No. COA09-431 TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

McCRACKEN AND AMICK, INCORPORATED d/b/a THE NEW VEMCO MUSIC CO. AND RALPH AMICK,	)	
Plaintiffs,	)	
v.	)	From Wake County
BEVERLY EAVES PERDUE, in her official capacity as Governor of North Carolina,	)	
Defendant.	)	

****

BRIEF OF *AMICI CURIAE* EASTERN BAND OF CHEROKEE INDIANS OF NORTH CAROLINA, NATIONAL CONGRESS OF AMERICAN INDIANS, NATIONAL INDIAN GAMING ASSOCIATION, UNITED SOUTH AND EASTERN TRIBES, ARIZONA INDIAN GAMING ASSOCIATION AND POARCH BAND OF CREEK INDIANS OF ALABAMA IN SUPPORT OF DEFENDANT'S APPEAL

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I. INTRODUCTION

This case attacks the fifteen year old Tribal-State Compact between the Eastern Band of Cherokee Indians ("Tribe") and the State of North Carolina, yet Plaintiffs did not name the Tribe as a party. The Superior Court's Order held that

North Carolina's 2006 video gaming legislation violated the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21, but did not provide any supporting legal analysis. The Tribe is a necessary party, and thus the Superior Court should not have issued a declaratory judgment in the Tribe's absence. In addition, the Superior Court erred in its legal conclusion regarding IGRA.

For the reasons set forth below, the *amici curiae* respectfully request that this Court reverse the Superior Court's Order.

II. ARGUMENT

A. The Tribe Is a Necessary Party

North Carolina law requires that "those who are united in interest must be joined" as parties. N.C. Gen. Stat. § 1A-1, Rule 19. A court cannot determine a claim when doing so would "prejudice ... the rights of others not before the court ...." *Id.* Necessary parties "must be joined in an action." *Booker v. Everhart*, 294 N. C. 146, 156, 240 S.E.2d 360, 365 (1978).

"The term 'necessary parties' embraces all persons who have or claim material interests in the subject matter of a controversy, which interests will be directly affected by an adjudication of the controversy." *Equitable Life Assur. Soc. of United States v. Basnight*, 234 N.C. 347, 352, 67 S.E.2d 390, 394-95 (1951).

An adjudication that affects an absent but necessary party's rights "cannot yield a valid judgment." *Karner v. Roy White Flowers, Inc.*, 351 N.C. 433, 438-40,

527 S.E.2d 40, 44 (2000) (internal quotation omitted). When a necessary party is absent, "the court should refuse to deal with the merits of the case until the absent parties are brought into the action, and in the absence of a proper motion by a competent person, the defect should be corrected by *ex mero motu* ruling of the court." *Booker*, 294 N.C. at 158, 240 S.E.2d at 367.

Furthermore, the Declaratory Judgment Act, upon which Plaintiffs and the Superior Court rely, provides in part that "no declaration shall prejudice the rights of persons not parties to the proceedings." N.C. Gen. Stat. § 1-260.

1. This Lawsuit's Focus on the Tribe's Compact Renders the Tribe a Necessary Party

The Complaint alleges that this case arises from "the interplay" between North Carolina law, the Tribe's "compact" and IGRA. (Record on Appeal ("R.A.") at 4-5). The Complaint alleges that North Carolina's legislative regulation of video gaming has "***abrogated and voided provisions of the [Tribe's] Compact ....***" (R.A. at 5) (emphasis added).

The Complaint seeks a judgment prohibiting the Tribe from "possession or operation of video gaming machines ... because those activities are not allowed elsewhere in this State." (*Id.* at 10). It also seeks an injunction prohibiting the Governor from negotiating new compacts, or amending "the existing Tribal-State Compact." *Id.* Thus the Tribe's Compact is a cornerstone of the Complaint.

Plaintiffs argued below that "S.L. 2006-6 ***abrogates the Tribal-State Compact*** ... by [authorizing the Tribe's] possess[ion] and operat[ion] [of] video gaming machines that are not allowed elsewhere in North Carolina." Plaintiffs' Opposition to Motion to Dismiss ("Plaintiffs' Opposition") at 16 (emphasis added). They sought "***a judicial declaration to that effect.***" *Id.* (emphasis added). The Superior Court's Order ("Order") declared that "the State acted unlawfully in authorizing the ***Eastern Band of Cherokee Indians*** to possess and operate video gaming machines ...." (R.A. at 60-61) (emphasis added).

Where a complaint prays for relief that would void an agreement, such as the Tribe's Compact here, the parties to that agreement "have to be joined." *Swenson v. Thibaut*, 39 N.C. App. 77, 103-04, 250 S.E.2d 279, 295-96 (N.C. Ct. App. 1978). There can be no questioning the Tribe's "claim" of an "interest which would be affected by the declaration" sought by Plaintiffs' Complaint. N.C. Gen. Stat. § 1-260.

Federal courts, where tribal interests are typically litigated, are uniformly in accord. "No procedural principle is more deeply embedded in the common law than that, ***in an action to set aside ... a contract, all parties who may be affected by*** the determination of the action are indispensable." *Virginia Sur. Co. v. Northrop Gruman Corp.*, 144 F.3d 1243, 1248 (9th Cir. 1998) (emphasis added).

Because the Tribe is a party to the Compact that Plaintiffs seek to void (see R.A. at 5-10), "[i]n the Tribe's absence, complete relief may not be afforded between the parties to this action." *Clinton v. Babbitt*, 180 F.3d 1081, 1088 (9th Cir. 1999). *See also Manybeads v. United States*, 209 F.3d 1164, 1165 (9th Cir. 2000); *McClendon v. United States*, 885 F.2d 627, 633 (9th Cir. 1989); *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975). Prejudice exists as a matter of law when parties to a contractual agreement are not joined as parties to a lawsuit seeking to invalidate the contract. *See Clinton*, 180 F.3d at 1089; *Virginia Sur. Co.*, 144 F.3d at 1248; *Kescoli v. Babbitt*, 101 F.3d 1304, 1309-10 (9th Cir. 1996).

In addition, the Tribe and State are "united in interest" by virtue of their Compact. *Id.* "[A] person must be joined as a party to an action if that person is 'united in interest' with another party to the action. A person is 'united in interest' with another party when that person's presence is necessary in order for the court to determine the claim before it without prejudicing the rights of a party before it or the rights of others not before it." *Ludwig v. Hart*, 40 N.C. App. 188, 189-90, 252 S.E.2d 270, 272 (N.C. Ct. App. 1979). "A judgment which is determinative of a claim arising in an action which one who is 'united in interest' with one of the parties has not be joined is void." *Id.*

The Superior Court's failure to consider the Tribe's interests under N.C. Gen. Stat. § 1A-1, Rule 19 ("Rule 19") and the Declaratory Judgment Act was an abuse of discretion. *See, e.g., Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1223 (9th Cir. 2000); *Stanley v. University of Southern California*, 178 F.3d 1069, 1079 (9th Cir. 1999); *United States v. Schlette*, 842 F.2d 1574, 1577 (9th Cir. 1988); *Central Valley Typographical Union No. 46 v. McClatchy Newspapers*, 762 F.2d 741, 740 (9th Cir. 1985).

The Tribe is a "necessary party" under Rule 19 because of its Compact and related interests at issue here.

2. <u>The Lower Court Ignored the Tribe's Right of Self-Governance</u>

IGRA authorizes the Tribe to engage in gaming to "promot[e] tribal economic development, self-sufficiency, and [a] strong tribal government[]." 25 U.S.C. § 2702(1). Congress found that "the income [from tribal gaming] often means the difference between an adequate governmental program and a skeletal program that is totally dependant on federal funding." S. Rep. No. 446, 100th Cong., 2d. Sess., *reprinted in* 1988 U.S.C.C.A.N. 3071, 3072 ("Senate Report"). Tribal interests "include raising revenues to provide governmental services for the benefit of the tribal community ... , promoting public safety [and] law and order on tribal lands, [and] realizing ... economic self-sufficiency and Indian self-determination ...." *Id.* at 3083. Gaming revenues, Congress noted, "have

enabled tribes, like lotteries and other games have done for State and local governments, to provide a wider range of government services to tribal citizens and reservation residents than would otherwise have been possible." *Id.* at 3072.

The Tribe and other *amici* tribal government members have made progress in attaining Congress' goals for strengthening tribal governments. The Superior Court erred by failing to consider whether, much less find that, the Tribe is a necessary party under Rule 19.

B. The Trial Court Erred in Its Interpretation of IGRA

Without any analysis, the Superior Court simply asserted that "IGRA does not permit a state to ban the possession and operation of video gaming machines elsewhere in the state while allowing their possession and operation on tribal lands." (R.A. at 60). As a result of that conclusion, the Superior Court's Order "declares that the State acted unlawfully in authorizing the Eastern Band of Cherokee Indians to possess and operate video gaming machines on tribal lands within North Carolina because that activity is not allowed elsewhere in this State ...." (R.A. at 61).

The Superior Court's Order is contrary to IGRA's plain language, Congressional purpose and legislative history, federal Executive agency action, and settled federal Indian law canons of statutory construction.

1. Background: IGRA's Purpose and Key Provision

Congress' primary purpose in IGRA was to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). Congress expressed this purpose as "a principal goal of Federal Indian policy ...." *Id.* § 2701(4).

IGRA's key language here provides that Class III gaming is lawful on Indian lands if "***located in a State that permits such gaming for any purpose by any person, organization, or entity*** .... " 25 U.S.C. § 2710(d)(1) (emphasis added). Plaintiffs' contend that S.L. 2006-6 violates this provision of IGRA. (*See* R.A. at 6, 8-10, 52).

This Court should reverse the Superior Court's Order because it is contrary to IGRA's plain language, its policies and legislative history, federal agency interpretations and well-settled canons of federal Indian law.

2. The State "Permits" the Tribe to Operate Video Gaming

In construing a statute, this Court's primary task is to ensure that the legislative intent is accomplished. *See Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 574, 573 S.E.2d 118, 121 (2002). Courts ascertain legislative intent from the statute's plain words. *See Shaw v. U.S. Airways, Inc.*, 362 N.C. 457, 460, 665 S.E.2d 449, 451 (2008). When a statute's language is clear and unambiguous,

courts must give effect to the statute's plain meaning. *See State v. Hooper*, 358 N.C. 122, 125, 591 S.E.2d 514, 516 (2004). Courts only look behind a statute's plain language when a literal interpretation would lead to absurd results or contradict the statute's explicit purpose. *See State v. Beck*, 359 N.C. 611, 614, 614 S.E.2d 274, 277 (2005).

IGRA's "permits such gaming" language has a clear, unambiguous meaning. "Permit" means "To suffer, allow, consent, let; to give leave or license; to acquiesce, ... or to expressly assent or agree ...." *Black's Law Dictionary* at 1026 (West 5th ed. 1979). *See also Webster's New Twentieth Century Dictionary Unabridged* at 1336 (Simon and Schuster 2d ed. 1983) ("Permit" means "to give permission to; to authorize; ... to allow by silent consent .... "); *Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 722 (9th Cir. 2003) (adopting *Black's* definition).

Here, there can be no doubt that North Carolina "permits" the Tribe's use of video gaming machines. Indeed, Plaintiffs concede the point. (*See* R.A. at 7-8). North Carolina "explicitly excepts Indian gaming from provisions of state law that otherwise prohibit slot machines ...." *Artichoke Joe's v. Norton*, 216 F.Supp.2d 1084, 1120-21 (E.D. Cal. 2002), *aff'd* 353 F.3d 712 (9th Cir. 2003).[1]

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[1] Interestingly, the federal district court judge who authored the *Artichoke Joe's* opinion, the Hon. David F. Levi, has since retired from the bench and is now the Dean of the Duke Law School. *See* http://www.law.duke.edu/fac/levi/.

Here, as in *Artichoke Joe's*, "[a] state's affirmative permission to tribes to engage in gaming ... ***fits well within [IGRA's] plain language***." *Id.* at 1121 (emphasis added). Congress used "capacious language" in IGRA to "clarify the situations in which it would be lawful for Indian tribes to offer class III gaming." *Id.* IGRA does not define the term "permits," "neither placing restrictions on the word nor otherwise limiting its meaning." *Id.* IGRA "does not say 'permits such gaming ***independently of IGRA*** for any purpose ....'" *Id.* (emphasis in original).

Focusing on IGRA's plain meaning, there is no question that North Carolina "permits" the Tribe's continuing use of video gaming machines.

3. The Tribe Is an "Entity"

IGRA's use of the term "entity" must be read to include an Indian tribe. *Webster's* defines "entity" as "being; existence" and "a thing that has real and individual existence ...." *Webster's*, *supra*, at 607. *Black's* defines "entity" as "A real being; existence. An organization or being that possesses separate existence for tax purposes." *Black's*, *supra*, at 477.

The Superior Court held that the Tribe is not an "entity" within IGRA's meaning. Plaintiffs' Complaint seeks "a judgment declaring that ... operation of video gaming machines by the Tribe is prohibited because those activities are not allowed elsewhere in the State." (R.A. at 10). Plaintiffs' argued below that the "State may NOT ... permit the Tribe to operate video poker games, because...the

State has not permitted 'such gaming' for any purpose by any ***other*** person, organization or entity." Plaintiffs' Opposition at 19 (emphasis added). The Order ratified this argument. (*See* R.A. at 59).

By adding the word "other," Plaintiffs argue that the Tribe is not an "entity" under IGRA. But that is not what IGRA says. IGRA "does not say 'permits such gaming for any purpose by any ... entity ***other than Indian tribes***.'" *Artichoke Joe's*, 216 F.Supp.2d at 1121. "Congress did not say that a state had to permit class III gaming activities for any ***non-Indian*** purpose for any ***non-Indian*** ... entity." *Id.* at 1122 (emphasis in original). Instead, as noted above, IGRA authorized Class III gaming on Indian lands when "located in a State that permits such gaming for ***any purpose***, by ***any ... entity ....***" 25 U.S.C. § 2710(d)(1)(B) (emphasis added).

Artichoke Joe's found that "this statutory language cannot reasonably be understood to condition class III Indian gaming on the state's permission of class III gaming to all persons for any purpose." *Artichoke Joe's*, 216 F.Supp.2d at 1091. The court observed that "[i]f this were the proper interpretation, IGRA would be a virtual nullity because no state would ever grant class III gaming privileges to all comers for any purpose." *Id.* The court concluded that IGRA "is best understood to open the way to class III Indian gaming if the state grants permission to any one group or person, including Indian tribes." *Id.*

The Superior Court's holding here is directly contrary to well-established federal law regarding Indian tribes as distinct legal entities. For nearly two centuries, the Supreme Court has recognized that "Indian tribes endure as distinct ***entities*** which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life." *United States v. Mazurie*, 419 U.S. 544, 557, (1975) (*citing United States v. Kagama*, 118 U.S. 375, 381-82 (1886)); *see also McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 173 (1973); *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831) (Cherokee Nation is "a distinct political society").

The Tribe is federally recognized, an established "entity" under federal law. *See* Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 73 Fed. Reg. 18,553, 18,554 (Apr. 4, 2008) (listing the Tribe as federally recognized tribe). Listed tribes "have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States ...." *Id.* at 18,553.

There can be no question that the United States regards the Tribe as an "entity" under that term's plain meaning and as it is used in IGRA.

4. IGRA's Purpose, Policies and Legislative History Support Reversal

If this Court finds IGRA ambiguous it must determine Congress' purpose and legislative intent. *See Coastal Ready-Mix Concrete Co., Inc. v. Bd. of Comm'rs of Town of Nags Head*, 299 N.C. 620, 629, 265 S.E.2d 379, 385 (1980). In determining legislative purpose for ambiguous statutes, courts are guided by the policy objectives behind the statute's passage and the statute's legislative history. *See Electric Supply Co. of Durham, Inc. v. Swain Electrical Co., Inc.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294-95 (1991).

The Superior Court's Order directly undermines IGRA's purpose of "promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). The Superior Court's interpretation of IGRA, striking down N.C. Gen. Stat. 14-306.1A, and thereby legalizing video gaming machines statewide, "would not further any of IGRA's goals and would limit the states' authority and flexibility without any resulting benefit to the tribes." *Artichoke Joe's*, 216 F.Supp.2d at 1126.

IGRA's legislative history also supports reversal. Prior to IGRA's passage, there were two competing bills before Congress: S. 555, 100th Cong. (1987), and S. 1303, 100th Cong. (1987). Each had different language addressing the question presented here. S. 555 would have permitted class III gaming where such gaming was "***otherwise*** legal within the State where such [Indian] lands are located." S.

555, § 11(d)(2)(A) (emphasis added). In contrast, S. 1303 would have had the federal government regulate class III gaming "where such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity." S. 1303, § 10(b).

While S. 555 became the basis for most of IGRA's final version, Congress rejected that bill's "otherwise" language in favor of S. 1303's "permits such gaming for any purpose by any person, organization or entity" formulation. S. 1303, § 10(b). The rejected S. 555 "otherwise" language would appear to "block a state from permitting tribal gaming while otherwise prohibiting gaming by others." *Artichoke Joe's*, 216 F.Supp.2d at 1125. Congress' rejection of the "otherwise" language clarifies that it "did not intend to so limit the states or the tribes." *Id.*

This history is consistent with Congress' intent for tribes and states to have flexibility in regulating Indian gaming. *See, e.g.*, Senate Report at 3084 ("A compact may allocate most or all of the jurisdictional responsibility to the tribe, to the State or to any variation in between").

IGRA's legislative history reflects Congress' desire to satisfy the concerns of *both* tribes and states: "[T]he Committee concluded that the use of compacts between tribes and states is the best mechanism to assure that the interests of both sovereign entities are met with respect to the regulation of complex gaming enterprises ...." Senate Report at 3083. Thus a state's decision to agree to tribal

class III gaming "while denying those rights to other persons, organizations, and entities, is a policy judgment, which whether one agrees with it or not, ***does not conflict with IGRA's goal*** of maintaining state authority while protecting Indian gaming from discrimination." *Artichoke Joe's*, 216 F.Supp.2d at 1126 (emphasis added).

5. Federal Executive Agency Action Supports the State's and *Amici's* Position

Support for the view that a State may "permit" class III gaming for Tribes alone is consistently found in federal agency interpretations and actions. IGRA requires that the Secretary of Interior approve tribal-state compacts. *See* 25 U.S.C. § 2710(d)(3)(B). Congress directed the Secretary to disapprove a compact if it "violates ... any provision of this chapter ...." *Id.* at § 2710(d)(8). Thus if the Secretary found that a compact granting exclusive gaming rights to a tribe violated IGRA, the Secretary would disapprove such a compact.

In fact, numerous compacts have granted tribes exclusive gaming rights, and the Secretary has consistently held that IGRA permits such exclusivity. For example, in 1999, California concluded compacts with 62 tribes, granting them exclusive rights to operate video gaming machines that were otherwise prohibited. The Secretary concluded that IGRA permits compacts giving tribes "the ***exclusive right to conduct certain types of Class III gaming***." *Artichoke Joe's*, 353 F.3d at

718 (internal quotations omitted) (emphasis added). In addition to the many California examples, the Secretary has found a number of tribal-state compacts in other states, granting gaming exclusivity to tribes, to be lawful under IGRA.[2]

If this Court finds IGRA's plain language ambiguous, then it must defer to the Secretary's reasonable interpretation. "[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984). *See Artichoke Joe's*, 216 F.Supp.2d at 1126 (giving "substantial deference to the Secretary's understanding of IGRA as expressed in her approval of the compacts").

6. The Federal Indian Law Canon of Construction Requires That Any Ambiguity in IGRA Be Interpreted in the Tribe's Favor

In determining legislative purpose for ambiguous statutes, courts are guided by applicable canons of statutory construction. *See Electric Supply Co. of Durham, Inc.*, 328 N.C. at 656, 403 S.E.2d at 294. Where a court is left with any question as to the correct interpretation of a federal statute enacted to benefit tribes,

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[2] Examples of other tribal-state compacts that give tribes exclusive gaming rights and have been deemed by the Secretary to be consistent with IGRA include: the Eastern Shawnee Tribe and Oklahoma; the Seneca Nation and New York; the Jicarilla Apache Nation and New Mexico; and the Seneca Cayuga Tribe and Oklahoma. *See* http://www.nigc.gov/ReadingRoom/Compacts/tabid/760/Default.aspx#J (federal approvals of tribal-state compacts).

"the doubt [will] benefit the Tribe ...." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 152 (1982).

"Statues are to be construed liberally in favor of Indians, with ambiguous provisions interpreted to their benefit." *County of Yakima v. Confederated Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992); *see Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

Congress intended that courts apply this canon in interpreting IGRA. "The Committee ... trusts that courts will interpret any ambiguities on these issues in a matter that will be most favorable to tribal interests consistent with the legal standards used by courts for over 150 years in deciding cases involving Indian tribes." Senate Report at 3085.

Thus even if this Court does not find IGRA's plain language, purposes and policies, legislative history and federal agency interpretation to be dispositive, the federal Indian law canon mandates that any remaining statutory ambiguity be resolved in the Tribe's favor.

The Superior Court erred in this case by failing to consider, much less apply, this settled Indian law canon.

III. CONCLUSION

For all of these reasons, the *amici* respectfully request that this Court reverse the Superior Court's Order and hold that IGRA permits North Carolina to establish

State gaming policy as enacted in N.C. Sess. Laws 2006-6. *Amici* further respectfully request that this Court find the Eastern Band of Cherokee Indians to be a necessary party, and direct the lower court that no declaratory, injunctive or other relief may be ordered in the Tribe's absence.

Respectfully submitted, this 13th day of May, 2009.

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Gaming Association, Poarch Band of Creek Indians of Alabama

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for *amici curiae* certifies that the foregoing brief, which is prepared using proportional Times New Roman 14-point font, is less than 3,750 words (excluding cover, indexes, tables of authorities, certificates of service, and this certificate of compliance) as reported by the word-processing software.

Date: May 13, 2009

By: Electronically Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the document entitled "BRIEF OF *AMICI CURIAE* EASTERN BAND OF CHEROKEE INDIANS OF NORTH CAROLINA, NATIONAL CONGRESS OF AMERICAN INDIANS, NATIONAL INDIAN GAMING ASSOCIATION, UNITED SOUTH AND EASTERN TRIBES, ARIZONA INDIAN GAMING ASSOCIATION AND POARCH BAND OF CREEK INDIANS OF ALABAMA IN SUPPORT OF DEFENDANT'S APPEAL," to which this Certificate of Service is affixed, on counsel for the Defendant-Appellant and Plaintiff-Appellee by depositing a copy, contained in a first-class-postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows, this 14th day of May, 2009:

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No. COA09-431

North Carolina Court of Appeals

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McCRACKEN and AMICK, INCORPORATED d/b/a THE NEW VEMCO MUSIC CO. and RALPH AMICK,
Plaintiffs,

V

BEVERLY EAVES PERDUE, in her official capacity as Governor of North Carolina,
Defendant.

From Wake
(08CVS19569)

****

ORDER

The following order was entered:

The motion filed in this cause on the 14th day of May 2009 and designated "Motion for Leave to File Amicus Curiae Brief of Eastern Band of Cherokee Indians of North Carolina, National Congress of American Indians, National Indian Gaming Association, United South and Eastern Tribes, Arizona Indian Gaming Association and Poarch Band of Creek Indians of Alabama in Support of Defendant's Appeal" is allowed. The attached brief shall be printed.

By order of the Court this the 20th day of May 2009.

Witness my hand and official seal this the 20th day of May 2009.

John H. Connell
Clerk of North Carolina Court of Appeals

cc:
Ms. Annette Tarnawsky
Mr. Mark A. Davis
Mr. Hugh Stevens
Mr. Michael J. Tadych

Filed the 20th day of May 2009 at 11:23 AM
In the Office of the Clerk, Court of Appeals of North Carolina