
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Nos. 19-1661, 19-1857

AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.;
TOWN OF AQUINNAH,

Plaintiffs-Appellees/Cross-Appellants,

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH); THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.; THE AQUINNAH
WAMPANOAG GAMING CORPORATION,

Defendants-Appellants/Cross-Appellees,

CHARLIE BAKER, in his official capacity as Governor of the Commonwealth of
Massachusetts; MAURA HEALEY, in her capacity as Attorney General of the
Commonwealth of Massachusetts; CATHY JUDD-STEIN, in her capacity as Chair
of the Massachusetts Gaming Commission,

Third Party Defendants/Appellees.

Nos. 19-1729, 19-1922

AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.;
TOWN OF AQUINNAH,

Plaintiffs-Appellees/Cross-Appellants,

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH); THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.; THE AQUINNAH
WAMPANOAG GAMING CORPORATION,

Defendants-Appellants/Cross-Appellees,

CHARLIE BAKER, in his official capacity as Governor of the Commonwealth of
Massachusetts; MAURA HEALEY, in her capacity as Attorney General of the

Commonwealth of Massachusetts; CATHY JUDD-STEIN, in her capacity as Chair
of the Massachusetts Gaming Commission,

Third Party Defendants.

On Appeal from the United States District Court for the District of Massachusetts
Case No. 1:13-cv-13286-FDS

**CROSS-APPEAL REPLY BRIEF OF THE TOWN OF AQUINNAH AND
THE AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION INC.**

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Dated: June 16, 2020

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Although the Town and AGHCA did not expect to file a cross-appeal reply brief, *see* Town/AGHCA Br. 51 n.19, the Tribe’s response/reply brief compels a short rejoinder.

As the Town and AGHCA explained (at 51), they properly filed a notice of cross-appeal solely to preserve their ability to challenge the gaming injunction. A panel of this Court has already decided the merits of that issue, but noticing a cross-appeal leaves open the possibility of asking the *en banc* court or the Supreme Court to review that decision. *See Greenlaw v. United States*, 554 U.S. 237, 244 (2008) (“[I]t takes a cross-appeal to justify a remedy in favor of an appellee.”). Without a notice of cross-appeal, if the Town or AGHCA filed a rehearing petition to reconsider the gaming injunction, the Tribe would undoubtedly object. Thus, while the cross-appeal seeks no relief *at the panel stage*, it is jurisdictionally proper.

Remarkably, the Tribe accuses the Town and AGHCA of filing a cross-appeal “to manufacture additional pages of briefing” through “manipulation of this Court.” Corrected Response/Reply Br. 2, 13. But the Town and AGHCA scrupulously *forwent* any “additional pages of briefing.” Their principal brief adhered to the ordinary 13,000-word limit, and did not use the 2,300 extra words allowed in cross-appeals. Town/AGHCA Br. 51 n.19; Fed. R. App. P. 28.1(e)(2)(B)(i), 32(a)(7)(B)(i). Hardly a “manipulation.”

If anything, it is the Tribe that has jumped at “additional pages of briefing.” Without a cross-appeal, the Tribe’s reply would have been limited to 6,500 words. *See* Fed. R. App. P. 32(a)(7)(B)(ii). Because of the cross-appeal, the Tribe was entitled to double that amount (plus its separate, 3,882-word response to an amicus brief)—and it used more than 12,500 of its 13,000 words to address the merits of its principal appeal, not the cross-appeal.

As for the Tribe’s accusation that the Town and AGHCA cross-appealed in order to get the last word (Corrected Response/Reply Br. 2): this reply would not have been necessary at all but for the Tribe’s baseless accusations of “manipulation” and its insistence that the cross-appeal must be dismissed.

CONCLUSION

The Court should not dismiss the cross-appeal. At the panel stage, the Court need not address the cross-appeal at all, and should simply affirm the District Court’s Third Amended Final Judgment for the reasons given in the Town and AGHCA’s Principal and Response Brief.

Respectfully submitted,

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Dated: June 16, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply Brief complies with the type-volume limitations set forth by Federal Rule of Appellate Procedure 28.1(e)(2)(C) because it contains 390 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced 14-point Times New Roman typeface using Microsoft Word 2010.

Dated: June 16, 2020

s/ William M. Jay
William M. Jay

CERTIFICATE OF SERVICE

I hereby certify that, on June 16, 2020, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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