

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

PENOBSCOT NATION

*Plaintiff,*

UNITED STATES OF AMERICA, on its own behalf,  
and for the benefit of the Penobscot Nation,

*Plaintiff-Intervenor,*

v.

JANET T. MILLS,  
Attorney General for the State of Maine;  
CHANDLER WOODCOCK,  
Commissioner for the Maine Department  
of Inland Fisheries and Wildlife; and  
JOEL T. WILKINSON,  
Colonel for the Maine Warden Service; each in  
his/her official capacity,

*Defendants,*

CITY OF BREWER, et al.,

*Intervenor-Defendants.*

Civ. Action No. 1:12-cv-00254-GZS

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF MEMBERS OF  
CONGRESS IN SUPPORT OF PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT**

*Amici curiae*, five members of the Congressional Native American Caucus, respectfully  
submit this Motion for Leave to File a Brief as *Amici Curiae* in Support of Plaintiffs' Motions

for Summary Judgment.<sup>1</sup> The Congressional Native American Caucus is a bipartisan coalition of legislators working to improve nation-to-nation relationships between the United States and the 566 sovereign tribal nations. For the reasons set forth below, *Amici* respectfully request that this Court grant the motion and permit the filing of the attached *amici curiae* brief. All the parties have consented to the filing of the proposed brief.

*Amici Curiae* have a substantial and compelling interest in ensuring that the United States fulfills its trust responsibilities towards Indian tribes. As trustee for Indian tribes, Congress has recognized tribal governments as sovereign within their reserved territories and has an obligation to protect that sovereignty. In fulfilling that obligation through legislation Congress expects federal courts to construe Indian-related legislation in light of the unique principles of federal Indian law. *Amici Curiae*'s substantial and compelling interest is the need to provide this Court with its unique perspective on the canons of statutory construction and the federal trust responsibility under federal Indian law.

A federal district court has the inherent authority to permit the participation of *amicus curiae* that have a substantial interest in bringing useful information to the court's attention. *Alliance of Auto. Mfrs. v. Gwadowsky*, 297 F. Supp. 2d 305, 306 (D. Me. 2003). "It remains within the discretion of the court to determine the fact, extent, and the manner of participation by the *amicus*." *Id.* at 307 (internal quotation marks omitted). *Amicus* participation is appropriate "when there is an issue of general public interest, the *amicus* provides supplemental assistance to

---

<sup>1</sup> *Amici* are Betty McCollum, Member of the U.S. House of Representatives and Co-Chair of the Congressional Native American Caucus; Tom Cole, Member of the U.S. House of Representatives and Co-Chair of the Congressional Native American Caucus; Raúl M. Grijalva, Member of the U.S. House of Representatives and Vice Chair of the Congressional Native American Caucus; Ron Kind, Member of the U.S. House of Representatives and Vice Chair of the Congressional Native American Caucus; and Ben Ray Lujan, Member of the U.S. House of Representatives and Vice Chair of the Congressional Native American Caucus.

existing counsel, or the *amicus* insures a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Id.* (internal quotation marks omitted). The district court may permit an *amicus* filing where the “amicus has a special interest that justifies his having a say,” particularly where, as here, the parties have consented. *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970). District courts “[g]enerally . . . grant leave to appear as an *amicus* if the information offered is timely and useful.” *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (internal quotation marks omitted).

*Amici Curiae* are in a unique position to fully explain Congress’s views of the trust relationship and the Indian canons of statutory construction. Congress reserves Indian lands to assist and protect Indian tribes and intends that reservation to be interpreted to favor and protect Indians. In particular, when Congress enacted the Maine Indian Claims Settlement Act of 1980, 25 U.S.C. §§ 1721 *et seq.*, it expected federal courts to construe any ambiguities in the Act in favor of Indian tribes. Under this longstanding principle of statutory construction, the Act confirms that Congress intended to include the Penobscot River within the Penobscot Reservation. This interpretation is necessary to ensure that the United States fulfills its trust responsibilities and to preserve the right of tribal members to hunt and fish. *Amici Curiae* are uniquely interested in ensuring that the Act is construed in a way that will ensure sovereignty issues are resolved fairly in order to fulfill Congress’s trust responsibility. In contrast, none of the parties is in a position to explain Congress’s understanding of the trust relationship and statutory construction when it enacts Indian-related legislation.

Counsel of record for all parties have consented to the filing of the proposed *amici curiae* brief, which has been submitted after the parties’ cross-motions for summary judgment. This Court has not yet heard oral argument and has not issued a ruling on those motions.

Wherefore, *Amici Curiae* respectfully request that this Court grant leave to file the attached brief as *amici curiae*.

Dated this 29<sup>th</sup> day of April, 2015

Respectfully submitted,

*/s/ L. Scott Gould*

L. Scott Gould, Maine Bar No. 8798  
25 Hunts Point Road  
Cape Elizabeth, Maine 04107  
(207) 799-9799  
sgould@maine.rr.com

**CERTIFICATE OF SERVICE**

I hereby certify that on April 29, 2015, I electronically filed the foregoing Motion for Leave to File *Amici Curiae* Brief of Members of Congress in Support of Plaintiffs' Motion for Summary Judgment with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties of record.

*/s/ L. Scott Gould*  
Attorney for *Amici Curiae*