

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

NOTICE OF MOTION

Index # 2004-5270

UPON the affidavit of Daniel T. Warren sworn to on the 15th day of June, 2004, and the exhibits attached thereto, the Affidavit of Service, the Admission of Service and the Memorandum of Law, Plaintiff will move this court in Part 13 at the Erie County Courthouse, 25 Delaware Ave., New York 14202, on the 30th day of June, 2004, at 9:30 a.m. for a preliminary injunction: 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; 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; 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; enjoining Defendant George E. Pataki as Governor of the State of New York to request the Attorney General of the State of

1 New York pursuant to Executive Law § 63 to initiate an action against the Oneida Indian Nation
2 of New York and the St. Regis Mohawk Tribe to enjoin the illegal Class III gaming at the
3 Turning Stone and Akwesasne Mohawk Casinos under 25 USC § 2710(d)(7)(A)(ii); enjoining
4 Defendant George E. Pataki from entering into any tax compact or price parity agreement with
5 any Indian nation or tribe which provides for a pre-established limit on tax liability, whether it be
6 considered as conferring "tax exemption" or "tax savings", or tax relief by any other label;
7 enjoining Defendants from using their powers of eminent domain to acquire any land as required
8 under the tribal-state compact between the Seneca Nation of Indians and the State of New York;
9 enjoining Defendant George E. Pataki from entering into any tribal-state compact permitting
10 Class III gaming with any Indian nation or tribe, together with such other, further or different
11 relief as the court deems just and proper.
12

13 The above referenced action is for declaratory judgment and permanent injunction.

14 Pursuant to CPLR § 2214(b), answering papers, if any, are required to be served upon the
15 undersigned at least seven days before the return date of this motion.

16 Dated: June 18, 2004
17 Buffalo, New York

18 Yours, etc.,

19
20 _____
21 Daniel T. Warren
22 Plaintiff, Pro Se
23 836 Indian Church Road
24 West Seneca, New York 14224-1235

23 To: Peter B. Sullivan, Esq.
24 Assistant Attorney General
25 107 Delaware Avenue - 4th Flr
Buffalo, NY 14202

1
2 SUPREME COURT OF THE STATE OF NEW YORK
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3 DANIEL T. WARREN,)
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JR. AND WAYNE E. BENNETT.)
6 Defendants)
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Index # 2004-5270

8 State of New York)
County of Erie) ss:
9 City of Buffalo)

10 Daniel T. Warren, being duly sworn, deposes and says:

- 11 1. I am a citizen and taxpayer of the State of New York.
- 12 2. I reside in the Town of West Seneca, County of Erie.
- 13 3. I am a registered voter in the County of Erie and have voted in the last general election.
- 14 4. I submit this affidavit in support of my motion for a preliminary injunction.
- 15 5. Attached hereto and marked as Exhibit "A" is a copy of the Verified Complaint in this
- 16 action. The allegations of the Verified Complaint are incorporated herein by reference.
- 17 6. The state continues to provide 24/7 services to the Turning Stone and Akwesasne
- 18 Mohawk Casinos and plan to continue to do so despite their illegality.
- 19 7. Attached hereto and marked as Exhibit "B" is a copy of pages 231 to 233 of the 2004-05
- 20 Executive Budget: Appendix I, published 1/20/2004 and obtained from
- 21 <http://publications.budget.state.ny.us/fy0405app1/racewage.pdf> . According to the
- 22 executive Budget for 2004-2005, the NYS Racing and Wagering Board anticipates 13
- 23 employees to be located at the Turning Stone Casino; 15 employees at the Akwesasne
- 24 Mohawk Casino and 13 at the Seneca Niagara Casino.
- 25 8. Attached hereto and marked as Exhibit "C" is a copy of the NYS Division of State Police
- web page that describes its "Gaming Detail" and obtained from

1 http://www.troopers.state.ny.us/Criminal_Investigation/Support_Services/ . According to
2 this document State Police personnel are responsible for the 24 hour, seven days a week
3 law enforcement and public safety services at the casinos and unit members conduct
4 investigations on all employees who in turn are certified for licensing by the NYS Racing
5 and Wagering Board.

6 9. It is my position that this and any other tribal-state compact is not valid under Indian
7 Gaming Regulatory Act and together with Executive Law § 12 are illegal and
8 unconstitutional.

9 10. This and any other tribal-state compact is not valid under the under the Indian Gaming
10 Regulatory Act. The Indian Gaming Regulatory Act makes Class III gaming lawful on
11 Indian lands only if such activities are: (1) authorized by an ordinance or resolution
12 adopted by the governing body of the Indian tribe and the Chairman of the National
13 Indian Gaming Commission; (2) located in a State that permits such gaming for any
14 purpose by any person, organization, or entity; and (3) conducted in conformance with a
15 valid Tribal-State compact entered into by the Indian tribe and the State and approved by
16 the Secretary of the Interior. 25 U.S.C. § 2710(d)(1), (3)(B). Currently the compact
17 between New York and the Seneca Nation fail the last two conditions.

18 11. This and any other Compact is illegal and unconstitutional in that the State Legislature
19 exceeded its power as limited by Article III Section 17 of the New York State
20 Constitution which provides “No private or local bill, which may be passed by the
21 legislature, shall embrace more than one subject, and that shall be expressed in the title.”;
22 the State Legislature exceeded its power as limited by Article III § 20 of the New York
23 Constitution which prohibits the legislature from passing any private or local bill
24 “Granting to any private corporation, association or individual any exclusive privilege,
25 immunity or franchise whatever.”; in that it requires the state to lend its money or credit

1 in violation of Article VII section 8 of the New York Constitution; the State Legislature
2 exceeded its power by ratifying it through a special law in violation of the Home Rule
3 provisions of Article IX of the New York State Constitution and the laws of the State of
4 New York; the State will receive money from gambling activities in violation of various
5 provisions of New York Penal Law Article 225 and 18 USC § 1166 and is otherwise
6 against the public policy of the State of New York as expressed in various constitutional
7 provisions and laws of this State which include, but is not limited to, The Donnelly Act
8 (General Business Law § 340) and The Organized Crime Control Act (Article 460 of the
9 New York Penal Law).

10
11 12. Article 1 § 9 of the New York State Constitution which provides that no "gambling,
12 except lotteries operated by the state and * * * pari-mutuel betting on horse races * * *
13 shall hereafter be authorized or allowed within this state". New York Penal Law § Article
14 225 criminalizes the promotion of gambling, possession of gambling records and devices.
15 Therefore the second condition set forth above is not met in that gaming is not allowed
16 for any purpose by any person, organization, or entity within the State of New York.

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

23
24 14. This and any other compact is not valid under the IGRA in that the State was and is
25 without power to enter into a tribal-state compact permitting Class III gaming.

15. Attached hereto and marked as Exhibit "D" is a copy of the Governor's press release
dated May 12, 2003 (http://www.state.ny.us/governor/press/year03/may12_1_03.htm)
wherein he announces a tentative settlement of the Mohawk Land Claim. As part of

1 this proposed settlement (which ultimately fell apart) the Mohawks would obtain a
2 “Retail Price Parity” or “tax parity” agreement in addition the parties would seek
3 legislative ratification for the Akwesasne Mohawk Casino.

4 16. Attached hereto and marked as Exhibit “E” is a copy of the Governor’s press release
5 dated June 10, 2004 (http://www.state.ny.us/governor/press/year04/june10_2_04.htm)
6 wherein he announces a tentative settlement of the Cayuga Land Claim. As part of this
7 proposed settlement the Cayuga Indian Nation of New York would obtain a “tax parity
8 compact” agreement in addition the parties would seek a tribal-state compact to open a
9 Class III gaming facility in Sullivan County.
10

11 17. Any tax/price parity or tax compact that the Governor is attempting to negotiate and
12 bind the State is in violation of Article XVI § 1 of the New York Constitution in that it
13 surrenders or contracts away the State’s power of taxation. The only one that can
14 authorize such a surrender or contract is the people in a statewide referendum.

15 18. Your deponent will be denied his vote as guaranteed by the New York Constitution on
16 these issues.

17 19. These expenditures of State assets which include wages to state employees performing
18 police and regulatory functions at casinos are illegal and not authorized under New
19 York and federal law. Particularly, maintaining state personnel at the Turning Stone
20 Casino and the Akwesasne Mohawk Casino. Once these expenditures are paid from the
21 public purse of the State they are not recoverable. Therefore, the impact is
22 immeasurable in dollars and cents and the time lost to minimize the impact is
23 irreplaceable. Furthermore plaintiff and all taxpayers should not be required to suffer
24 further economic harm by loss of these assets of the state’s public purse during the
25 pendency of the action.

1 20. Upon information and belief the Defendants intend to sign the settlement agreement as
2 announced in the press release (Ex. E) this Thursday, June 17, 2004.

3 21. No previous application for the relief sought herein has been made.

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

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

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

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

24 D. Enjoining Defendant George E. Pataki as Governor of the State of New York to
25 request the Attorney General of the State of New York pursuant to Executive Law §

1 63 to initiate an action against the Oneida Indian Nation of New York and the St.
2 Regis Mohawk Tribe to enjoin the illegal Class III gaming at the Turning Stone and
3 Akwesasne Mohawk Casinos under 25 USC § 2710(d)(7)(A)(ii);

4 E. Enjoining Defendant George E. Pataki and all purporting to act on his behalf and
5 those in privity with him, from entering into, or taking any steps to bind the State to,
6 any tax compact or price parity agreement with any Indian nation or tribe which
7 provides for a pre-established limit on tax liability, whether it be considered as
8 conferring "tax exemption" or "tax savings", or tax relief by any other label;

9 F. Enjoining Defendants and all purporting to act on their behalf and those in privity
10 with them, from using their powers of eminent domain to acquire any land as
11 required under the tribal-state compact between the Seneca Nation of Indians and
12 the State of New York;

13 G. Enjoining Defendant George E. Pataki and all purporting to act on his behalf and
14 those in privity with him, from entering into, or taking any steps to bind the State to,
15 any tribal-state compact permitting Class III gaming with any Indian nation or tribe;
16 together with such other, further, or different relief as the court deems just and proper.
17
18
19

20 _____
Daniel T. Warren

21
22 Sworn to before me this
____ Day of June, 2004

23
24 _____
Notary Public