regulated to prevent commercialized gambling, prevent participation by criminal and other undesirable elements and the diversion of funds from the purposes authorized hereunder and establish a method by which a municipality which has authorized such games may rescind or revoke such authorization." Bingo and lotto are Class II games 25 U. S. C. § 2703(7)(A). IGRA excludes from the definition of Class II gaming "electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." Id. at § 2703(7)(B)(ii). Class II gaming may be conducted in Indian country without a tribal-state compact. See id. §§ 2703(7) & 2710(b)(1). To the extent that the second part of this subdivision may be interpreted to permit some Class III gaming the State is without power to authorize commercial gaming of any classification.

Unlawful gambling activity has been defined as any gambling activity that is not explicitly authorized by the state of New York (N.Y. Penal Law §§ 225.05-225.20 & 225.30 (McKinney 1999); Op.Atty.Gen. 81-68).

When language of a constitutional provision is plain and unambiguous, full effect should be given to "the intention of the framers ... as indicated by the language employed" and approved by the People (*Settle v Van Evrea*, 49 NY 280, 281 [1872]; see also, *People v Rathbone*, 145 NY 434, 438). The Court of Appeals in the absence of ambiguity found "no justification ... for departing from the literal language of the constitutional provision" (*Anderson v Regan*, 53 N.Y.2d 356, 362). As the Court of Appeals stated in *Settle v Van Evrea*, supra, "[I]t would be dangerous in the extreme to extend the operation and effect of a written Constitution by construction beyond the fair scope of its terms, merely because a restricted and more literal interpretation might be inconvenient or impolitic, or because a case may be supposed to be, to some extent, within the reasons which led to the introduction of some particular provision plain and precise in its terms. That would be pro tanto to establish a new Constitution and do for the people what they have not done for themselves" (49 NY 280, 281, supra). If the guiding principle of statutory interpretation is to give effect to the plain language (*Ball v Allstate Ins. Co.*, 81 N.Y.2d 22, 25; *Debevoise & Plimpton v New York State Dept. of Taxation & Fin.*, 80 N.Y.2d 657, 661; McKinney's Cons Laws of NY, Book 1, Statutes § 94), "[e]specially should this be so in the interpretation of a written Constitution, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State" (*Settle v Van Evrea*, 49 NY, at 281, supra). These guiding principles do not allow for interstitial and interpretative gloss by the courts or by the other branches of government themselves that substantially alters the specified law-making regimen. Courts do not have the leeway to construe their way around a self-evident constitutional provision by validating an inconsistent "practice and usage of those charged with implementing the laws" (*Anderson v Regan*, 53 N.Y.2d 356, 362, supra; see also, *People ex rel. Burby v Howland*, NY 270, 282*; People ex rel. Crowell v Lawrence*, 36 Barb 177, affd 41 NY 137; *People ex rel. Bolton v Albertson*, 55 NY 50, 55).

Some may urge that this issue was already decided by Justice Teresi in Dalton v. Pataki., Albany County, Index #2002-719. While this issue was decided in that action this court is not bound by that decision nor should it be followed for the following reasons.

Other than referring to his "careful consideration," Justice Teresi simply opts for Judge Read's dissenting opinion in *Saratoga County Chamber of Commerce Inc. v. Pataki*, 100 N.Y.2d 801, 798 N.E.2d 1047, 766 N.Y.S.2d 654 (N.Y. 06/12/2003) rather than Judge Smith's concurring opinion. No other reasons for his opinion are offered by Justice Teresi. It is peculiar, to say the least, to base an opinion on a dissent from an appellate court and in any event Judge Read does not opine that all gambling pursuant to a tribal-state compact is legal in New York. However, in adopting Judge Read's opinion Justice Teresi does not address the issues raised therein namely the one raised in Note 10 which states "We note, however, that the question is not whether these games may be characterized as Las Vegas-style or commercialized gambling, but whether a particular game is a 'game of chance' or 'lottery' within the meanings of those terms in our Constitution and laws, and requires a detailed analysis of how each game is played." Furthermore in his opinion Justice Teresi implies that slot machines are illegal, if they are illegal then the tribes can't have them. However, Justice Teresi did not address this issue either. While there are no major misstatements of fact, the decision falls short of any reasoned analysis of the issues. A well reasoned analysis of the issues is what the Court of Appeals majority wanted when they stated "Judge Read's arguments in favor of the compact's compatibility with article I, section 9, and the contrary views of Judge Smith, strengthen our belief that further development of the issue by the courts below is desirable, if not necessary" Judge Read places great emphasis on the Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 94 L. Ed. 2d 244, 107 S. Ct. 1083 (1987), however The IGRA was passed to fill a void in Indian gaming regulation that arose from the states' dependence on Congress for any authority to regulate tribal affairs

(Spokane Tribe of Indians v. Washington State, 28 F.3d 991 (9th Cir. 07/06/1994)). Furthermore, although Judge Read opined that the statutory provision that a "State that permits such gaming for any purpose by any person, organization, or entity" should be read to mean that if any person for any purpose is permitted to conduct Class III gaming then too should an Indian Nation or Tribe, it is not consistent with the purpose of the act in relation to the State having reasonable control over what types of Class III gaming, if any, to permit. The tribal-state compacts alone do not satisfy the "permit" prong of the IGRA. Two courts have held that a compact entered into under § 2710(d)(1)(C), does not satisfy the state permission requirement of § 2710(d)(1)(B). *Citizen Band Potawatomi Indian Tribe v. Green*, 995 F.2d 179, 181 (10th Cir. 1993); *American Greyhound Racing*, 146 F.Supp.2d 1012, 1067-69 (D. Ariz. 2001). It would be inconsistent to not compel a state to choose one type of Class III game over another, but not to allow the state to choose for what purposes over another. In the State of New York only charitable organizations are permitted to operate certain games of chance and commercialized gambling is prohibited altogether. Therefore if an Indian Nation or Tribe would like to conduct the same games of chance in aid or in support of education to its members, or to support its own volunteer fire department the State must permit and negotiate arrangements with the Indian Nation or Tribe to do so under the IGRA. On the other hand if the Indian Nation or Tribe wants to permit commercialized gaming the State cannot be compelled to enter into such a compact and in fact has no authority to do so under our State Constitution. There is no dispute that New York's criminal laws prohibit commercialized gambling. This is not merely a civil regulatory scheme. If a person (off-reservation) runs an operation that conducts a game of chance for profit he can be charged under Article 225 of the Penal Law. 18 USC § 1955 makes that same for profit operation a federal offense. It is should also be noted that Justice LaMendola addressed Cabazon in *People v Snyder*, 141 Misc.2d 444 (1987) and concluded "The question then appears to be whether New York permits the

possession or operation of gambling devices such as "joker poker", "black jack" or "casino" video machines and electronic slot machines anywhere within the State and whether it permits the promotion or profit from the operation of such devices. The answer is that such conduct or activity is not permitted to any extent in this State. Accordingly the statutes at issue in this case can be characterized as criminal/prohibitory and fully enforceable against the defendant by reason of Congress' express grant of criminal jurisdiction under 25 USC § 232." It is also curious that Part B of Chapter 383 of the Laws of 2001 amended Penal Law § 225.30 to except games conducted under the compact but did not amend any other provisions of Article 225. It should also be noted that "for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State." 18 U.S.C. §§ 1166(a), 1955.

New York Article I § 9 is not preempted by federal law

Under the Supremacy Clause of the United States Constitution, state laws that "interfere with, or are contrary to the laws of Congress" are preempted and are therefore invalid. *Gibbons v. Ogden*, 22 U.S. (9 Wheat) 1, 211 (1824). "Congressional intent governs our determination of whether federal law preempts state law. If Congress so intends,`[p]re-emption . . . is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Boyes v. Shell Oil Prods. Co*., 199 F.3d 1261, 1267 (11th Cir. 2000) (quoting *Gade v. National Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 96 (1992) (plurality)). The Supreme Court has recognized three types of federal preemption: (1) express preemption, where the statute contains "explicit pre-emptive language," (2) field preemption, "where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room

for the States to supplement it," and (3) conflict preemption, "where compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. (citing Gade, 505 U.S. at 96 (emphasis added)). None of these are present in relation to the IGRA and the issue of if and how a state ratifies a tribal-state compact. In fact federal courts have expressly held that this is a state law issue (*Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir.), cert. denied, 65 U.S.L.W. 3713 (U.S. Oct. 6, 1997)); see also, *Hotel Employees & Restaurant Employees International Union v. Davis*, 21 Cal.4th 585, 981 P.2d 990, 88 Cal.Rptr.2d 56).

A couple of decisions from the United States Court of Appeals for the 9th Circuit are instructive on this issue. *In Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 at 1258 (9th Cir. 1994), amended by 99 F.3d 321 (9th Cir. 1996). The court held that the "IGRA does not require a state to negotiate over one form of Class III gaming simply because it has legalized another, albeit similar form of gaming. Instead, the statute says only that, if a state allows a gaming activity "for any purpose by any person, organization, or entity," then it also must allow Indian tribes to engage in that same activity. 25 U.S.C. § 2710(d)(1)(B). In other words, a state need only allow Indian tribes to operate games that others can operate, but need not give tribes what others cannot have." In the face of this decision the tribes went to the people of California and passed Proposition 5. The proposition, which amended California state law but not the State constitution, required California to enter into a model "Tribal-State Gaming Compact" with Indian tribes to allow certain class III gambling activities, such as banked card games and slot machines. Proposition 5 obligated the governor of California to execute compacts as a ministerial act within 30 days after any federally recognized Indian tribe requested such an arrangement. Under the plan, the compacts were deemed approved if the governor took no action within 30 days. Proposition 5 passed by a wide margin. Shortly after its passage, however, the Hotel Employees and Restaurant Employees International Union and others filed a petition for a

writ of mandate in the California Supreme Court seeking to prevent the Governor from implementing Proposition 5 because, they argued, it violated Article IV, Section 19(e) of the California Constitution. *Hotel Employees & Restaurant Employees International Union v. Davis*, 21 Cal.4th 585 at 601, 981 P.2d 990, 88 Cal.Rptr.2d 56. Section 19(e), added to California's Constitution in 1984, provides that the "Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey." On August 23, 1999, the California Supreme Court held, in agreement with the Union, that the gaming rights conferred on tribes by Proposition 5 violated the California Constitution. Id. at 589. "Because Proposition 5, a purely statutory measure, did not amend section 19(e) or any other part of the Constitution, and because in a conflict between statutory and constitutional law the Constitution must prevail," the court invalidated the proposition in its entirety, save the final sentence of Cal. Gov. Code § 98005, containing the State's consent to federal suits brought by California tribes pursuant to IGRA. The Ninth Circuit stated after reviewing the above history "The State already had no obligation to conclude compacts with tribes permitting slot machines and banked card games, see Rumsey, 64 F.3d at 1258; the decision meant it now also lacked the authority to do so." *In re Indian Gaming Related Cases Chemehuevi Indian Tribe*, 331 F.3d 1094 (9th Cir. 06/11/2003). California later amended its State Constitution to permit Class III gaming subject to a tribal-state compact ratified by its legislature. If the people of New York desire commercialized gambling then they too must amend the New York Constitution through the lawful process outlined in it (N.Y. Const. Art. XIX)

Executive Law § 12 is a Special Law

Article IX, § 2 of the State Constitution grants the Legislature authority to enact a "general law" relating to the property, affairs or government of local governments (NY Const, art IX, § 2[b][2]). A general law is defined as a "law which in terms and in effect applies alike to all

counties, all counties other than those wholly included within a city, all cities, all towns or all villages" (NY Const, art IX, § 3[d][1]). In contrast, a "special law" is defined as a "law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages" (NY Const, art IX, § 3[d][4]). Executive Law § 12 is clearly not a general law because it is specifically applicable to no more than six out of 62 counties.

In enacting Executive Law § 12 the Legislature violated the Home Rule provision of the New York Constitution

New York Constitution Article IX provides that a special law relating to the property, affairs or government of any local government may not be enacted without a "home rule message" from the locality or the localities affected by the law (NY Const, art IX, § 2[b][2]). A home rule message is a "request of two-thirds of the total membership of [the local] legislative body or * * * [a] request of its chief executive officer concurred in by a majority of such membership".

A recognized exception to the home rule message requirement exists when a special law serves a substantial State concern (*City of New York v Patrolmen's Benevolent Assn. of City of N.Y.*, 89 NY2d 380, at 389; see also, Matter of Kelley v McGee, 57 NY2d 522, 538 [1982]). To overcome the infirmity of enacting a special law without complying with home rule requirements, the enactment must have a reasonable relationship to an accompanying substantial State concern (City v PBA, supra, at 391). Thus, a special law that relates to the property, affairs or government of a locality is constitutional only if enacted upon a home rule message or the provision bears a direct and reasonable relationship to a "substantial concern" (id., at 393). The stated substantial state concern in the act is that the provisions of any tribal-state compact contain

terms consistent with certain state laws that will adequately protect the environment and public health and safety.

Nowhere in this enactment does it address the Class III casinos of the Oneidas or the Mohawks. The legality of the tribal-state compacts with the Oneidas and the Mohawks were then being challenged in Court based on the lack of legislative authorization. The fact that certain Class III gaming establishments were exempted from the provisions of the statute is evidence that Executive Law § 12 does not address a substantial State concern, thus rendering it an improper intrusion on the Home Rule provision of the N.Y. Constitution.

Commercial gambling is prohibited by the New York Constitution (as discussed supra). Therefore there would be a substantial State concern in prohibiting commercial gambling but not in permitting it, even under a tribal-state compact with terms consistent with certain state laws which will adequately protect the environment and public health and safety. An analysis of the precedents does not indicate any absolute need for explicit constitutional authority to be a substantial State interest. (see, e.g., *Floyd v New York State Urban Dev. Corp*., 33 N.Y.2d 1, 6-7; *Matter of Freedman v Suffolk County Bd. of Supervisors*, 29 A.D.2d 661, affd 25 N.Y.2d 873; *Bugeja v City of New York*, 24 A.D.2d 151, 152, affd 17 N.Y.2d 606; *Town of Brookhaven v Parr Co. of Suffolk*, 76 Misc. 2d 378, 380-381, mod on other grounds 47 A.D.2d 554, supra). However, it must not be specifically prohibited by the Constitution.

It also relates to the property, affairs or government of town, villages, cities and counties in that wherever said casino is located the land it occupies will be taken out of the jurisdiction of the municipality and thereby re-draw its boundary lines and diminishes its real property tax base. This is acknowledged in the act because it amends the State Finance Law to provide the effected municipalities a share of the State's take on the operation as compensation (State Finance Law § 99-h(3)).

Part B of Chapter 383 of the Laws of 2001 is a Local Law

It has many times been said that there is difficulty in laying down any definite or general rule by which the question of whether a law is local or general may be determined (*Matter of Henneberger*, 155 N. Y. 420, 425; *Matter of Church*, 92 N. Y. 1, 4; *Matter of New York Elevated R. R. Co.*, 70 N. Y. 327, 350; *People ex rel. Clauson v. Newburgh & Shawangunk Plank Road Co.*, 86 N. Y. 1, 6), and "it has been found expedient to leave the matter to a considerable extent open, to be determined upon the special circumstances of each case." (*Ferguson v. Ross*, 126 N. Y. 459, 464.) In this instance Part B of Chapter 383 of the Laws of 2001 is a local act since it is one which operates within a limited territory or specified locality, in this instance no more than 6 out of 62 counties. (see, McKinney's Cons Laws of NY, Book 1, Statutes § 3 [f] et seq.; *People ex rel. Clauson v Newburgh & Shawanqunk Plank Rd. Co.*, 86 NY 1; *Matter of Paul*, 94 NY 497). Further the selection of these counties was not based on population base but by name.

The word "local" as applied to a bill, act or law means such bill, act or law as touches but a portion of the territory of the State or a part of its people, a fraction of the property of its citizens (*Kerrigan v. Force*, 68 N. Y. 381, 383). A local law is entirely confined in its operation to the property and persons of a specified locality whereas a general law embraces persons or property of the people of the State generally (*People v. O'Brien*, 38 N. Y. 193, 194).

The Legislature violated N.Y. Constitution Article III § 15

N. Y. Const., art. III, § 15 provides “No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.” "The purpose of this provision was to prevent concealment and surprise to the members of the Legislature and to the public at large and to prevent legislative 'logrolling.' (*Economic Power &*

Constr. Co. v. City of Buffalo, 195 N. Y. 286.) This is perhaps best illustrated by the occasion for the creation of this constitutional provision, which was added as a result of the success of Aaron Burr in persuading the Legislature to grant him a charter for a water company which had hidden among its provisions a clause enabling him to found a bank. *(Matter of City of New York [Clinton Avenue]*, 57 App. Div. 166.)" (*Burke v. Kern*, 287 N. Y. 203, 213) Accordingly, the bill's title should have the effect of informing the Legislature and public what subject is covered in a particular bill. In passing S5828 and A9459 (which ultimately became Chapter 383 of the Laws of 2001) the bills, introduced by the Governor through the Committee on Rules, embraced 27 different purposes under a non-descriptive subject to wit: "This act enacts into law major components of legislation relating to issues deemed necessary for the state." This bill is the epitome of what Article III § 15 of the State Constitution was intended to avoid in that its description is unduly vague and there appears no common thread in the 27 purposes that has no necessary or natural connection to the subject. How can permitting commercial gaming that is prohibited by the State Constitution be necessary for the State? It simply cannot.

The Legislature violated N.Y. Constitution Article III § 17

New York State Constitution Article III § 17 provides: "The legislature shall not pass a private or local bill in any of the following cases: * * * Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever." In the case of the tribal-state compact with the Seneca Nation it grants them an exclusive franchise for Class III gaming in New York west of State Route 14 and it authorizes a total of six Casinos (three of which are committed to the Seneca Nation).

Part B of Chapter 383 of the Laws of 2001 unconstitutionally amended the State Constitution and deprived plaintiff of his vote in violation of the State Constitution (NY Const, art II, § 1 [right to vote]; art I, § 1 [right against disfranchisement]

In 1924 Congress made all Indians citizens of the United States and the State wherein they reside (8 USC § 1804(a)(2)). Therefore Indians on Indian Land located within the State of New York have the right to vote in state elections and are counted for purposes of establishing legislative districts in the state legislature as well as the U.S. Congress.

Movant is a duly registered voter in the County of Erie and State of New York.

Article XIX of the State Constitution provides two methods for amending its provisions. The first is through a Constitutional Convention where amendments are drafted by delegates and then approved by a majority of voters at a statewide referendum. The second is for a proposed amendment being passed by two consecutive sessions of the Legislature and then be approved by a majority vote in a statewide referendum. These two methods are the only way the State Constitution may be amended and both methods require a vote of all eligible voters.

Part B of Chapter 383 of the Laws of 2001 was not passed by two consecutive sessions of the State Legislature nor was it approved by a majority of voters at a statewide referendum

As detailed above Part B of Chapter 383 of the Laws of 2001 is in direct conflict with Article 1 § 9 of the State Constitution. If allowed to stand it would have the force and effect of amending the State Constitution in violation of Article XIX. By circumventing Article XIX movant was stripped of his right to vote as guaranteed by Article 1 § 1 and all non-Indians will be disfranchised in violation of Article II § 1 of the State Constitution.

No Compact entered into between the State of New York and any Indian Nation/tribe/band can be valid under the IGRA

In order to be valid under the Indian Gaming Regulatory Act a tribal-state compact can only be entered into where located in a State that permits such gaming for any purpose by any

person, organization, or entity; and conducted in 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).

The State of New York has never permitted any commercial Class III gaming for any purpose by any person. Part B of Chapter 383 of the Laws of 2001 did not change this. In fact it confirms this by amending Penal Law § 225.30 to not apply such possession and use pursuant to a gaming compact, duly executed by the governor and an Indian tribe or Nation, under the Indian Gaming Regulatory Act, as codified at 25 U.S.C. §§ 2701-2721 and 18 U.S.C §§ 1166-1168, where the use of such slot machine or machines is consistent with such gaming compact . Article 225 of New York's Penal Law creates five gambling offenses, only two of which, §§ 225.10 and 225.20, are felonies. The other three, §§ 225.05, 225.15, and 225.30, are misdemeanors. However, the legislature did not amend the other provisions to include such an exemption for activity carried out under a tribal-state compact under the IGRA. Since 18 USC § 1955(a) provides "Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both." It further defines "illegal gambling business" as "a violation of the law of a State or political subdivision in which it is conducted; involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day." Therefore any conduct that would be in violation of Penal Law §§ 225.05, 225.10, 225.15, & 225.20 would also constitute a violation of 18 USC § 1955 if it involves five or more persons and has been in operation in excess of 30 days or generates in excess of $2,000.00 in revenue in any single day. In addition to being in violation of federal law New York applies its criminal laws to Indian land unlike any other state. Congress granted the State of New York jurisdiction over offenses "committed by or against

Indians on Indian reservations within the state to the same extent as the courts of the State have jurisdiction over offenses committed elsewhere within the State as defined by the laws of the State" (25 USC § 232). Therefore Article 225 of the Penal Law applies of its own force on Indian land within New York and activity in violation of its provisions is punishable in the New York Courts.

Although some may argue that the statutory provision that a "State that permits such gaming for any purpose by any person, organization, or entity" should be read to mean that if any person for any purpose is permitted to conduct Class III gaming then too should an Indian Nation or Tribe, it is not consistent with the purpose of the act in relation to the State having reasonable control over what types of Class III gaming, if any, to permit. It would be inconsistent to not compel a state to choose one type of Class III game over another, but not to allow the state to choose for what purposes over the other. In the State of New York only charitable organizations are permitted to operate certain games of chance and commercialized gambling is prohibited altogether. Therefore if an Indian Nation or Tribe would like to conduct the same games of chance in aid or in support of education to its members, or to support its own volunteer fire department the State must permit and negotiate arrangements with the Indian Nation or Tribe to do so under the IGRA. On the other hand if the Indian Nation or Tribe wants to permit commercialized gaming the State cannot be compelled to enter into such a compact and in fact has no authority to do so under our State Constitution.

Relief sought with regards to the Turning Stone and Akwesasne Mohawk Casinos

The Court has already declared that providing state personnel and services under these respective tribal-state compacts to be an illegal expenditure of State funds and is therefore res judicata and is binding on the Defendants. Defendant Pataki unsuccessfully sought review of

the Court of Appeals decision in Saratoga County Chamber of Commerce v. Pataki by the United States Supreme Court. Normally as a co-equal branch of government the Governor should have complied with this pronouncement of the State's highest court voluntarily. However, nearly 6 months later while acknowledging the mandate of the Court of Appeals the Defendants continue to waste money from the public purse and expend state assets in accordance with illegal, void and unenforceable agreements. This Court must therefore use its coercive power to compel compliance by the Defendants by issuing this injunction and if still the Defendants arrogantly flaunts the judiciary's mandate to hold them in contempt.

Relief requested towards "tax compacts"

The Governor is currently negotiating "tax compacts" or price parity agreements with various Indian nations and tribes in conjunction with these tribal-state compacts as purportedly authorized under Executive Law § 12. For example the recent Memorandum of Understanding between the State and the St. Regis Mohawk Tribe contained such an agreement on taxes. The purpose of these agreements is for the Indian retailers to raise the prices of goods sold on their land to an equivalent price as the same goods off their land that in exchange the State will not collect taxes from non-members purchasing goods on Indian land and those retailers would enjoy a higher profit margin. A similar agreement on taxation is being offered to the Cayuga Indian Nation of New York.

These agreements are illegal and unconstitutional in that they surrender and contract away the State's power of taxation in violation of Article XVI § 1 of the New York State Constitution. As the Court of Appeals stated *in Matter of Roosevelt Raceway v. Monaghan*, 9 N.Y.2d 293, 308-309; app. dsmd. 368 U.S. 12 "In the present case, Roosevelt would not be aided even if we were to accept its concept of tax exemption. Section 1 of article XVI separately prohibits any attempt to contract away the power of taxation unless sanctioned by the people themselves. (Cf., e.g., as to Housing, N. Y. Const., art. XVIII, § 2.) A contract for a

pre-established limit on tax liability, whether it be considered as conferring "tax exemption" or "tax savings", or tax relief by any other label, is clearly barred by this sweeping prohibition. (See *Troy Union R. R. Co. v. Mealy*, 254 U.S. 47, 50, supra.) The 1959 Legislature was, therefore, free to increase the tax obligations of the harness tracks either by raising the rates of existing taxes or by imposing new taxes. There are limits on, as well as qualifications of, the power to tax, but these have not been disregarded. The asserted limit based on a contract with the State does not exist." Additionally these agreements are in conflict with New York Tax Law §§ 284-E, 301-a, 471-e, 1112, & 1210.

Therefore by circumventing Article XVI § 1 movant was stripped of his right to vote on this surrender or contracting away the State's power of taxation as guaranteed by Article 1 § 1 and all non-Indians will be disfranchised in violation of Article II § 1 of the State Constitution.

IRREPARABLE INJURY IN ABSENCE OF INJUNCTION

CPLR § 6312 in pertinent part provides "that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff."

The complaint in this action seeks declaratory and injunctive relief against defendants for expending assets of the State in violation of law and in contracting away or surrendering the State's power of taxation.

These expenditures of State assets which include wages to state employees performing police and regulatory functions at casinos that are illegal and not authorized under New York and federal law. Particularly, maintaining state personnel at the Turning Stone Casino and the Akwesasne Mohawk Casino. Once these expenditures are paid from the public purse of the

State they are not recoverable. Therefore, the impact is immeasurable in dollars and cents and the time lost to minimize the impact is irreplaceable. Furthermore plaintiff and all taxpayers should not be required to suffer further economic harm by loss of these assets of the state's public purse during the pendency of the action.

As noted above the only one with the power to surrender or contract away the State's power of taxation is the people. The only way for the people to do this would be through a statewide referendum either after a constitutional convention or after the proposed amendment passes two consecutive sessions of the legislature. In the absence of this plaintiff would be denied his constitutional right to vote and would suffer irreparable injury to his vote.

BALANCING OF THE EQUITIES

These assets of the State are needed to meet other lawful obligations of the State. On the other hand if there is a new and valid tribal-state compact entered into between the State and the Oneida Indian Nation of New York and the St. Regis Mohawk Tribe these services could be restored. This injunction will not require the complete closure of neither the Turning Stone Casino nor the Akwesasne Mohawk Casino. It will merely require that they cease Class III gaming at those facilities. Those facilities may still conduct Class I and II gaming even in the complete absence of a tribal-state compact under the IGRA.

The Oneida Indian Nation of New York does not require the presence of State Police Officers on its premises for security or public safety. This is because the Oneida Indian Nation of New York has a full time accredited police department of its own.

The principle of a government of laws and not of men cannot exist absence a stringent safeguards for the right to vote as guaranteed in our Constitution. Any damage to anyone's vote is paramount over political expediency without proper authorization..

There is no adequate remedy at law to make the public purse whole or keep plaintiff's vote intact and whole.

UNDERTAKING

Finally, in granting the temporary injunction, the court must fix the amount of an undertaking to compensate the defendants for damages in the event of a final determination that Plaintiff was not entitled to injunctive relief (CPLR § 6312(b); *MonsterHut, Inc. v. PaeTec Communications, Inc.*, 292 A.D.2d 761, 738 N.Y.S.2d 640 (4th Dept. 2002); *Schwartz v Gruber*, 261 AD2d 526, 527 [1999]; *Blueberries Gourmet, Inc. v Aris Realty Corp*., 255 AD2d 348, 350 [1998]). The defendants would not be damaged in the event that the requested injunction is issued and it is ultimately determined that plaintiff was not entitled thereto. In fact the granting of this injunction would prevent the waste and loss of revenue. The fixing of the amount of an undertaking is a matter which rests within the sound discretion of the court. *Clover Street Associates v. Nilsson*, 244 A.D. 2d 312, 313 (2nd Dept. 1997). However, since the statute does require some undertaking movant requests that the amount be fixed at $50.00.

Wherefore, Plaintiff prays for an order of this Court granting a preliminary injunction as follows:

A. Enjoining Defendant Wayne E. Bennett as Superintendent of the NYS Division of State Police and all those in his control to enforce the provisions of Penal Law Article 225 on the premises of the Turning Stone Casino and the Akwesasne Mohawk Casino. This includes the investigation and referral of the matters investigated to the District Attorney for the County in which such illegal gambling is occurring as well as to the appropriate federal law enforcement agency for their consideration of violations of federal law which includes, but is not limited to, 18 USC §§ 1166 & 1955;

B. Enjoining Defendant Wayne E. Bennett as Superintendent of the NYS Division of State Police and all those in his control from conducting any background investigations as was previously required in the illegal and void tribal-state compacts between the Oneida Indian Nation of New York and the St. Regis Mohawk Tribe and the State of New York;

C. Enjoining Defendant Michael J. Hoblock, Jr. as Chairman of the NYS Racing and Wagering Board and all those in his control from conducting any inspections as was previously required in the illegal and void tribal-state compacts between the Oneida Indian Nation of New York and the St. Regis Mohawk Tribe and the State of New York;

D. Enjoining Defendant George E. Pataki as Governor of the State of New York to request the Attorney General of the State of New York pursuant to Executive Law § 63 to initiate an action against the Oneida Indian Nation of New York and the St. Regis Mohawk Tribe to enjoin the illegal Class III gaming at the Turning Stone and Akwesasne Mohawk Casinos under 25 USC § 2710(d)(7)(A)(ii);

E. Enjoining Defendant George E. Pataki from entering into any tax compact or price parity agreement with any Indian nation or tribe which provides for a pre-established limit on tax liability, whether it be considered as conferring "tax exemption" or "tax savings", or tax relief by any other label;

F. Enjoining Defendants from using their powers of eminent domain to acquire any land as required under the tribal-state compact between the Seneca Nation of Indians and the State of New York;

G. Enjoining Defendant George E. Pataki from entering into any tribal-state compact permitting Class III gaming with any Indian nation or tribe.

Dated: June 18, 2004
Buffalo, New York

Yours, etc.,

_____

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