UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAY MILLS INDIAN COMMUNITY, Plaintiff,	)	
	)	No. 1:11-cv-729
-v-	)	
	)	Honorable Paul L. Maloney
RICK SNYDER, Defendant.	)	

ORDER DENYING MOTIONS TO INTERVENE

Bay Mills Indian Community (Bay Mills) sued Governor Rick Snyder requesting this Court interpret portions of the Michigan Indian Land Claims Settlement Act (MILCSA). Bay Mills asked this Court to declare that a parcel of land – the Vanderbilt Parcel -- in Corwith Township, Michigan, which was purchased with funds from MILCSA, is "Indian Land."

After learning that Snyder had considered settling the lawsuit, the Saginaw Chippewa Indian Tribe of Michigan (ECF No. 44) and the Nottawaseppi Huron Band of the Potawatomi (ECF No. 58) filed motions to intervene. Governor Snyder and Bay Mills have filed responses. (ECF Nos. 61, 61, 67 and 68.) Having reviewed the submissions, the matter will be resolved without a hearing. *See* W.D. Mich. LCivR 7.3(d).

I.

Rule 24 of the Federal Rules of Civil Procedure governs intervention. Subpart (a) requires a court to allow intervention when either of two situations exist: (1) the party is given an unconditional right to intervene by a federal statute, or (2) the party claims an interest in

the property or transaction that is the subject of the lawsuit and resolution of the matter would impair or impede the party's ability to protect his or her interest. Fed. R. Civ. P. 24(a). The latter situation does not require a court to allow the party to intervene if one of the existing parties in the lawsuit would adequately represent the party's interest. Decisions to grant or deny intervention under subpart (a), other than a decision based on timeliness, are reviewed de novo. *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989). The party requesting intervention bears the burden of proving each element and "failure to meet one of the criteria will require that the motion to intervene be denied." *Id.*

Subpart (b) of Rule 24 authorizes a court to permit a party to intervene when either (1) the party is given a conditional right to intervene by a federal statute or (2) when the party has a claim or defense that shares with the main action a common question of law or fact. Fed. R. Civ. P. 24(b). Decisions to grant or deny intervention under subpart (b) fall within the Court's discretion. *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 784 (6th Cir. 2007).

II.

The Saginaw Chippewa Indian Tribe of Michigan (Saginaw Tribe), seeks to intervene by right and by permission.[1] The Saginaw Tribe argues its motion is timely because, although the lawsuit has been pending since 2011, procedurally the lawsuit is still in the early stages of litigation. Also, Governor Snyder's decision to explore settlement talks was a change from his earlier stance and warrants intervention. The Saginaw Tribe asserts that its financial

[1] The Court employs the same shorter reference as the party seeking intervention.

interests are sufficient to meet the liberal standard for intervention under the court rule. The Saginaw Tribe also claims an interest in the litigation because it is an entity regulated by the statute and because it helped craft the statute. Finally, the Saginaw Tribe insists that Governor Snyder does not adequately represent its interest in the outcome of the litigation. As a result, the Saginaw Tribe's ability to protect its interest is impaired if it is not allowed to intervene. For permissive intervention, the Saginaw Tribe explains that it is an intended beneficiary of the Bay Mills Compact and that its defenses to Bay Mills' complaint share common questions of law and fact with those asserted by Governor Snyder. The Saginaw Tribe does not allege they are authorized to intervene by any federal statute.

Because the Saginaw Tribe does not have a sufficient legal interest in the lawsuit, its request to intervene of right is DENIED. The United States Supreme Court has interpreted the word "interest" in Rule 24(a) as "a significantly protectable interest." *Donaldson v. United States*, 400 U.S. 517, 542 (1971); *Linton by Arnold v. Comm'r of Health and Env't, State of Tennessee*, 973 F.2d 1311, 1319 (6th Cir. 1992). The Sixth Circuit has "opted for a rather expansive notion of the interest sufficient to invoke intervention of right." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). This circuit's broad standard for intervention is not without limits. *Granholm*, 501 F.3d at 780 ("[T]his does not mean any articulated interest will do."). The party seeking to intervene "'must have a direct and substantial interest in the litigation' such that it is a 'real party in interest in the transaction which is the subject of the proceeding." *Reliastar Life Ins. v. MKP Invs.*, 565 F.App'x 369, 372 (6th Cir. 2014) (internal citation and citation omitted). "The inquiry into the substantiality of the claimed interest is necessarily fact-specific." *Miller*, 103 F.3d at 1245.

The Saginaw Tribe has not demonstrated that its financial interests in the outcome of the lawsuit constitute a substantial legal interest for the purpose of intervention of right. The Saginaw Tribe has a financial interest in maintaining the revenue streams generated by its gaming facilities, which it alleges would be threatened by expansion of off-reservation gaming sites like the Vanderbilt Parcel. This asserted interest sets the bar too low. The Saginaw Tribe's interest in minimizing economic competition is simply not sufficient to merit intervention. *See Reliastar Life Ins.*, 565 F.App'x at 372 (explaining that a potential intervenor does not have required legal interest where it seeks to protect one of the existing party's financial assets in order to protect its own economic interests) (citations omitted). *Accord, Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 318-19 (3d Cir. 1995) ("In general, a mere economic interest in the outcome of the litigation is insufficient to support a motion to intervene.") (citations omitted). The outcome of this lawsuit might well affect the Saginaw Tribe's revenue streams, but those revenue streams are not a significantly protectable legal interest within the context of underlying lawsuit. *See United States v. Tennessee*, 260 F.3d 587, 595 (6th Cir. 2001) ("Implementation of the settlement agreement does not alter CMRA's economic interests with the State to provide support and services to the class members nor its ability to negotiate the terms of these contracts.").

The authority cited by the Saginaw Tribe does not require a different conclusion. The intervening parties in the opinions cited by the Saginaw Tribe all had more direct economic interests at stake in the underlying litigation. In *United States v. Detroit International Bridge Company*, 7 F.3d 497, 501 (6th Cir. 1993), the circuit court concluded

that the district court erred in denying intervention of right. The circuit court explained that the condemnation proceedings that were the subject of the underlying litigation, contrary to the assertions by the parties to the litigation, "clearly provided" for the condemnation of property owned by the parties seeking intervention. The Saginaw Tribe does not have any possessory rights to Vanderbilt Parcel that is the subject of the underlying claim in this lawsuit. In *Liberte Capital Group, LLC v. Capwill*, 126 F.App'x 214, 218-19 (6th Cir. 2005), the circuit court concluded that a group of banks had the requisite interest for the purpose of intervention of right, even though the banks could not show that their interests would be impaired without intervention.[2] The court had appointed a receiver, who sued the banks. The circuit court held that the banks had a substantial financial interest in the underlying litigation because of the lawsuit filed against them by the receiver. Here, the Saginaw Tribe has not been sued by either Bay Mills or by the State of Michigan. Finally, in *City of St. Louis v. Velsicol Chemical Corporation*, 708 F.Supp.2d 632, 666 (E.D. Mich. 2010), the City of St. Louis sued the trustees of several trusts that had been established through bankruptcy proceedings. The trusts had been created to manage certain financial assets for the purpose of the remediation of seven polluted properties. The district court granted the motion to intervene filed by the United States, concluding that the United States was a party to the settlement agreement establishing the trusts and was also a named beneficiary of the

[2] The circuit court affirmed the district court's decision denying the banks' motion to intervene of right, but reversed the district court's decision denying the banks' motion for permissive intervention.

trusts. Here, the Saginaw Tribe was not a party to the MILCSA and is not a named beneficiary to any funds involved in the underlying litigation.

The Saginaw Tribe's reliance on its involvement "in the political process that resulted in the Indian Gaming Regulatory Act" (IGRA) (ECF No. 46 PageID.298) is too attenuated a connection to the underlying lawsuit to create a substantial interest justifying intervention. The underlying lawsuit requests a declaration regarding MILCSA, not the IGRA. Although the Saginaw Tribe may be regulated under the IGRA, the underlying litigation does not involve regulation of the Saginaw Tribe's conduct. *See Granholm*, 501 F.3d at 781-82. And, the Sixth Circuit has held that involvement in the political process leading to the adoption or enactment of a proposal does not create, in that organization, a substantial legal interest in a subsequent lawsuit challenging the validity of the resulting statute. *See id.* (discussing *Northland Family Planning Clinic, Inc. v. Cox*, 478 F.3d 323 (6th Cir. 2007)).

Also supporting the decision to deny intervention, Governor Snyder has filed a motion for summary judgment. (ECF No. 53.) Governor Snyder argues MILCSA does not support Bay Mills' position and asks the Court to dismiss the claims in the complaint. The Saginaw Tribe premised its motion to intervene on the assumption that Governor Snyder was negotiating a settlement with Bay Mills that would have allowed gaming at the Vanderbilt Parcel. The Governor's motion clearly undermines that assumption. On the record before this Court, any interests the Saginaw Tribe has in the lawsuit are adequately defended by the existing parties.

The Saginaw Tribe's request for permissive intervention is also DENIED. The Saginaw Tribe has not demonstrated that it has any claims or defenses that share a question

of fact or law in common with the underlying action. The underlying lawsuit requires the Court to interpret the MILCSA. The Saginaw Tribe is neither a party to the MILCSA nor a beneficiary of the MILCSA. The MILCSA does not regulate the Saginaw Tribe. As explained by Governor Snyder in his response, Bay Mills and the Saginaw Tribe are two of a small number of tribes operating Class III gaming facilities in the State of Michigan. The State of Michigan enters into gaming compacts with each tribe individually, not collectively. The Court has not been asked to interpret any of the Indian gaming statutes or any of the tribal gaming compacts.

Finally, section 9 of Bay Mills' gaming compact does not provide a reason to allow the Saginaw Tribe to intervene. Section 9 of the Bay Mills compact states that, for off-reservation gaming, any application to take land in trust shall not be submitted to the Secretary of the Interior without "a prior written agreement between the Tribe and the State's other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subjection of the § 20 application." (ECF No. 1-3 PageID.36.) Bay Mills has not asked for the Secretary of the Interior to take the Vanderbilt Parcel into trust.

Also supporting the decision to deny permissive intervention, Governor Snyder has filed a motion for summary judgment. The Governor has asked the Court to deny the requests in the complaint. And where the existing parties will adequately represent the interests of the potential intervenors, "the case for permissive intervention disappears." *Menominne Indian Tribe of Wisconsin v. Thompson*, 164 F.R.D. 672, 678 (W.D. Wis. 1996); *see Tri-State Generation and Transmission Ass'n, Inc. v. New Mexico Pub.*

Regulation Comm'n, 787 F.3d 1068, 1075 (10th Cir. 2015); *Acra Turf Club, LLC v. Zanzuccki*, 561 F.App'x 219, 222 (3d Cir. 2014).

III.

After Governor Snyder filed his motion for summary judgment, the Nottawaseppi Huron Band of the Potawatomi (NHBP) filed its motion to intervene.[3] (ECF No. 58.) NHBP requests intervention of right or, alternatively, permissive intervention.

NHBP's motion for intervention of the right is DENIED. NHBP has not demonstrated a sufficient legal interest in the lawsuit between Bay Mills and Governor Snyder. Like the Saginaw Tribe, NHBP asserts an interest ensuring a market for lawful tribal gaming that is not undermined by unlawful gaming activities. The Court has rejected the conclusion that a general economic interest in gaming profits as a sufficient basis for intervention. And, the underlying litigation, which asks the Court to interpret the MILCSA, does not put at issue the Indian gaming regulatory scheme in Michigan. Finally, section 9 of the Bay Mills gaming compact could not be considered a negotiated property interest for NHBP. Bay Mills and the State of Michigan entered into a gaming compact in 1993. NHBP was not a federally recognized tribe until 1995. The MILCSA was enacted in 1997. NHBP and the State of Michigan entered into a gaming compact in 1998. From these dates, it follows that NHBP could not have been an intended beneficiary of section 9 of the Bay Mills compact.

[3] Again, the Court employs the same shorter reference as the party seeking intervention.

For the same reason the Court rejected the Saginaw Tribe's motion, Governor Snyder's motion for summary judgment undermines NHBP's ability to show that its interests would be impaired if it were not allowed to intervene. The position taken by the Governor in the motion adequately protects NHBP's interests.

NHBP's request for permissive intervention is also DENIED. NHBP does not have a claim or defense that shares a common question of law or fact in the underlying litigation. NHBP is not a party to, not a beneficiary of, and not regulated by the MILCSA. In the underlying lawsuit, the Court is not asked to interpret any of the Indian gaming statutes or any of the tribal gaming compacts. And, like the Saginaw Tribe's motion for permissive intervention, Governor Snyder's motion for summary judgment effectively undermines any case for permitting NHBP to intervene. *See Menominee Indian Tribe of Wisconsin v. Thompson*, 164 F.R.D. at 678.

IV.

Bay Mills Indian Community has asked the Court to interpret the Michigan Indian Land Claims Settlement Act and declare that the State of Michigan lacks any authority over the Vanderbilt Parcel, a tract of land purchased with funds from that legislation. Governor Snyder has filed a motion for summary judgment offering an alternative interpretation of the statute, which would require the Court to deny Bay Mills' request for declaratory relief. The Saginaw Chippewa Tribe of Michigan and the Nottawaseppi Huron Band of Potawatomi filed motions to intervene after learning that Governor Snyder had contemplated settling the lawsuit. The Court denies both motions to intervene. The Governor's motion, by itself, undermines the argument in favor of both intervention of right and permissive intervention.

Neither potential intervenor has established that it has a substantial legal interest in the underlying lawsuit. Both assert an interest in existing revenue streams from gaming and both assert an interest in the existing regulatory framework for Indian gaming in Michigan. Neither interest is sufficient for intervention of right. And neither potential intervenor has a claim or defense that shares with the underlying lawsuit a common question of law or fact. The underlying lawsuit requests an interpretation of a statute that does not provide any benefits for or regulate the potential intervenors.

ORDER

For the reasons provided in the accompanying Opinion, The motions to intervene filed by the Saginaw Chippewa Indian Tribe of Michigan (ECF No. 47) and by the Nottawaseppi Huron Band for the Potawatomi (ECF No. 58) are **DENIED.**

IT IS SO ORDERED.

Date: March 8, 2017

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge