UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, on its own behalf and as *parens patriae* for its members,

Plaintiff,

and

THE UNITED STATES,

Plaintiff-Intervenor

vs.

JENNIFER GRANHOLM, Governor of the State of Michigan; MIKE COX, Attorney General of the State of Michigan; JAY B. RISING, Treasurer of the State of Michigan; STEVEN CHESTER, Director of the Department of Environmental Quality of the State of Michigan, each in his/her official capacity,

Defendants.

Case No. 05-10296-BC

Hon. Thomas L. Ludington

CITY OF MT. PLEASANT'S MOTION TO INTERVENE

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CITY OF MT. PLEASANT'S MOTION TO INTERVENE

Pursuant to FRCP 24(a) and 24(b), the City of Mt. Pleasant respectfully requests to intervene as a matter of right in the above captioned matter. The City of Mt. Pleasant opposes and disagrees that the five townships and two half townships in Isabella County are "Indian country" as defined by 18 USC § 1151(a) and federal law and that an Isabella Reservation was established by executive order of 1855, I Cappler 846-847 (1904), the treaty of 1855, 11 Stat. 63 (August 2, 1855), and the treaty of 1864, 14 Stat. 657 (October 18, 1964) in these townships other than tribal trust lands and allotment land held in trust by the United States government.

The City of Mt. Pleasant meets the criteria for intervention as a matter of right. This application is timely as there has been no substantive litigation process. The City of Mt. Pleasant has substantial legal interest in enforcing the provisions of its own ordinances and confirming its prosecutorial jurisdiction on land which is claimed to be "Indian country". The City of Mt. Pleasant, with its own distinct interest is not adequately represented by the State of Michigan.

In the alternative, the City of Mt. Pleasant meets the standard for permissive intervention. Because this application is timely, no party will be prejudice by intervention

at this stage of the litigation.

On September 13, 2007 a letter was sent to counsel of record seeking concurrence with this motion. On September 14, 2007 telephone calls were made to counsel of record and counsel of record were still considering the request for intervention.

WHEREFORE, the City of Mt. Pleasant respectfully requests that this Court grant its motion to intervene and in support, relies upon the attached brief.

Date: September 14, 2007

Respectfully submitted,

LYNCH, GALLAGHER, LYNCH,
MARTINEAU & HACKETT, P.L.L.C.

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BRIEF IN SUPPORT OF MOTION TO INTERVENE

Introduction

The Saginaw Chippewa Indian Tribe (the "Tribe") filed this action seeking prospective, injunctive and declaratory relief asserting that an Isabella Reservation was established under the 1855 and 1864 treaties and that five full townships and two half townships in Isabella County constitute "Indian country" as defined by 18 USC § 11 51(a) and federal law. The United States was permitted to intervene as a Plaintiff on November 1, 2006. Plaintiffs' seek a permanent injunction prohibiting the State of Michigan from

exercising criminal and civil jurisdiction within the reservation in a manner inconsistent with its "Indian country" status. The City of Mt. Pleasant asserts that the only lands within the designated townships that should be considered "Indian country" are the tribal trust lands and the allotment land which is held in trust by the United States for individual tribal members. It appears that there is no dispute that the land held in trust by the United States for the benefit of the Tribe was in the exterior boundaries of the Isabella Reservation is "Indian country".

Pursuant to a joint stipulation narrowing issues related to jurisdictional defenses, neither the Tribe nor the United States seeks to establish the Tribe's jurisdiction over non-Indians.

The Plaintiffs assert that all of the land within five whole townships (Wise, Denver, Isabella, Nottawa and Deerfield) and two half townships (the northern halves of Chippewa and Union) are "Indian country". The Plaintiffs seek a determination that the townships and half townships at issue are "Indian country" and challenge the ability of the State to impose state criminal laws and state jurisdiction over tribal members, the ability of the State to apply State law and assert Sate jurisdiction over the Tribe and its members and the ability of the State to impose state income tax against tribal members on the land in dispute. (Complaint in Intervention by the United States paragraph 16, 17, 18, 19, and 20).

Facts

Portions of the City of Mt. Pleasant fall within one of the townships that are the subject of this litigation. The City of Mt. Pleasant was incorporated over 100 years ago and according to the 2000 United Sates Census the population of the City was 25,946. The City is 7.9 square miles. The northern half of the City of Mt. Pleasant lies within the

northern half of Union Township. The City of Mt. Pleasant imposes the City's criminal laws and jurisdiction over all people (Tribal and non-Tribal) within the City boundaries, imposes civil law and jurisdiction over all people (Tribal and non-Tribal) within the City boundaries and imposes a City personal property tax within the City boundaries.

The City of Mt. Pleasant seeks to intervene as a right, or in the alternative permissibly in order to participate in litigation which will ultimately decide whether the City of Mt. Pleasant has civil and criminal jurisdiction within the City limits.

Argument

FRCP 24 sets forth the test for intervention. Rule 24(a)(2) provides that upon timely application, anyone shall be permitted to intervene as a matter of right:

> When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> FRCP 24(a)(2).

In order to intervene as a right pursuant FRCP 24(a), a proposed intervenor must establish the following four elements:

1. The motion to intervene is timely.

2. The proposed intervenor has a substantial legal interest in the subject matter of the case.

3. The proposed intervenor's ability to protect their interest may be impaired in the absence of intervention.

4. The parties already before the court may not adequately represent the proposed intervenor's interest.

US v. Michigan, 424 F. 3d 438 (6th Cir. 2005) citing *Grutter v. Bollinger,* 188 F. 3d

394, 397-398 (6th Cir. 1999).

1. The request for intervention is timely.

Timeliness is to be evaluated in the context of all relevant circumstances. *Stupak-Thrall v. Glicman*, 226 F. 3d 467 (6th Cir. 2000). In considering timeliness, a variety of factors are considered including the development in the case, the purpose for intervention, and how long the proposed intervenors knew of their interest in the property or a transaction at issue before they sought intervention. *Stupak-Thrall*, at 473-74.

Although the present suit has been pending for a while, it is still in its infancy. A review of the case management and scheduling order dated December 19, 2006 reveals that the parties disclosed expert witness materials August 1, 2007, have until November 2, 2007 for completion of rebuttal expert materials and that discovery will remain open until March 7, 2008. The court has a status conference scheduled for December 6, 2007 and the filing deadline for dispositive motions is not until May 30, 2008. (Order Granting the United States' Motion for Modification of the Case Management and Scheduling Order and Resetting Dates)

The City just recently received the attached letter from the United States Department of Commerce - U.S. Census Bureau that the area covered by the City's "jurisdiction has been claimed as within the boundary of a federally recognized American Indian Reservation and/or off reservation trust land." (Letter attached as **Exhibit A**) The City had not previously been advised that there was a dispute about how land was treated for purposes of the Census. If the property was within the City limits, its residents were treated for all purposes as being within the jurisdiction of the City of Mt. Pleasant.

2. The City has a substantial legal interest in the subject matter of the case.

The Tribe asserts that a portion of the City of Mt. Pleasant is "Indian country". A determination by this Court that the land in question is "Indian country" would limit the actions that the City of Mt. Pleasant could take on the land in question. Currently, the City of Mt. Pleasant exercises jurisdiction over the land in question and enforces its rules, regulations and ordinances. It polices the land in question and exercises criminal and civil jurisdiction over the people and property within the City limits.

Under these circumstances, the City of Mt. Pleasant should participate fully in the development of the legal issues in this case and this court should allow intervention to save it, and the parties substantial time and expense.

3. In the absence of intervention, the City's interests are not protected.

If not allowed to intervene, the City of Mt. Pleasant's substantial legal interests could be impaired. The City of Mt. Pleasant would likely be legally bound by a judgment in this case. To satisfy the impairment test, an intervenor must show that impairment of its substantial legal interest is possible if intervention is denied. *Michigan State-AFLCIO 103 Fed 3rd at 1247*. The impairment requirement is satisfied even if there is only a potential that the interest of the intervenor could be affected by stare decisis *Michigan State - AFL-CIO 103 Fed 3rd at 1247*.

The continuation of this action without the City of Mt. Pleasant would impair the City's ability to protect its substantial legal interest in the property in question because the court's holding in this litigation would likely have stare decisis application. Namely, a decision that the property in question is "Indian country" would limit the actions that the City of Mt. Pleasant could take in accordance with federal law. Under these circumstances, the

City of Mt. Pleasant should participate in the development of the legal issues in this case and this Court should allow intervention to save it, and the parties substantial time and expense.

4. The City is not adequately protected.

An applicant for intervention bears the burden of proving that they are inadequately represented by a party to the suit. However, this burden has been described as minimal because it need only be shown that there is a potential for inadequate representation. *Grutter*, 188 F. 3d at 400.

The Tribe and the State have entered into a Joint Stipulation Narrowing the Issues related to Jurisdictional Defenses. The stipulation does not adequately protect the City of Mt. Pleasant. Paragraph 5 of the stipulation states:

> The Saginaw Tribe specifically does not seek remedies related to State property taxes on land held in fee simple within the boundaries of the historic Isabella reservation. The Saginaw Tribe also specifically does not seek any remedies related to the collection of State sales taxes as part of this litigation.

The language of the stipulation makes clear that the State is protecting only its own interests and not the interests of the City of Mt. Pleasant. The stipulation provides that Tribe does not seek remedies related to State property taxes and does not seek remedies related to the collection of State sales tax as part of the litigation. Because there has been no statement regarding the collection by the City of taxes, it would appear that the Tribe could seek remedies related to or directly impacting upon the City of Mt. Pleasant's collection of taxes. Likewise, a determination by this court that the area in dispute constitute "Indian country" pursuant to federal law has wide reaching impact on the City of Mt. Pleasant including the rights of the City of Mt. Pleasant to enforce its rules, regulations

and laws, including, its ability to enforce zoning regulations. The State has no such zoning issues to concern it. Likewise, the City is concerned about how a ruling might limit or impede its responsibility to respond to alleged criminal law violations.

While the State of Michigan may be concerned about its abilities to enforce its own laws should the court rule that the area in question is "Indian country", the State has no such interest in protecting or enforcing the rules, regulations and laws of the City of Mt. Pleasant.

The City of Mt. Pleasant was involved as a party defendant in a suit filed back in 1991 concerning many of these same issues. In 1991, the Department of Justice brought an action on behalf of the Tribe and individual Indian property owners against the State of Michigan, the City of Mt. Pleasant and other political subdivisions of Michigan, challenging the assessment of ad valorem property taxes on Indian-owned lands. The case raises the question of whether certain parcels of land in Michigan west of Saginaw Bay that were owned by the Saginaw Chippewa Indian Tribe and by members of the Tribe were subject to ad valorem property taxes.

This District Court granted summary judgment for the defendants, finding that when Congress conveyed the land to individual Indian owners in unrestricted fee simple pursuant to the 1864 treaty, Congress intended to give the state the authority to tax the land. *U.S. on Behalf of Saginaw Chippewa Tribe v. State of Mich.*, 882 F.Supp. 659 (ED Mich. 1995). This decision was reversed and remanded by the United States Court of Appeals for the Sixth Circuit with instructions that it was remanding for "further proceedings, including adjudication of the defendants' claims that the land at issue is not reservation land and that the Saginaw Chippewa Tribe has been dissolved." *U.S. on Behalf of Saginaw Chippewa*

Indian Tribe v. State of Mich, 106 F.3d 130, 135 (6th Cir. (Mich.) 1997).

Ultimately the United States Supreme Court granted certiorari, vacated the judgement and remanded to United States Court of Appeals for the Sixth Circuit Appeals. *Michigan v. U.S., 524 U.S.* 923; 118 S.Ct. 2316; 141 L.Ed.2d 692, 66 USLW 3085, 66 USLW 3785, 66 USLW 3789 (1998).

CONCLUSION

WHEREFORE, for the reason set forth herein, the City of Mt. Pleasant requests that this court allow it to intervene as a Defendant as a matter of right or in the alternative, by permission and should allow the City of Mt. Pleasant to intervene as a Defendant in this matter and permit it to file the answer attached as **Exhibit B**.

Date: September 14, 2007

Respectfully submitted,

LYNCH, GALLAGHER, LYNCH,
MARTINEAU & HACKETT, P.L.L.C.

/s/ Mary Ann J. O'Neil

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2007, I electronically filed **City of Mt. Pleasant's Motion to Intervene,** with the Clerk of the Court using the ECF system, which will send notification of such filing to the

following: Sean J. Reed, 7070 E. Broadway Road, Mt. Pleasant MI 48858; William A. Szotkowski, 1360 Energy Park Drive, Suite 210, St. Paul, MN 55108-5252; Patricia Miller, L'Enfant Plaza Station, P.O. Box 44378, Washington, DC 20026-4378; and Todd B. Adams, 525 W. Ottawa St., Fl. 6, P.O. Box 30755, Lansing, MI 48909.

Date: September 14, 2007

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