

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF  
MASSACHUSETTS,

*Plaintiff,*

vs.

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

*Defendants.*

**CASE NO: 1:13-cv-13286-FDS**

[Formerly Supreme Judicial Court for Suffolk  
County, Massachusetts, CIVIL ACTION NO.  
2013-0479]

**OPPOSITION TO AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION'S  
MOTION TO INTERVENE**

Defendants Wampanoag Tribe of Gay Head (Aquinnah) and Aquinnah Wampanoag Gaming Corporation (collectively "Tribe") submit this opposition to the Motion to Intervene filed by the Aquinnah/Gay Head Community Association ("AGHCA").

**ARGUMENT**

AGHCA filed its Motion and supporting Memorandum, DK## 36 and 37 on the same day as the Town of Aquinnah filed its Motion and supporting Memorandum, DK ## 38 and 39, setting forth substantially the very same analysis, case citations and organization as the Town of Aquinnah. Accordingly, the Tribe incorporates by this reference as if fully set forth herein, the arguments, analysis and case citations made in its Opposition to the Town of Aquinnah's Motion, filed on July 24, 2014.

The Tribe has not waived and has no intention to waive its tribal sovereign immunity from suit as to claims brought by AGHCA.

Four additional arguments are made in opposition to AGHCA's motion.

First, AGHCA's interests allegedly at stake in this litigation are even more attenuated than the Town of Aquinnah's interests because AGHCA is not a government and it has no capacity in any circumstance to exercise sovereign jurisdiction over any lands, much less the Tribe's Indian lands. This litigation is a dispute over Congress' intent regarding the jurisdictional authority of the Tribe, the United States and the Commonwealth of Massachusetts. Regardless of the outcome of this litigation, AGHCA will not exercise any jurisdiction over the Tribe's Indian lands.

Second, as identified in the Tribe's Opposition to the Town of Aquinnah's Motion to Intervene, the Court may base its denial of the motion for permissive intervention based on concerns that intervention will cause undue delay and expense from the Intervenor's potential to seek longer hearings and conduct discovery. See *Costa v. Marotta, Gund, Budd & Dzera, LLC*, 281 Fed. Appx. 5, 6 (1st Cir. 2008). The Tribe and the Commonwealth are in agreement and will be submitting a joint scheduling statement that this case does not need extensive discovery and can be resolved on cross-motions for summary judgment. Legal counsel to the Town of Aquinnah has indicated that the Town does not anticipate the need for discovery if allowed to intervene. Legal counsel to AGHCA is not willing to make a similar commitment. Allowing permissive intervention creates the very real risk that AGHCA will seek to add more expense and delay by pursuing discovery.

Third, AGHCA provides no analysis whatsoever as to why the Town of Aquinnah, if allowed to Intervene, is not able to adequately represent AGHCA.

Fourth, AGHCA has not established that it is the same entity as the Taxpayer's Association of Gay Head, which was a party to the Memorandum of Agreement. AGHCA asserts that it is the same entity in footnote 2, DK # 37 at 2 n.2, but footnote 2 only establishes that AGHCA came into existence in 2003, thirty years after the Memorandum of Agreement was signed. Thus, AGHCA has failed to establish any sufficient interests to warrant either intervention as of right or permissive intervention.

For these reasons and the reasons set forth in the Tribe's Opposition to Town of Aquinnah's Motion to Intervene, AGHCA's motion for intervention as of right or permissive intervention should be denied.

DATED: July 24, 2014

Respectfully Submitted,

/s/ Scott Crowell  
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**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)**

I hereby certify that on July 24, 2014, I, Scott Crowell, spoke by telephone with James L. Quarries III, counsel to the proposed Intervenor in the above-captioned action, in good-faith effort to resolve or narrow the issues presented in this motion and we were unable to do so.

/s/ Scott Crowell  
SCOTT CROWELL

**CERTIFICATE OF SERVICE**

I, Scott Crowell, hereby certify that the OPPOSITION TO INTERVENE was filed through the ECF System and therefore copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be sent, via first-class mail, to those indicated as non-registered participants.

Dated: July 24, 2014

/s/ Scott Crowell  
SCOTT CROWELL