IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF CONNECTICUT, MASHANTUCKET PEQUOT TRIBE, and MOHEGAN TRIBE OF INDIANS OF CONNECTICUT *Plaintiffs*, v. UNITED STATES DEPARTMENT OF THE INTERIOR, and RYAN ZINKE, SECRETARY OF THE INTERIOR, *Defendants*.	)	No. 1:17-cv-02564-RC

MOVANT-INTERVENOR MGM RESORTS GLOBAL DEVELOPMENT, LLC'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

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GLOSSARY

Amendments	Amendments executed July 20, 2017 to the Gaming Authorizations
APA	Administrative Procedure Act
Gaming Authorizations	The Mohegan Compact, Mashantucket Pequot Gaming Procedures, and memoranda of understanding relating to those documents (excluding the Amendments, which are not in force)
IGRA	Indian Gaming Regulatory Act, 25 U.S.C. §§ 2501 *et seq*.
Interior	United States Department of the Interior (including the Secretary where applicable)
MGM	Movant-Intervenor MGM Resorts Global Development, LLC
Ruling	September 15, 2017 decision issued by Interior returning the Tribes' proposed Amendments without approving or disapproving them
Secretary	Secretary of the United States Department of the Interior
State	State of Connecticut
Tribes	Mashantucket Pequot Tribal Nation and Mohegan Tribe of Indians of Connecticut

Pursuant to Local Rule 7, this Court's Order dated January 8, 2018 (ECF 17), and this Court's Minute Order dated February 16, 2018, Movant-Intervenor MGM Resorts Global Development, LLC ("MGM")[1] submits this reply in support of its motion for leave to intervene[2] (ECF 11), and in response to oppositions submitted by Defendants United States Department of the Interior and Secretary of the Interior Ryan Zinke (collectively, "Interior"), Plaintiffs Mashantucket Pequot Tribe and Mohegan Tribe of Indians of Connecticut (collectively, the "Tribes"), and Plaintiff State of Connecticut (the "State," and together with the Tribes, "Plaintiffs").[3]

INTRODUCTION AND SUMMARY OF ARGUMENT

Attempting to foreclose MGM's mere participation in the case, Plaintiffs and Interior mischaracterize the nature of this dispute, misstate the underlying facts, and misapprehend the law governing standing and intervention. Contrary to their arguments, the remedy Plaintiffs seek—approval of proposed Amendments to the Tribes' Gaming Authorizations—would inflict direct and immediate competitive harms on MGM, and Interior will not adequately represent MGM's interests in the litigation. MGM therefore meets the requirements for intervention as of right under Rule 24(a) and permissive intervention under Rule 24(b).

Although the opposition briefs present a broad range of challenges to MGM's motion, those challenges can be grouped into four main objections, each meritless.

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[1] Movant-Intervenor's name has changed from "MGM Resorts International Global Gaming Development, LLC" to "MGM Resorts Global Development, LLC." *See* ECF 20.

[2] *See also* Memo. in Support of Mot. for Leave to Intervene, ECF 11-1 ("MGM Memo.").

[3] *See* Federal Defendants' Opposition to MGM Resorts International's Motion to Intervene, ECF 22 ("Interior Opp."); Mohegan Tribe of Indians of Connecticut and Mashantucket Pequot Tribes' Opposition to the Motion for Leave to Intervene by MGM Resorts Global Development LLC, ECF 23 ("Tribes Opp."); and Plaintiff State of Connecticut's Opposition to Motion for Leave to Intervene of MGM Resorts International Global Gaming Development LLC, ECF 26 ("State Opp.").

1. Plaintiffs and the Tribes erroneously assert that MGM lacks Article III standing to participate in this case. Although they contend that MGM's competitive injuries are hypothetical or speculative, those arguments overlook key facts and precedent. In particular, Plaintiffs and Interior ignore the fundamental distinction between commercial, Las Vegas-style gaming on the one hand and tribal, on-reservation gaming governed by IGRA on the other. The Amendments for which Plaintiffs seek approval are unique because, contrary to every other IGRA amendment of which MGM is aware, they are designed to facilitate commercial gaming by a private corporation (MMCT) on non-Indian lands. The Amendments' commercial character is apparent from their text, which provides benefits for "a business entity jointly and exclusively owned by the Tribe[s]," ECF 11-5 at 4, and from their stated purpose of aiding MMCT's "authoriz[ation] … to own and operate a commercial casino gaming facility," ECF 11-5 at 7. Indeed, the Connecticut legislature's approval resolution, which the Tribes submitted to Interior as proof that the Amendments were lawfully executed, observes that the "amendments *will authorize* said tribes to jointly operate a gaming facility in East Windsor, Connecticut." ECF 11-5 at 25 (emphasis added). Thus, the Amendments seek to use IGRA's procedures to extend valuable development rights into the commercial-gaming arena, in which MGM has direct and substantial involvement.

Contrary to the arguments advanced by Plaintiffs and Interior, MGM has standing because approval of the Amendments would inflict two distinct competitive injuries on MGM. *First*, the Amendments would create a special exemption that would allow MMCT to operate new commercial casinos in Connecticut without eliminating the State's right to collect hundreds of millions in annual royalties from Foxwoods and Mohegan Sun. Because the Amendments make that exemption available *only* to MMCT, approval of the Amendments would give MMCT a perpetual competitive advantage over MGM in seeking approval for new casino opportunities (including in

Bridgeport, where MGM and MMCT are vying for development rights). That injury flows from the Amendments themselves and is not dependent on Connecticut's casino laws. *Second*, approval of the Amendments would automatically—and without further regulatory or legislative action—authorize MMCT's proposed East Windsor casino, just 12 miles from MGM's new gaming facility in Springfield, Massachusetts ("MGM Springfield"). It would defy basic laws of economics for MMCT's casino to do anything other than compete with MGM Springfield; indeed, the *stated purpose* of the proposed East Windsor casino (and the Amendments that would make it possible) is to divert market share from MGM to MMCT.

Although Plaintiffs and Interior insist that the competitor-standing doctrine does not apply, those arguments ignore D.C. Circuit precedent holding that market participants such as MGM have standing to challenge—or support—agency action that would lift regulatory restrictions on a competitor or otherwise increase competition. *See Mendoza v. Perez*, 754 F.3d 1002, 1011 (D.C. Cir. 2014). That rule applies here because approval of the Amendments would (i) lift a regulatory restriction by allowing MMCT to operate new commercial casinos without terminating the State's revenue-sharing rights and (ii) expand competition for MGM Springfield by "authoriz[ing]" MMCT to "operate a gaming facility in East Windsor, Connecticut," ECF 11-5, at 25.

2. Interior errs in asserting that it will adequately represent MGM's interests in this litigation. Interior's contrary argument cannot be squared with the rest of its brief, which consistently denies that MGM has *any* interest in this case, or with controlling precedent, which holds that agencies are seldom able to represent interests of private parties. Interior's ability to represent MGM's interests is especially suspect because Interior owes trust obligations *to the Tribes*; Interior cannot fulfill those trust obligations while at the same time protecting the interests of MGM, a non-tribal entity and economic competitor of the Tribes.

3. Any doubt about MGM's right to intervene is settled by *Forest County Potawatomi Community v. United States*, 317 F.R.D. 6 (D.D.C. 2016), which Interior and the Tribes fail to distinguish in any material way. Here, as in *Forest County*, a third-party casino developer seeks to intervene in an APA lawsuit to defend Interior's ruling rejecting gaming amendments. Just as in *Forest County*, the amendments would, if approved, create a non-competition zone designed to aid the amendments' sponsors while disadvantaging the proposed intervenor. Although MGM is a commercial casino operator rather than an Indian tribe as in *Forest County*, that difference has no bearing on the standing or Rule 24 analyses—particularly given that the Amendments at issue here would authorize a commercial casino operated by a private corporation on private, non-Indian lands. At bottom, there is no meaningful difference between this case and *Forest County*, and the same result should therefore apply.

4. Finally, allowing MGM to intervene will not hinder the efficient resolution of the case. Not only is MGM is already participating on a provisional basis, but courts frequently allow parties to intervene while imposing conditions to ensure that intervention does not disrupt the proceedings. MGM has no objection to that approach—including the restrictions suggested by the Tribes—here. In fact, allowing MGM to intervene will aid, rather than frustrate, the efficient resolution of the case because MGM has consistently participated in the process that led to the Amendments and is thus uniquely positioned to address the context in which Plaintiffs' claims arise.

For all these reasons, MGM respectfully requests that the Court grant is motion for leave to intervene, subject to the conditions proposed by the Tribes and discussed in Part IV below. In the alternative, if the Court concludes that MGM should not be permitted to intervene, MGM respectfully requests that it be permitted to participate as *amicus curiae*.

ARGUMENT

I. Contrary to Plaintiffs' and Interior's Arguments, MGM Meets the Requirements for Intervention as of Right.

To establish its right to intervene under Rule 24(a), MGM must show that (i) its motion is timely; (ii) it has Article III standing, that is, a legally protected interest in the lawsuit[4]; (iii) its ability to protect its interests may be impaired by the disposition of the lawsuit; and (iv) its interests may be inadequately represented by Interior. *See* MGM Memo. at 13. Because none of the parties contests that MGM's motion is timely, the factors at issue are whether MGM has standing, whether a decision by this court would impair MGM's ability to protect its interests, and whether Interior will adequately represent MGM's interests.

A. Plaintiffs and Interior Mischaracterize the Basis for MGM's Standing.

Although Interior and the Tribes argue that MGM's injuries are speculative and not causally related to the challenged agency action, *see* Interior Opp. at 5-11; Tribes Opp. at 9-21, those arguments rest on fundamental misunderstandings of the economic realities in this case, the effect this Court's decision would have on MGM, and the D.C. Circuit's competitor-standing doctrine.

1. Approval of the Amendments would cause MGM competitive harm.

As noted, the relief sought by Plaintiffs—an order requiring Interior to approve the Amendments and publish a notice making the approval effective—would harm MGM in two ways.

First, approval of the Amendments would create a special exemption allowing MMCT (and *only* MMCT) to open commercial casinos without stripping the State of its right to receive hundreds of millions in annual revenue-sharing payments from the Tribes' existing casinos, Foxwoods and Mohegan Sun. *See* MGM Memo. at 2, 10-11; ECF 11-5 at 4-9. In this respect, the

[4] Because Article III standing is coextensive with a legally protectable interest in the subject of the litigation for purposes of Rule 24(a), *see* MGM Memo. at 16, this Reply treats MGM's standing and its legally protectable interest as one and the same factor.

Amendments would create a statewide non-competition zone (similar to the non-competition zone in *Forest County*) that would put MGM at a perpetual disadvantage vis-à-vis MMCT in competing for new commercial casino opportunities, including in Bridgeport where MGM and MMCT are competing with one another for development rights. *See* MGM Memo. at 5, 11-12, 15.[5]

Second, approval of the Amendments would immediately result in authorization, without intervening legislative or regulatory action, of MMCT's proposed East Windsor casino, thus exposing MGM Springfield to new (and, in MGM's view, unlawful) competition. *See* MGM Memo. at 2, 10-11. Lest there be any doubt on the issue, the Connecticut legislature's resolution approving the Amendments (which the Tribes included in their submission to Interior as proof that the Amendments were lawfully executed) states that the "[A]mendments will authorize said tribes to operate a gaming facility in East Windsor, Connecticut, pursuant to public act 17-89." ECF 11-5, at 25; *see also id.* at 2. Tribal and State officials have likewise stated that the purpose of the East Windsor casino, and the Amendments that facilitate it, is to divert market share from MGM Springfield to MMCT. *See* MGM Memo. at 8-9. For example, one recent report states that MMCT's proposed "East Windsor casino will keep gaming dollars and jobs tied to the gambling industry in Connecticut in the face of competition from the $960 million MGM Springfield casino."[6]

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[5] *See also* Dan Haar, *Tribes Want to Build Bridgeport Casino*, Connecticut Post (Dec. 6, 2017), https://www.ctpost.com/local/article/Pequot-Mohegan-tribes-interested-in-Bridgeport-12410028.php; Brian Hallenbeck, *Casino Expansion Could be Hot Topic for Lawmakers in 2018*, The Day (Dec. 6, 2017), https://www.theday.com/business/20171206/casino-expansion-could-be-hot-topic-for-lawmakers-in-2018; *Bridgeport Casino Plans Get Political as Tribes Want to compete with MGM*, The Real Deal (Dec. 13, 2017), https://therealdeal.com/2017/12/13/bridgeport-casino-plans-get-political-as-tribes-want-to-compete-with-mgm/.

[6] Ray Kelly, *Work at Site of 3rd Connecticut Casino, Rival to MGM Springfield, to Begin by Year's End*, MassLive.com (Nov. 9, 2017), http://www.masslive.com/news/index.ssf/2017/11/work_on_site_of_3rd_connecticu.html; *see also, e.g.*, Kenneth Gosselin, *Demolition On East Windsor Casino Now Underway But Construction Timetable Still Unclear*,

Interior and the Tribes erroneously assert that MGM's first injury is too remote and speculative to confer standing because MGM lacks the right to engage in commercial casino gaming in Connecticut and would need legislative approval to do so. *See* Interior Opp. at 6–7; Tribes Opp. at 17-19.[7] That MGM is not authorized to operate a casino in Bridgeport or elsewhere in Connecticut—and cannot do so without legislative approval—is consistent with its assertion that the Amendments, if approved, would make it *more difficult* for MGM to obtain the approval necessary to develop and operate a commercial casino within the State. In fact, the latter assumes the former. Thus, MGM's lack of legislative authorization is a *non sequitur*.

More fundamentally, Interior and the Tribes focus their arguments on the wrong question. The critical inquiry is not whether MGM may operate a commercial casino, but rather whether "a decision by this Court granting [the] requested relief" would put MGM at a "competitive disadvantage *when seeking state approval*" for a commercial casino. *Forest County*, 317 F.R.D. at 12 (emphasis added, quotation marks omitted). The answer to the latter question is clearly "yes": If the Court grants the relief requested by Plaintiffs, the Amendments would become effective and would create a statewide non-competition zone, thereby putting MGM (and all other developers) at a perpetual competitive disadvantage in seeking approval for new commercial casino opportunities. More specifically, once approved, the Amendments would give the State a financial incentive measured in the hundreds of millions annually to prefer MMCT's proposals over those

Hartford Courant (Mar. 5, 2018), http://www.courant.com/real-estate/property-line/hc-east-windsor-casino-demolition-20180302-story.html (Tribes "are jointly building in East Windsor to stave off a competitive threat from MGM Resorts International's Springfield casino.").

[7] Interior incorrectly asserts that MGM must also obtain "local government" approval to operate a commercial casino in Connecticut. Interior Opp. at 6. MGM is not aware of any such requirement.

submitted by MGM. MGM Memo. at 2, 8-11. "Such an alteration in competitive conditions clearly amounts to a concrete injury." *Forest County*, 317 F.R.D. at 12.[8]

Plaintiffs and Interior also incorrectly argue that a decision granting Plaintiffs' requested relief would not adversely affect MGM Springfield. *See* Interior Opp. at 7; Tribes Opp. at 14; State Opp. at 2. For example, the State makes the erroneous claim that the Amendments "only affect the obligations and relationships between the State and the Tribes with regard to the existing gaming operations on their reservations" and "do not … in any respect authorize MMCT Venture's proposed facility." State Opp. at 2. The Connecticut legislature, whose approval of the Amendments was necessary under both state and federal law,[9] explained in its resolution that the "[A]mendments *will authorize* said tribes to jointly operate a gaming facility in East Windsor." ECF 11-5 at 25; *see also id.* at 7 (Amendments are intended to aid in "authoriz[ing]" MMCT "to own and operate a commercial casino gaming facility"). Specifically, approval of the Amendments would immediately activate the Tribes' right to operate a new commercial casino in East Windsor, just 12 miles from MGM Springfield. *See* MGM Memo. at 10-11, 15; ECF 11-5 at 25.

[8] Although the Tribes question MGM's development plans by arguing that "[t]he Court need not take as true challenged allegations in MGM's Motion to Intervene," Tribes Opp. at 19 n.8, "[c]ourts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections," *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001). The Tribes have provided no support for the assertion that MGM's allegations are frivolous, and MGM has provided a sworn declaration supporting their veracity. *See* Decl. of Uri Clinton, ECF 11-2. MGM's allegations are also supported by public records and news reports. *See, e.g.*, Brian Hallenbeck, *MGM's CEO Still Bullish on a Bridgeport Casino*, The Day (Dec. 5, 2017), https://www.theday.com/business/20171205/mgms-ceo-still-bullish-on-bridgeport-casino; City of Bridgeport, FY 2017-2018 Adopted General Fund Budget, at 16-19, http://www.bridgeportct.gov/filestorage/341650/341652/342544/2017_2018_Proposed_Budget_4.7.17.pdf (discussing MGM's development plans in Bridgeport); *Magritz v. Ozaukee Cty.*, 894 F. Supp. 2d 34, 35 n.1 (D.D.C. 2012) (taking judicial notice of newspaper articles).

[9] *See* Conn. Gen. Stat. § 3-6c; 25 C.F.R. § 293.8; ECF 11-5 at 2.

Interior cannot credibly maintain that MMCT's casino would not draw customers from MGM Springfield, *see* Interior Opp. at 7; nor can the Tribes sincerely assert that there is only some "vague probability that increased competition would occur," Tribes Opp. at 14. Common sense and basic laws of economics dictate that the two casinos would, given their proximity to one another, necessarily compete for the same customer base.[10] *See Am. Inst. of Certified Pub. Accountants v. IRS*, 804 F.3d 1193, 1198 (D.C. Cir. 2015) ("allegations of competitive harm founded on 'basic economic logic' can establish standing"). Indeed, the stated purpose of the East Windsor casino is to compete with MGM Springfield, as the Tribes and the Connecticut legislature have acknowledged. *See* MGM Memo. at 8–9; *see also* notes 5-6, *supra*.[11]

The cases cited by the Tribes cite likewise do not support their argument that MGM's injuries are hypothetical or speculative. *See* Tribes Opp. at 17-19. For example, *Daimler-Chrysler Corp. v. Cuno* stands for the proposition that a taxpayer plaintiff lacks standing to challenge legislative appropriations because such policy judgments are "committed to the broad and legitimate discretion of lawmakers." 547 U.S. 332, 345 (2006). By contrast, MGM does not assert taxpayer standing; nor does this action challenge any legislative decision regarding appropriation of funds. Similarly, although *New World Radio, Inc. v. FCC* explained that a claim may not be ripe where the plaintiff will have an "opportunity to challenge any [agency] decision that directly affects it as

[10] Although the Tribes contend that MGM suffers no harm because MGM Springfield is subject to a "50-mile radius restriction on competing with its own facility in Springfield," Tribes Opp. at 6 n.6, that restriction has no bearing on whether the Tribes' proposed East Windsor casino will injure MGM Springfield by drawing from the same customer pool, which it will. The radius restriction is also irrelevant to the ongoing competition between MGM and MMCT for a Bridgeport casino because Bridgeport lies outside the restricted area.

[11] *See also, e.g.*, Mark Pazniokas, *Hartford's 11th-Hour Casino Game is 'Let's Make a Deal'*, CT Mirror (June 5, 2017), https://ctmirror.org/2017/06/05/hartfords-11th-hour-casinogame-is-lets-make-a-deal/ (statement by Representative Davis that MMCT's East Windsor casino would "compet[e] for a share of gamblers who otherwise would go to [MGM] Springfield").

a competitor," 294 F.3d 164, 172 (D.C. Cir. 2002) (cited in Tribes Opp. at 18), MGM will have no such opportunity to defend Interior's decision if the Court orders Interior to approve the Amendments. Simply put, this lawsuit is MGM's one and only opportunity to defend Interior's ruling.

Nor are the Tribes correct that MGM's competitive injuries must be "certainly impending." Tribes Opp. at 8. Standing exists where, as here, there is "a 'substantial risk' that the harm will occur." *Attias v. Carefirst, Inc.*, 865 F.3d 620, 626 (D.C. Cir. 2017).

For the same reasons, Interior is incorrect that only a "direct and current" competitor has standing. Interior Opp. at 7. As the D.C. Circuit has explained, parties "sufficiently establish their constitutional standing by showing that the challenged action authorizes allegedly illegal transactions that have the clear and immediate *potential* to compete with the petitioners' own sales. *They need not wait for specific, allegedly illegal transactions to hurt them competitively*." *Associated Gas Distributors v. FERC*, 899 F.2d 1250, 1259 (D.C. Cir. 1990) (emphases added). Here, it is enough that Interior's ruling, if reversed, would (i) immediately put MGM at a competitive disadvantage vis-à-vis MMCT in seeking commercial casino opportunities, including in Bridgeport, and (ii) have the "clear and immediate potential" to create new competition for MGM Springfield.

2. The competitor-standing doctrine applies here.

Although Interior and the Tribes also maintain that the competitor-standing doctrine is inapplicable here, *see* Interior Opp. at 8-9; Tribes Opp. at 12-14, their own articulation of the doctrine compels the opposite conclusion. As Interior acknowledges: "The competitor standing doctrine recognizes 'parties suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition.'" Interior Opp. at 8 (quoting *Mendoza*, 754 F.3d at 1011). That is precisely what approval of the Amendments would do here. *See* MGM Memo. at 10, 15. Competitor standing also exists where "an agency action ... imposes a

competitive injury," for example, by "expand[ing] the number of entrants in the petitioner's market." Interior Opp. at 8 (quoting *Delta Air Lines, Inc. v. Exp.-Imp. Bank of U.S.*, 85 F. Supp. 3d 250, 267–68 (D.D.C. 2015)). Here, approval of the Amendments would lift a regulatory restriction on MMCT (in competing for commercial casino opportunities in Connecticut) while at the same time expanding the number of competitors for MGM Springfield. MGM's standing under the competitor-standing doctrine could hardly be more clear.

In this respect, Interior errs in arguing that approval of the Amendments would not "lif[t] … regulatory restrictions" on a "competitor." Interior Opp. at 9. The Tribes' Gaming Authorizations impose a restriction on the Tribes and their joint venture, MMCT, by effectively barring them from operating a commercial casino in Connecticut because doing so would terminate the State's right to receive revenue-sharing payments from Foxwoods and Mohegan Sun—a right the State is unlikely to give up without concessions in return. *See* MGM Memo. at 4-5, 8; note 14, *infra*. By their terms, the Amendments would lift that restriction by creating a special exemption allowing MMCT—and no one else—to operate a new commercial casino gaming facility *without* terminating the State's revenue-sharing rights. *See* Proposed Amendments, ECF 11-5.

Interior's attempt to minimize this competitive harm fails. Although Interior contends that the Amendments would authorize "at most a single casino" and that the new casino would not affect MGM Springfield's bottom line, Interior Opp. at 9, those assertions are demonstrably false. To start, the Amendments are not limited to MMCT's proposed East Windsor casino, as Interior asserts, but would provide MMCT with a competitive advantage in developing *any* commercial casino in Connecticut—including one in Bridgeport. *See* ECF 11-5 at 4-9. MMCT has already publicly stated that it intends to pursue a Bridgeport casino and has invoked the advantages that would be afforded by the Amendments as a reason why the State should prefer its proposal. *See*

MGM Memo at 11-12. The authorities cited above and in MGM's opening brief also show that MMCT selected East Windsor as the site for its proposed casino precisely because that location would allow MMCT to compete with MGM Springfield for customers and revenue. *See* notes 5-6, 11, *supra*.[12] Interior, in contrast, has provided no evidence to support its assertion that the proposed East Windsor casino would not affect MGM Springfield's bottom line. To the extent that Interior's argument is that the lost market share would be minimal, there is no *de minimis* exception to Article III's injury requirement: A "substantial probability" of "even a minor degree of economic harm" is sufficient to establish standing, *Alfa Int'l Seafood v. Ross*, 2017 WL 1906586, at *2 (D.D.C. May 8, 2017), and even a single "dollar of economic harm is still an injury-in-fact for standing purposes," *Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017).

Finally, MGM's theory of standing would not, as the Tribes contend, open the floodgates by allowing any competitor to challenge administrative decision "no matter how remote its connection to the relevant agency action or inaction." Tribes Opp. at 12. MGM seeks to apply only the D.C. Circuit's well-established competitor-standing doctrine with respect to Amendments expressly designed to target MGM's interests. It also bears emphasis that the Amendments would pave the way not for a tribal casino on Indian lands, but for a commercial casino owned by a corporation (MMCT) and operated on non-Indian lands—thus squarely implicating the interests of MGM, a commercial casino developer. *See* MGM Memo. at 1, 6, 20 n.23. So far as MGM is aware, no tribe has *ever* attempted to use IGRA's amendment process to facilitate a commercial

[12] In addition, the Tribes have presented expert testimony that the proposed East Windsor casino would "compete with MGM Springfield" and divert market share from MGM to MMCT. *See* Testimony of Dr. Clyde W. Barrow, Hrg. Before the J. Comm. on Finance, Revenue, and Bonding, Conn. Gen. Assembly, at 1-3 (Apr. 17, 2017), https://www.cga.ct.gov/2017/findata/tmy/2017HB-07319-R000417-Barrow,%20PH.D.,%20Clyde,%20Chair-Department%20of%20Political%20Science-University%20of%20Texas%20Rio%20Grande%20Valley-TMY.PDF.

casino in this fashion. MGM would have no interest in this case, and would not have sought leave to intervene, if the Amendments merely concerned operation of the Tribes' on-reservation casinos.

3. MGM's competitive injuries are fairly traceable to the Amendments and would be prevented if Interior's ruling were upheld.

Interior's traceability and causation objections fare no better. According to Interior, MGM's injuries result from Connecticut Public Act 17-89, rather than the Amendments, because approval of the Amendments would not harm MGM in the absence of Public Act 17-89's authorization for MMCT's East Windsor casino. But that is tantamount to saying that pushing someone off a cliff would not result in injury in the absence of gravity. The fact of the matter is that Public Act 17-89 exists and approval of the Amendments is the final element necessary to effectuate the statute's authorization for MMCT's proposed casino, such that the relief Plaintiffs seek would unavoidably cause MGM competitive harm. Article III standing does not require that agency action be the sole, the most immediate, or even the proximate, cause of the injury asserted. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1391 n.6 (2014) ("Proximate causation is not a requirement of Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct."); *Attias*, 865 F.3d at 629 ("Article III standing does not require that the defendant be the most immediate cause, or even a proximate cause, of the plaintiffs' injuries; it requires only that those injuries be 'fairly traceable' to the defendant.").

In any event, Interior's ruling on the Amendments is directly linked to MGM's competitive injuries. If Interior is ordered to approve the Amendments, that result would, without other action by any other party, immediately cause the East Windsor casino to be authorized. Interior's approval is not the first step toward increased competition; it is the last step. Stated differently, but for Interior's approval of the Amendments, MMCT would not receive authorization to operate its proposed East Windsor casino and MGM Springfield would not be exposed to new competition

just 12 miles away. It is well settled that this type of "but for" relationship between agency action and a party's asserted injuries satisfies Article III's traceability requirement. *See Alaska v. U.S. Dep't of Agric.*, 273 F. Supp. 3d 102, 115 (D.D.C. 2017).

Moreover, Interior's causation argument has no bearing on MGM's first injury, which focuses on the harm to MGM's relative bargaining position in Connecticut rather than any effect on MGM Springfield. There can be no question that approval of the Amendments would grant MMCT a special exemption that would give MMCT's proposals (in Bridgeport and elsewhere) an advantage over MGM's in seeking state approval. *See* MGM Memo. at 10-11. That harm flows from the Amendments themselves, and does not depend on Public Act 17-89 or any other statute, because the Amendments state that operation of a new casino by any entity "other than a business entity jointly and exclusively owned by the [Tribes]" would strip the State of its revenue-sharing rights. ECF 11-5 at 4. Put another way, the Amendments of their own force create an incentive worth more than $200 million annually for the State to prefer MMCT's commercial casino proposals over MGM's. *See* MGM Memo at 11-14. And because the Amendments do not have an expiration date or geographic limitation, MMCT would enjoy that competitive advantage on a statewide basis in perpetuity.

Finally, MGM's competitive injuries would be redressed by an order rejecting Plaintiffs' claims. Such a decision would prevent MGM's injuries because in that scenario MMCT would not obtain a competitive advantage over MGM in Connecticut and MGM Springfield would not face new competition from MMCT's proposed East Windsor casino.

4. Plaintiffs' and Interior's Zone-of-Interests Arguments Fail.

Interior and the Tribes also miss the mark in arguing that MGM should not be involved because IGRA is designed to benefit Indian tribes and not private commercial casino developers. *See* Tribes Opp. at 11-16, 25; Interior Opp. at 8-10, 14-15.

These arguments are simply another way of arguing that MGM falls outside IGRA's zone of interests. That argument fails for the simple and dispositive reason that the zone-of-interests test "no longer appl[ies] to intervening defendants." *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 319 (D.C. Cir. 2015).

The arguments also fail because unlike most amendments to tribal gaming compacts or procedures, the Amendments are designed to facilitate a *commercial* casino located on *non-Indian* lands. *See* Tribes Opp. at 4 n.3 ("The land in East Windsor on which MMCT Venture, LLC proposes to build a casino is not 'Indian lands' as defined by IGRA."). IGRA's amendment procedures were never intended to be used in that fashion; as the Supreme Court recently observed, "[e]verything—literally everything—in IGRA affords tools … to regulate gaming on Indian lands, *and nowhere else*." *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2034 (2014) (emphasis added). It is entirely sensible that a commercial casino operator like MGM would seek to address Amendments that implicate (and if approved threaten to obliterate) the line Congress drew between tribal and commercial gaming.

B. Interior Cannot Adequately Represent MGM's Interests.

Interior's argument that it will adequately protect MGM's interests is impossible to square with the rest of its brief, which repeatedly asserts that MGM has no interest in the lawsuit. *Compare* Interior Opp. at 12 (Interior is an "adequate representativ[e] of any interest that MGM might have in this dispute"), *with id.* at 15 ("MGM … has no protectable interest in IGRA's interpretation."). Interior cannot have it both ways. Either MGM has no interest in the litigation, in which case there is nothing for Interior to protect, or MGM does have an interest in the litigation, in which case it must be assured adequate protection.

Moreover, Interior attempts to set an impossibly high bar for establishing inadequate representation. The Supreme Court has explained that Rule 24(a)'s requirements are "satisfied if the

applicant shows that representation of his interest '*may be*' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added). Measured by that standard, a movant "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee." *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980).

The D.C. Circuit has repeatedly cast doubt on agencies' ability to adequately represent interests of private parties. *See Crossroads*, 788 F.3d at 321 ("[W]e look skeptically on government entities serving as adequate advocates for private parties."); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003) ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors."); *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) ("Even when the interests of EPA and appellants can be expected to coincide … that does not necessarily mean that adequacy of representation is ensured for purposes of Rule 24(a)(2).").

There is particular reason to doubt Interior's inability to protect MGM's interests: Interior owes trust obligations *to the Tribes*. *See Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008) (discussing "federal government's unique trust obligation to Indian tribes"); Tribes Opp. 5 (Interior "owes a fiduciary responsibility to the Tribes"). Because the Tribes' interests clearly diverge from MGM's, Interior cannot adequately represent MGM in this suit without breaching its trust obligation to the Tribes. *See Fund For Animals*, 322 F.3d at 737 (agency "would be shirking its duty were it to advance" a proposed intervenor's "narrower interest at the expense of its representation of the general public interest"); *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002) (it is "impossible" for agency faithfully to represent public interest and proposed intervenor's private interests).

The adversity of interest between MGM and Interior's trust obligations precludes any presumption of adequate representation. *Contra* Interior Opp. at 12.[13] If anything, D.C. Circuit precedent establishes a presumption of *inadequate representation* where, as here, a private-sector party seeks leave to intervene in an APA case. *See Crossroads*, 788 F.3d at 321.

Finally, it bears notice that nowhere does Interior argue that it will or even intends to defend MGM's interests in the lawsuit. "Such equivocation about whether the Department will … protect the intervenors' interests constitutes at least the requisite 'minimal' showing that the Department's representation of [the intervenor's] interest 'may be' inadequate." *U.S. House of Representatives v. Price*, 2017 WL 3271445, at *2 (D.C. Cir. Aug. 1, 2017) (quotation marks, alterations, and citations omitted).

C. Neither Interior Nor the Tribes Effectively Distinguish *Forest County*.

If there were any remaining doubt that MGM has established its right to intervene under Rule 24(a), Judge Kollar-Kotelly's decision in *Forest County* settles the matter. As MGM explained in its opening brief, this case mirrors *Forest County* in every respect that counts. *See* MGM Memo. at 15. Like *Forest County*, this case involves competition between the plaintiff and a prospective intervenor in a state's casino-gaming market as well as amendments to tribal-state gaming authorizations that would give one competitor an advantage the other. *See* 317 F.R.D. at 10-12. As in *Forest County*, Interior declined to approve the proposed amendments, prompting the plaintiff-tribe to file an APA lawsuit. And finally, like the proposed Intervenor in *Forest County*, MGM would suffer competitive harm if the Amendments were approved.

[13] Although Interior cites *Cobell v. Jewell*, 2016 WL 10704595, at *2 (D.D.C. Mar. 30, 2016), for the proposition that "a presumption of adequate representation exists if both the intervenor and existing party have the same ultimate objective," Interior Opp. at 12, that case involved a private party that attempted to intervene in support of another private entity, not a federal agency that owed trust obligations to the proposed intervenor's adversaries.

Plaintiffs and Interior attempt to distinguish *Forest County* on six grounds, each of which mischaracterizes the court's rationale and the underlying facts in that decision.

First, that the agency decision in *Forest County* referred to the proposed intervenor, whereas Interior's ruling fails to refer to MGM, does not alter the analysis. *See* Interior Opp. at 13; Tribes Opp. at 11. It cannot be maintained that to establish standing to challenge or defend an agency action, a proposed intervenor must be named in the agency's decision. Such a requirement would allow an agency to foreclose intervention by any party no matter how significantly the agency action would affect the proposed intervenor. Regardless, the public record demonstrates that the Amendments at issue here target MGM the same way that the amendments targeted the Menominee Tribe in *Forest County*. *See* MGM Memo. at 8-9; notes 5-6, 11, *supra*. The question is not whether MGM is named in the Amendments, but rather whether the Amendments will harm MGM if approved. *See Forest County*, 311 F.R.D. at 12. As demonstrated above, the answer to that question is "yes."

Second, although Interior notes that the amendment in *Forest County* could have required the proposed intervenor to make payments to Wisconsin and another tribe, whereas Interior's ruling here does not require MGM to pay the State or Tribes, Interior Opp. at 13, that fact played no role in the court's reasoning. To the contrary, the decision states that it "*does not address* the parties' contention as to whether [the gaming amendment at issue] requires the Menominee to make mitigation payments to the State and/or to Potawatomni." 317 F.R.D. at 12 n.6 (emphasis added). Instead, the court's analysis focuses on how the amendment would, if approved, "impede [the intervenor's] efforts to develop a gaming facility" in Wisconsin. *Id.* at 12. That is precisely the harm MGM would suffer here.

In this respect, the similarities between this case and *Forest County* run deeper than Plaintiffs and Interior acknowledge. Interior observes that the amendments in *Forest County* made it less likely that the Governor of Wisconsin would approve the Menominee's proposed gaming facility. *See* Interior Opp. at 13. But Connecticut's Governor has said nearly the same thing about MGM's proposed gaming facility in Bridgeport, asserting that he will not approve any casino that would terminate the State's right to collect revenue-sharing payments from the Tribes and citing that rationale as a reason not to support MGM's Bridgeport proposal.[14] MMCT's proposed casinos are subject to the same objection, but would not terminate the State's revenue-sharing rights if the Amendments were approved. The Amendments thus make it unlikely that the Governor would approve casino proposals by MGM, as Interior concedes. Interior Opp. at 13-14 ("approval of the Gaming Amendments may indirectly make it more difficult for MGM to game in Connecticut").

Third, Interior's argument that the proposed intervenor in *Forest County* was a federally-recognized tribe, whereas MGM is not, Interior Opp. at 14, is a distinction without substance. Although Interior asserts that the intervenor's tribal status gave it "an interest in IGRA's provisions," *id.*, that rationale appears nowhere in the court's decision. Again, in defining the intervenor's injury, the court focused exclusively on the fact that proposed amendments would cause competitive harm, not whether the intervenor had some broader interest in IGRA. *See Forest*

[14] *See, e.g.*, Dan Glaun, *Connecticut Gov. Dannel Malloy Bats Down Chances of MGM Casino in Bridgeport Winning Approval*, MassLive.com (Sept. 19, 2017), http://www.masslive.com/mgm_springfield/index.ssf/2017/09/connecticut_gov_bats_down_chan.html ("Gov. Dannel Malloy threw cold water yesterday on MGM Resorts International's plans to build a casino in Bridgeport" because the proposal "would violate the state's revenue-sharing agreement with Mohegan Sun and Foxwoods, costing Connecticut nearly $500 million over the next two years."); Mark Pazniokas, *Legislators Buck Senate Co-Chairs, Keep Casino Expansion Alive*, CT Mirror (Feb. 22, 2018), https://ctmirror.org/2018/02/22/legislators-buck-senate-co-chairs-keep-casino-expansion-alive/ ("Gov. Dannel P. Malloy … has consistently opposed any gaming proposal that would endanger the profit-sharing deal [with] the Mashantucket Pequots and Mohegans").

County, 317 F.R.D. at 12. Interior's argument also falls flat here because the Amendments are designed to facilitate a commercial casino operated by a corporation (MMCT) on non-Indian lands; even if MGM would lack a cognizable interest in a case involving tribal gaming on tribal lands, the same could not be said of the Amendments at issue here.

Fourth, the Tribes similarly argue that *Forest County* implicated Interior's authority and trust obligations to assist the intervenor-tribe's economic development, whereas Interior has no such authority or obligation to assist MGM's economic wellbeing. Tribes Opp. at 11-12. If anything, however, that Interior owes no trust obligations to MGM makes the case for intervention stronger than it was in *Forest County*. There, the court found that Interior could not protect interests of the intervenor-tribe, to which it owes trust obligations, while at the same time representing "the public interest of its citizens as a whole." 317 F.R.D. at 14. For precisely the same reason, Interior cannot adequately protect interests of MGM, to which it owes *no* obligations, while at the same time honoring its trust obligation to the Tribes.

Fifth, Interior's argument that *Forest County* involved a factual dispute "based on the Secretary's finding in the administrative record," whereas this case is involves "legal questions" about IGRA's interpretation, Interior Opp. at 14-15, makes little sense. Both cases arise under the APA and present questions regarding IGRA's proper application. As is the case here, the plaintiff tribe in *Forest County* contended that Interior's decision rested on a faulty interpretation of the proposed amendment and of IGRA's governing provisions. *See* 317 F.R.D. at 9, 12 n.5. Thus, like this case, *Forest County* involved "largely legal questions" about IGRA's interpretation. However, as Judge Kollar-Kotelly recognized in *Forest County*, those "contenion[s] concer[n] the underlying merits" and should not be considered in ruling on a motion for leave to intervene. *Id.*

Sixth, and finally, there is no substance to the Tribes' argument (at 12) that, unlike *Forest County*, "this case does not involve a challenge to the disapproval of compact amendments." The Tribes do not explain why the difference between an affirmative disapproval, as in *Forest County*, and a ruling "return[ing]" amendments based on "insufficient information," as here, ECF 11-6, affects the Rule 24 analysis. As a defense to Plaintiffs' claims that Interior must approve the Amendments, Interior can argue that it was not required to do so because the Amendments violate IGRA or other federal law. MGM Memo. at 20. Thus, this case involves the same basic question as in *Forest County*: Did Interior err in ruling on the proposed gaming amendments?

Because this case is materially indistinguishable from *Forest County*, the same result should apply, and MGM should be permitted to intervene as of right.

II. Contrary to Plaintiffs' and Interior's Arguments, MGM Meets the Requirements for Permissive Intervention.

Not only is MGM uniquely situated to assist the Court in understanding and resolving the issues presented by Plaintiffs' complaint, but MGM will not, as Plaintiffs and Interior assert, delay the action or otherwise unfairly prejudice the original parties.

To the contrary, MGM has already taken steps to ensure that its participation does not interfere with the efficient adjudication of this case. The parties mutually agreed to a process whereby MGM could participate without disrupting the litigation by provisionally lodging briefs with the Court until it rules on intervention. *See* J. Mot. to Modify Briefing Schedule, ECF 16 at ¶ 9(d). It also bears mention that MGM is the only party in this lawsuit that has not sought to extend the deadlines for its own filings.

Although the Tribes nevertheless assert that MGM seeks to inject new issues into the suit, *see, e.g.*, Tribes Opp. at 4, 24, that is not the case. As MGM's proposed answer (ECF 11-7) makes clear, MGM seek resolution only of the claims asserted in Plaintiffs' complaint. MGM agrees

with Plaintiffs that the validity of Connecticut's casino laws is not at issue in this case. *See* Tribes Opp. at 15, 18, 21. MGM discussed Public Act 17-89 and Connecticut's new legislative framework for commercial gaming in its motion for leave to intervene merely to provide relevant background on the Amendments. But that does not mean MGM seeks to litigate those issues here.

The Tribes also err in disputing MGM's characterization of Interior's September 15, 2017 decision as a "ruling." *See* Tribes Opp. at 24. It is hornbook law that all agency action constitutes either rulemaking or adjudication for purposes of the APA. *See* 5 U.S.C. §§ 553-554; *Bricklayers, Masons & Plasterers Int'l Union of Am. v. NLRB*, 475 F.2d 1316, 1319 (D.C. Cir. 1973). Interior's decision to return the Amendments plainly does not constitute rulemaking. Thus, by process of elimination, Interior's decision was an adjudication and its determination a ruling. In fact, Interior adjudicated the Tribes' request for approval of the Amendments by considering the views of interested parties (including MGM and the Tribes) and then issuing a decision on the Tribes' request.

In sum, MGM has a legitimate role to play in this litigation. MGM is well situated to assist the Court in resolving the factual and legal issues in this case given its longstanding involvement in the underlying dispute. Interior lacks that knowledge and experience. Moreover, Interior also owes trust obligations to the Tribes, which undermines its ability to defend MGM's interests, as evidenced by its failure to fully appreciate the commercial concerns at stake and the economic harms the Amendments would cause. Finally, MGM can participate without delaying the case's efficient litigation, and, as noted in Part IV below, has no objection to imposition of conditions that would help ensure that result.

III. The Tribes' Rule 24(c) Objections Are Meritless.

Federal Rule of Civil Procedure 24(c) requires a motion for leave to intervene to "be accompanied by a pleading that sets out the claim or defense for which intervention is sought."

Although the Tribes (but not the State or Interior) argue that MGM violated that requirement, *see* Tribes Opp. at 26, their argument fails because MGM submitted a proposed answer with its motion, and the answer asserts a common affirmative defense, *see* Proposed Answer of Movant-Intervenor-Defendant, ECF 11-7 at ¶ 61 ("Plaintiffs' claims fail because the Interior Department's September 15, 2017 ruling was authorized by law."). And to be clear, MGM asserts only that it has a common defense with the main action and does not assert affirmative claims in this litigation.[15] Accordingly, MGM's proposed answer plainly satisfies Rule 24(c).

The Tribes also curiously maintain that MGM's defense is not colorable because Interior's ruling did not state that the Amendments were returned for insufficient documentation. Tribes Opp. at 27. Interior's ruling, however, expressly states: "We find that there is *insufficient information* upon which to make a decision." ECF 11-6 (emphasis added) . Although Interior did not use the exact term "documentation," its rationale is apparent. *See Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974) ("[W]e will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned.").

IV. MGM Agrees to the Conditions Proposed by the Tribes.

The Tribes propose conditions on MGM's intervention "to ensure the prompt adjudication of the matter," Tribes Opp. at 28, and MGM has no objection to that proposal.

Courts frequently resolve contested intervention motions by granting intervenor status while simultaneously imposing conditions on the intervenor's participation in the suit. *See Fund for Animals*, 322 F.3d at 737 n.11; *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 20 (D.D.C. 2010). As this Court has explained, granting intervention subject to reasonable conditions on the

[15] Although MGM's motion mentioned a "claim" in passing, MGM Memo. at 20, MGM raised that claim in the proceedings before Interior and does not seek to litigate it here. The claim would again be relevant if the case were returned to Interior on remand.

proposed intervenor's participation is "a necessary instrument in accommodating the two conflicting goals of intervention: *i.e.*, to achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming fruitlessly complex or unending." *WildEarth Guardians*, 272 F.R.D. at 13.

MGM has no objection to the same approach here or to the conditions suggested by the Tribes. *See* Tribes Opp. at 28. Specifically, MGM agrees that if it is permitted to intervene, (i) it will not assert cross-claims, counterclaims, or other collateral claims against Plaintiffs or Interior, (ii) it will limit its briefing and arguments to addressing Plaintiff's claims and any colorable defenses that Interior does or could assert to those claims, and (iii) it will not seek additional time or alter the existing schedule without the other parties' consent. Furthermore, to avoid overburdening the Court with excessive filings, MGM proposes that its briefs be subject to the following page limits: no more than 30 pages for memoranda of points and authorities in support of or in opposition to motions and no more than 20 pages for reply memoranda. *See WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 6 (D.D.C. 2017) (imposing same page limits). MGM also proposes that before any filings, it will confer with Interior to avoid duplicative arguments to the extent practical. *See id.* (imposing similar conference requirement).

Allowing MGM to intervene subject to the foregoing conditions strikes an appropriate balance between ensuring that MGM has a full and fair opportunity to protect its interests in the litigation while ensuring that Plaintiffs are able to adjudicate their claims efficiently. MGM respectfully requests that the Court take this approach to accommodate both sides' interests.

V. At a Minimum, MGM Should be Permitted to Participate as *Amicus Curiae*.

If—and only if—the Court concludes that MGM should not be permitted to intervene, MGM respectfully requests that it be granted leave to participate as *amicus curiae*.

The Court enjoys "broad discretion to permit … proposed intervenors to participate as amici curiae." *D.C. v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011). Exercising that discretion, judges of this Court often allow proposed intervenors to appear as *amici* where, as here, they "may provide a unique perspective on issues pending before the Court." *Keepseagle v. Vilsack*, 307 F.R.D. 233, 249 (D.D.C. 2014); *see also Potomac Elec. Power Co.*, 826 F. Supp. 2d at 237; *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Engineers*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007).

Here, MGM is well situated to assist the Court by bringing its relevant expertise and experience to bear. As explained above, MGM is familiar with the factual and legal issues in this case given its longstanding involvement in the underlying dispute. As a result of that experience, MGM is aware of facts material to the Court's analysis, such as the position repeatedly taken by Connecticut's Attorney General that "there is no Compact between Connecticut and the [Mashantucket Pequot] Tribe."[16]

Accordingly, MGM should at a minimum be permitted to participate as *amicus curiae*. If the Court allows MGM to do so, MGM also requests that the briefs that it has lodged to date be treated as *amicus* briefs. *See* Order Granting J. Mot. to Modify Briefing Schedule, ECF 17 at ¶ 4.

CONCLUSION

For the foregoing reasons and those set forth in its opening brief, MGM respectfully requests that the Court grant its motion for leave to intervene, subject to the conditions discussed above. Alternatively, MGM respectfully requests permission to participate as *amicus curiae*.

[16] MGM Memo. In Support of Mot. for Partial Dismissal, ECF 21-1, at 2 (quoting Conn. Op. Att'y Gen. 93-004, 1993 WL 378477, at *2 (Feb. 11, 1993); Conn. Op. Att'y Gen. 94-010, 1994 WL 275088, at *6 n.5 (May 18, 1994)).

Respectfully submitted,

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March 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on March 12, 2018, I caused the foregoing brief to be filed with the Clerk of the Court for the United States District Court for the District of Columbia using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

March 12, 2018

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