

Case No. 17-1362

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BAY MILLS INDIAN COMMUNITY,
Plaintiff,

v.

GOVERNOR RICK SNYDER,
Defendant.

**PROPOSED INTERVENOR SAGINAW INDIAN CHIPPEWA TRIBE OF
MICHIGAN'S MOTION TO EXPEDITE APPEAL**

William A. Szotkowski
Jessica Intermill
Hogen Adams PLLC
1935 W. County Road B2, Suite 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
E-mail: bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed
General Counsel
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: sreed@sagchip.org

*Counsel for Proposed Intervenor
Saginaw Chippewa Indian Tribe of Michigan*

The Saginaw Chippewa Indian Tribe of Michigan (“Saginaw Tribe”) moves for expedited consideration of its appeal from a March 8, 2017 order issued by the U.S. District Court of the Western District of Michigan. In support of its motion, the Saginaw Tribe states:

1. This litigation arises out of the Bay Mills Indian Community’s (“Bay Mills”) attempt to establish the first off-reservation Indian gaming establishment in the State of Michigan.

2. The Indian Gaming Regulatory Act (“IGRA”) provides that an Indian tribe may only conduct Class III gaming under a compact with the state in which the gaming will occur. 25 U.S.C. § 2710(d)(3). Both Bay Mills and the Saginaw Tribe entered compacts with the State of Michigan on August 20, 1993. Bay Mills Compact, ECF No. 1-3, Page.ID.39; Saginaw Tribe Compact, ECF No. 46-1, Page.ID.323. The compacts contain identical provisions that limit the State’s ability to authorize off-reservation Indian gaming absent an agreement with other federally recognized tribes in the State. Bay Mills Compact, ECF No. 1-3, Page.ID.36; Saginaw Tribe Compact, ECF No. 46-1, Page.ID.320.

3. In August 2010, Bay Mills purchased the Vanderbilt Parcel and asserted its intent to establish an IGRA Class III gaming operation at the site. Compl., ECF No. 1, Page.ID.3. The proposed Vanderbilt establishment in Michigan’s lower peninsula is approximately 100 miles from Bay Mills’ Upper

Peninsula reservation. *See* S. Reed Decl., ECF 46, Page.ID.298. Because the Vanderbilt Parcel is not part of Bay Mills' reservation, Governor Snyder's representatives initially opposed this off-reservation expansion. *See, e.g.*, Compl. Ex. D, ECF No. 1-4 (describing meetings between State representatives and Bay Mills and stating that the Vanderbilt Parcel is eligible for gaming).

4. This proposed off-reservation casino was alarming to the Saginaw Tribe, which derives nearly all its own government funding from gaming establishments in the lower peninsula. Reed Decl., ECF No. 46, Page.ID.298. For years, however, it appeared that the legal restrictions of IGRA, combined with the State's opposition to off-reservation gaming, would block the Vanderbilt Casino. *See id.* at Page.ID.304.

5. Governor Snyder's representatives repeatedly asserted the State's jurisdiction over the Vanderbilt Parcel, prompting Bay Mills to seek a declaratory judgment that the Parcel constitutes "Indian lands" under IGRA. *See* Compl., ECF No. 1, PageID.5-6. Bay Mills and the Governor stipulated to a summary-judgment briefing schedule, but then repeatedly extended that briefing schedule. *See* ECF Nos. 22, 29, 32, 40, 42.

6. In December 2016, during the most recent of these extensions, the Saginaw Tribe learned that Bay Mills and Governor Snyder were negotiating settlement of this case and that the Governor had softened in his opposition to the

Vanderbilt Casino. S. Reed Decl., ECF No. 46, Page.ID.304. Because this change demonstrated that the Governor no longer adequately represented the Saginaw Tribe's interest in this litigation, the Saginaw Tribe moved to intervene as a defendant on January 12, 2017. Saginaw Tribe Mot. Intervene, ECF No. 44.

7. After service of the Saginaw Tribe's motion to intervene, the Governor filed a motion for summary judgment. Def. Mot. Summ. J., ECF No. 53.

8. The Governor's filing of the pending summary-judgment motion does not affect the inadequacy of the Governor's representation of the Saginaw Tribe's interests. The Governor had been in serious settlement negotiations with Bay Mills only weeks before this filing, and there is no prohibition on resumption of settlement talks—whether while the motion is pending or after it is decided.

9. The settlement talks similarly caught the attention of the Nottawaseppi Huron Band of the Potawatomi (“Nottawaseppi”), another federally recognized tribe in Michigan. And Nottawaseppi, like the Saginaw Tribe, was not reassured by the Governor's motion practice. Raising similar concerns as the Saginaw Tribe, the Nottawaseppi moved to intervene as a defendant on January 25, 2017. Nottawaseppi Mot. Intervene, ECF No. 58.

10. On March 8, 2017, the district court denied the Saginaw Tribe and Nottawaseppi's motions to intervene. Order Denying Mots. Intervene, ECF No. 69.

11. Soon after the district court denied intervention, Bay Mills filed its brief opposing summary judgment. Bay Mills Br. Opp. Def. Mot. Summ. J., ECF No. 70. Under the current briefing schedule, the Governor's reply brief is due April 7, 2017. Order, ECF No. 42, PageID.272.

12. There is still time for the parties to settle before summary-judgment briefing is finished and certainly before the district court resolves the merits of the case. If the Saginaw Tribe cannot intervene soon, disposition of the underlying case may moot the Saginaw Tribe's appeal, effectively blocking the Saginaw Tribe from exercising its intervention rights and protecting its interests in this litigation.

13. This Court "may suspend any provision of these rules to expedite its decision or for other good cause." 6 Cir. R. 2; *accord* Fed. R. App. P. 2.

14. The rules providing for expedited appeals were enacted to make clear that courts of appeals have the power to expedite cases "of pressing concern to the public or to the litigants." Fed. R. App. P. 2 advisory committee's note (1967). Accordingly, this Court has expedited cases involving matters of public interest. *See, e.g., Rosen v. Goetz*, 410 F.3d 919, 925 (6th Cir. 2005) (stating that an appeal regarding termination of Medicaid benefits had been expedited); *Bd. of Trustees of Ohio State Univ. v. U.S. Dep't of Educ.*, No. 88-3266, 1988 WL 63199, at *1 (6th Cir. June 22, 1988) (stating that court had expedited appeal of decision involving a federal grant to a university).

15. Other circuits have similarly expedited appeals involving matters of public interest. *See, e.g., Perry v. Schwarzenegger*, No. 10-16696, 2010 WL 3212786, at *1 (9th Cir. Aug. 16, 2010) (expediting appeal of decision involving same-sex marriage ban); *Hightower v. West*, 430 F.2d 552, 552 n.1 (5th Cir. 1970) (stating that appeal had been expedited in school desegregation case).

16. This case will affect the landscape of off-reservation gaming throughout the State of Michigan. When Congress enacted IGRA, it struck a careful balance between competing interests by limiting Indian gaming to lands that fit specific criteria. *See* 25 U.S.C. §§ 2703(4), 2719. This case presents a novel question of whether Bay Mills may create a never-before-recognized class of “Indian lands” within IGRA, and if Bay May Mills is successful, it could open Vegas-style casino anywhere in Michigan without following off-reservation protections in IGRA and gaming compacts. The Governor’s attempted settlement with Bay Mills was the first of its kind, and would upset the careful balance struck by IGRA and the gaming compacts.

17. Moreover, this appeal is also of “pressing concern” to the Saginaw Tribe and its members. *Cf.* Fed. R. App. P. 2 advisory committee’s note (1967) (“The primary purpose of this rule is to make clear the power of the courts of appeals to expedite the determination of cases of pressing concern . . . to the litigants by prescribing a time schedule other than that provided by the rules.”).

The Saginaw Tribe relies on gaming revenue to fund 90% of its government. S. Reed Decl., ECF No. 46, PageID.299. A settlement in this matter—or a disfavorable summary-judgment decision— without Saginaw’s ability to advocate its own interests jeopardizes the Saginaw Tribe’s gaming operations, which directly imperils essential governmental services. *Id.* And because Saginaw shares 2% of its net slot revenue with local non-tribal governments—to the tune of over \$144 million, *id.*—this case also threatens governmental funding for the City of Mt. Pleasant, Isabella County, and local townships.

18. The Saginaw Tribe has conferred with counsel for the parties in the underlying case concerning this motion. Nottawaseppi supports this motion; the Governor and Bay Mills do not.

19. An expedited appeal is necessary to ensure that the question of the Saginaw Tribe’s participation to protect its own and its neighbors’ governmental interests is decided before the underlying case is resolved and moots this appeal. Accordingly, the Saginaw Tribe asks that this Court shorten the time afforded for its own appellant’s brief by 2 weeks and the time afforded for the appellee’s principal brief by 1 week.

REQUEST FOR RELIEF

The Saginaw Tribe respectfully requests expedited consideration of this appeal and proposes the following briefing schedule:

Saginaw Tribe's Brief	Filed electronically by April 26, 2017
Opposing Parties' Briefs	Filed electronically by May 19, 2017
Saginaw Tribe's Reply Brief	Due no later than 14 days after the last appellee brief is filed

Dated: April 3, 2017

/s/ William A. Szotkowski
William A. Szotkowski (MN # 161937)
Jessica Intermill (MN # 0346287)
Hogen Adams PLLC
1935 W. County Road B2, Ste. 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
Email:bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed (MI # P62026)
General Counsel
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
Email: sreed@sagchip.org

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,348 words.

I further certify that, because this document has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font, it

complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6).

Dated: April 3, 2017

/s/ William A. Szotkowski

William A. Szotkowski (MN # 161937)
Jessica Intermill (MN # 0346287)
Hogen Adams PLLC
1935 W. County Road B2, Ste. 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
Email:bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed (MI # P62026)
General Counsel
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
Email: sreed@sagchip.org

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2017, I served the above Motion to Expedite upon the Bay Mills Indian Community, through counsel who have entered appearances in this matter, by means of the Court's ECF system as follows:

Kathryn L. Tierney: candyt@bmic.net

Chad P. DePetro: cdepetro@bmic.net

Margaret Bettenhausen: Bettenhausenm@michigan.gov

Jaclyn Shoshana Levine: Levinej2@michigan.gov

Dated: April 3, 2017

/s/ William A. Szotkowski

William A. Szotkowski (MN # 161937)

Jessica Intermill (MN # 0346287)

Hogen Adams PLLC

1935 W. County Road B2, Ste. 460

St. Paul, Minnesota 55113

Tele: (651) 842-9100

Fax: (651) 842-9101

Email: bszotkowski@hogenadams.com

jintermill@hogenadams.com

Sean Reed (MI # P62026)

General Counsel

Saginaw Chippewa Indian Tribe

7070 East Broadway

Mt. Pleasant, Michigan 48858

Tele: (989) 775-4032

Fax: (989) 773-4614

Email: sreed@sagchip.org