Case No. 17-1362

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BAY MILLS INDIAN COMMUNITY,
Plaintiff,

v.

GOVERNOR RICK SNYDER,
Defendant.

ON APPEAL OF DENIAL OF A MOTION TO INTERVENE

BRIEF OF PROPOSED INTERVENOR SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

William A. Szotkowski
Jessica Intermill
Hogen Adams PLLC
1935 W. County Road B2, Suite 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
E-mail: bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed
General Counsel of Soaring Eagle Gaming and Intergovernmental Affairs
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: sreed@sagchip.org

Counsel for Proposed Intervenor
Saginaw Chippewa Indian Tribe of Michigan

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 17-1362 Case Name: Bay Mills v. Snyder

Name of counsel: William A. Szotkowski

Pursuant to 6th Cir. R. 26.1, Saginaw Chippewa Indian Tribe of Michigan
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No. The Tribe is a federally recognized Indian Tribe.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No. The Tribe is a federally recognized Indian Tribe. As such, it does not have a parent corporation and has issued no stock.

CERTIFICATE OF SERVICE

I certify that on 03/31/17 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ William A. Szotkowski
1935 W. County Rd B2, Suite 460
St. Paul, Minnesota 55113

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

Table of Contents

Table of Authorities

Cases

Treaties

Statutes

Rules

Regulations

Secondary Sources

Statement in Support of Oral Argument

This case turns on whether an Indian tribe may intervene in a controversy that will directly impact that tribe's ability to fund its government and to provide funding to local non-tribal municipalities. Considering these important interests, petitioner, Saginaw Chippewa Indian Tribe of Michigan (the "Saginaw Tribe"), respectfully requests oral argument.

Statement of Jurisdiction

28 U.S.C. § 1331 gave the district court original jurisdiction over this action. The district court denied the Saginaw Tribe's motion to intervene on March 8, 2017. A district court's denial of a motion to intervene is immediately appealable. *Purnell v. City of Akron*, 925 F.2d 941, 945 (6th Cir. 1991). The Saginaw Tribe filed a timely notice of appeal on March 29, 2017. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

Statement of the Issues

1. The Saginaw Tribe's timely motion to intervene proffered defenses that share with the main action common questions of law or fact, and showed that its intervention would not delay or prejudice the original parties. Should the district court have granted the Saginaw Tribe's motion for permissive intervention?

2. The district court denied the Saginaw Tribe's motion for permissive intervention because the Saginaw Tribe does not have an interest in and is not a

beneficiary of the Michigan Indian Land Claims Settlement Act. This Court has repeatedly held that standing is not necessary to intervention. Did the district court improperly add a standing requirement to Fed. R. Civ. P. 24(b)?

3. The district court denied the Saginaw Tribe's motion for permissive intervention because it held that the Governor adequately represents the Saginaw Tribe's interests. Fed. R. Civ. P. 24(a) includes an inadequacy-of-representation requirement, but Fed. R. Civ. P. 24(b) does not. Did the district court improperly add an inadequacy-of-representation requirement to Fed. R. Civ. P. 24(b)?

4. The district court held that Governor Snyder adequately represents the Saginaw Tribe's interests even though he has demonstrating a willingness to compromise on the ultimate issue underlying this litigation—the opening of an off-reservation casino that would harm the Saginaw Tribe. If Fed. R. Civ. P. 24(b) includes an inadequacy-of-representation requirement, did the district court correctly apply the requirement?

Statement of the Case

For over a decade, the State of Michigan and its executive officers, including most recently, Governor Snyder, had been steadfast in their opposition to off-reservation Indian gaming. And for years, the Saginaw Chippewa Indian Tribe of Michigan relied on the Governor's steadfast opposition to protect the Saginaw Tribe's interests in ongoing litigation concerning Bay Mills' attempt to open an

off-reservation casino. But at the end of 2016, the Governor reversed course. His sudden willingness to consider Bay Mills' off-reservation casino prompted the Saginaw Tribe to move to intervene in this case. The district court denied the Saginaw Tribe's motion. Because the district court applied an incorrect legal standard, the Saginaw Tribe respectfully asks this Court to reverse the decision of the district court.

Statement of the Facts

I. The Saginaw Chippewa Indian Tribe of Michigan

The Saginaw Chippewa Indian Tribe of Michigan is a federally recognized Indian tribe. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 81 Fed. Reg. 26,826, 26,829 (May 4, 2016). The Saginaw Tribe's Isabella Reservation was secured by an 1855 executive order and treaties of 1855 and 1864. 14 Stat. 657 (1864); 11 Stat. 633 (1855); *Saginaw Indian Chippewa Tribe of Mich. v. Granholm*, 1:05-cv-10296, R. 283, Page ID ## 9009-10 (E.D. Mich. Dec. 17, 2010).

The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.*, is a comprehensive regulatory scheme that affirms the unique authority of tribes to establish casinos on their lands but also imposes specific limitations on gaming development. Among other things, IGRA restricts Indian gaming activity to "Indian lands," *id.* § 2710, which it defines as "all lands within the limits of an

Indian reservation" and certain off-reservation lands that the United States holds in trust or are subject to a federal restraint on alienation. *Id.* § 2703(4). The Saginaw Tribe owns and operates two casinos on its reservation Indian lands: the Soaring Eagle Casino Resort in Mount Pleasant, Michigan, and the Saganing Eagle's Landing Casino in Standish, Michigan. Reed Decl., R. 46, Page ID # 298, ¶ 3.

As a sovereign nation with fiduciary obligations to its citizens, the Saginaw Tribe is responsible for numerous governmental programs. To name just a few, it administers law enforcement, fire protection, a tribal-court system, a health clinic, social services, and an elementary school. Reed Decl., R. 46, Page ID # 299, ¶ 7. Funding these programs is challenging because the Saginaw Tribe's tax base is nearly non-existent, and the Isabella Reservation lacks sufficient natural resources to generate income. *Id.* ¶ 6. The Saginaw Tribe's needs have grown as federal and state funding cuts reduce other potential sources of income. Reed Decl., R. 46, Page ID # 299, ¶ 6. Consequently, the Saginaw Tribe relies heavily on gaming revenue to fund its governmental services. *Id.* at Page ID # 300, ¶ 11.

Soaring Eagle alone generates 90% of the Saginaw Tribe's governmental income, funding 90% of the Saginaw Tribe's governmental departments. *Id.* at Page ID # 299, ¶ 7. The Saginaw Tribe's governmental gaming revenue is, thus, critical to its continued political integrity. This is precisely what Congress expected from the Indian Gaming Regulatory Act. 25 U.S.C. § 2702(1) (expressing

Congress's IGRA purpose of "promoting tribal economic development, self-sufficiency, and strong tribal governments."); *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (recognizing that "tribal gaming operations cannot be understood as mere profit-making ventures that are wholly separate from the Tribes' core governmental functions" because "tribal business operations are critical to the goals of tribal self-sufficiency"); *see also California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 218-20 (1987) (recognizing that Indian gaming is an instrument of tribal sovereignty akin to the taxing power because it provides revenues to operate tribal government and provide essential tribal services).

In addition to serving as Isabella County's largest employer (of tribal members and non-Indians alike), the Saginaw Tribe has shared $144,014,790.56 with neighboring non-tribal governments like the City of Mt. Pleasant, Isabella County, and local townships. Those local governments use the casino-revenue provided by the Saginaw Tribe for their own governmental purposes, including law enforcement, airport maintenance, and K-12 education. Reed Decl., R. 46, Page ID ## 299-300, ¶¶ 8-10.

II. The Bay Mills Indian Community

The Bay Mills Indian Community ("Bay Mills") is also a federally recognized tribe. *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2029

(2014). Bay Mills' reservation is in the upper peninsula of the State of Michigan. *Id.* Like the Saginaw Tribe, Bay Mills owns and operates gaming enterprises on its reservation. *See id.*

But in 2010, Bay Mills opened an additional casino *off* its reservation. Bay Mills purportedly uses accrued interest from funds appropriated by Congress to compensate tribes for land-settlement claims to purchase land in Vanderbilt, Michigan (the "Vanderbilt Parcel") for the express purpose of establishing an off-reservation casino (the "Vanderbilt Casino"). *Id.*; *see* Michigan Indian Land Claims Settlement Act of 1997 ("MILCSA"), Pub. L. No. 105-143, 111 Stat. 2652.

Traveling by road, the Vanderbilt Casino is across the Straights of Mackinaw, about 100 miles south of Bay Mills' upper-peninsula reservation. The site is about 115 miles from each of the Saginaw Tribe's lower-peninsula casinos. Reed Decl., R. 46, Page ID.298, ¶ 5. The Vanderbilt Casino falls within the Saginaw Tribe's northern casino market and would draw customers away from its casinos, directly impacting the Saginaw Tribe's government funding and its support for local non-tribal governments. *Id.* at Page ID # 300, ¶ 11.

IGRA only allows off-reservation gaming on lands that are held in trust or otherwise subject to a federal restraint on alienation. *See* 25 U.S.C. § 2703(4). Bay Mills relies on MILCSA to fit the Vanderbilt Parcel within this IGRA restriction. It argues that because MILCSA stated that lands purchased with the appropriated

funds "shall be held as Indian lands are held," MILCSA § 107(a)(3), its MILCSA-purchased lands are automatically subject to a federal restraint on alienation, Mem. Opp. Summ. J., R. 70, Page ID # 761, rendering them IGRA "Indian lands."

III. Governor Snyder

When Bay Mills first announced its proposed Vanderbilt Casino, the Saginaw Tribe was immediately concerned. But the State of Michigan appeared willing to oppose the off-reservation casino and capable of ensuring that the casino would be shut down. *See* Reed Decl., R. 46, Page ID # 304, ¶ 21. The Saginaw Tribe relied on Michigan's leaders' long history of opposing off-reservation gaming dating back to the inception of IGRA. *See id.* at Page ID # 302, ¶ 19.

For a time, it appeared that Governor Snyder would be no different. Weeks after Bay Mills opened the Vanderbilt Casino, the State of Michigan sued to enjoin its operation. *Michigan v. Bay Mills Indian Cmty.*, 695 F.3d 406, 410 (6th Cir. 2012), *aff'd and remanded,* 134 S. Ct. 2024 (2014).[1] The district court preliminarily enjoined the Vanderbilt Casino operation, and Bay Mills appealed. Although the injunction was overturned on sovereign-immunity grounds, Bay Mills has voluntarily kept the casino closed pending resolution of its dispute with

[1] The Little Traverse Bay Bands of Ottawa Indians ("Little Traverse"), another federally recognized tribe with IGRA gaming operations in the State of Michigan, also sued Bay Mills, and the cases were consolidated. Little Traverse participated in proceedings before the Sixth Circuit but not the Supreme Court. *Bay Mills*, 134 S. Ct. at 2030 n.3.

the State. *See id.* at 2029-30.

Bay Mills separately sued Governor Snyder concerning the same matter, which led to the present case. Compl., R. 1. In this underlying suit, Bay Mills seeks a judgment that, among other things, declares that the Vanderbilt Parcel "is 'Indian lands' as defined in the Indian Gaming Regulatory Act." Am. Compl., R. No. 25, Page ID # 170. Bay Mills does seek any relief under MILCSA. *Id.*

Until recently, all publicly available information indicated that the Governor remained opposed to the Vanderbilt Casino and would litigate this case to judgment. Reed Decl., R. 46, Page ID # 304, ¶ 21. But a few months ago, the Saginaw Tribe learned that Governor Snyder was considering settling this litigation by dropping his opposition to the Vanderbilt Casino. *Id.* ¶ 22. According to a December 5, 2016 letter from the National Indian Gaming Commission to the Bay Mills Gaming Commissioner, both the Governor and Bay Mills have confirmed that the parties were "negotiating a possible agreement related to gaming on the Vanderbilt parcel." *Id.* Alarmed by this shift, the Saginaw Tribe monitored the docket throughout December 2016. *Id.* ¶ 23. When it became apparent that the Governor no longer adequately represented the Saginaw Tribe's interests, the Saginaw Tribe moved to intervene as defendant. *See* Saginaw Tribe Mot. Intervene, R. 44, Page ID ## 274-76.

IV. The Motions to Intervene

The Saginaw Tribe's motion to intervene sought intervention as of right, or, alternatively, permissive intervention because its defenses shared common questions of law and fact with the Governor's answer and affirmative defenses. Saginaw Tribe Mot. Intervene, R. 44, Page ID ## 275-76. The Nottawaseppi Huron Band of the Potawatomi ("Nottawaseppi"), another Indian tribe with IGRA-operated gaming in Michigan, later filed its own motion to intervene. Nottawaseppi Mot. Intervene, R. 58, Page ID ## 552-53. The Governor and Bay Mills opposed both motions.

In its motion, the Saginaw Tribe noted the similarity between its proposed Answer and the Governor's Answer and Affirmative Defenses. Reed Decl., R. 46, Page ID # 305, ¶ 26. As the Saginaw Tribe's Proposed Answer and Affirmative Defenses—filed with the intervention motion—demonstrated, the Saginaw Tribe denied many of the same allegations that Governor Snyder denied, and alleged many of the same affirmative defenses that Governor Snyder advanced earlier in the litigation, necessarily relying on common questions of law and fact.[2] The

[2] *Compare* Governor's Answer Am. Compl., R. 26, *with* Saginaw Tribe's Proposed Answer, R. 44-1. The Governor and the Saginaw Tribe make substantively identical responses to 27 paragraphs of the 46-paragraph Complaint (paragraphs 1-9, 13-16, 20-28, 31, 33, 36, and 45-46), and make responses to an additional 13 paragraphs (paragraphs 10-12, 17-19, 30, 32, 34-35, 37-39) that have significant areas of overlap; the responses to the remaining six paragraphs (paragraphs 29 and 40-44) are distinct, reflecting the Saginaw Tribe's different interests.

Saginaw Tribe's responses to more than half of the paragraphs in the Complaint are identical in substance to those of the Governor; many responses that are not identical have significant areas of overlap. All told, over 80% of the Saginaw Tribe's proposed response to the allegations of the Complaint tracks the Governor's response.

Similarly, of the nine affirmative defenses the Governor and the Saginaw Tribe both raise, seven of those defenses are substantively *identical*. *Compare* R. 26, Page ID ## 228-30, *with* R. 44-1, Page ID ## 295-96. For example, Bay Mills' amended complaint asked the court to "[d]eclar[e] that the Vanderbilt Parcel is 'Indian lands' as defined in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*, and in the Tribe's Class III gaming compact with the State of Michigan." Am. Compl., R. 25, Page ID # 171. In response, the Governor asserted three different affirmative defenses grounded in IGRA. Governor's Answer to Am. Compl., R. 26, Page ID ## 229-30, ¶¶ 6, 7, 9. The Saginaw Tribe raised the same three affirmative defenses. Saginaw Tribe's Proposed Answer, R. 41-1, Page ID ## 295-86, ¶¶ 6, 7, 9.

Immediately after the Saginaw Tribe moved to intervene, the Governor filed a motion for summary judgment. Mot. Summ. J., R. 53, Page ID # 398. Because the Governor had been involved in serious settlement negotiations only months earlier, the briefing was cold comfort for the Saginaw. Bay Mills and the Governor

do not deny that they were recently negotiating a settlement. And as the Governor recently observed *after filing its motion for summary judgment*, "[t]he [district] court has not barred the parties from settling." Br. Opp. Mot. Clarify Intervention Order, R. 84, Page ID # 888. Rather, Governor Snyder urged the district court to leave that settlement door open. *See id.*

Nonetheless, the district court denied the Saginaw Tribe and Nottawaseppi's motions to intervene. Order Denying Mots. Intervene, R. 69, Page ID # 749. The Saginaw Tribe now appeals the denial of its motion to intervene. On April 3, 2017, the Saginaw Tribe moved to expedite this appeal. Meanwhile, on April 7, 2017 the State filed its summary-judgment reply brief in the district court. Reply Br. Supp. Mot. Summ. J., R. 81, Page ID # 862.[3]

Summary of the Argument

The Saginaw Tribe respectfully requests that this Court reverse the district court's order denying the Saginaw Tribe's Fed. R. Civ. P. 24(b) motion to permissively intervene as a defendant in *Bay Mills Indian Community v. Snyder*. The Saginaw Tribe is entitled to permissive intervention because its defenses involve questions of law and fact in common with the main action, as evidenced by the similarity between the Saginaw Tribe's proposed Answer and the Governor's

[3] Nottawaseppi also filed a motion asking the district court to clarify that its dismissal of the motions to intervene was without prejudice. Nottawaseppi Mot. Clarify, R. 77, Page ID ## 851-52.

Answer and Affirmative Defenses to the complaint. *See Little Traverse*, No. 1:15-cv-850, R. 50, Page ID. # 572. And the Saginaw Tribe's intervention will not "unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), because the matter is still in the early stages of litigation.

The Saginaw Tribe seeks intervention because the Governor's confirmed attempt to negotiate a settlement with Bay Mills—and continuing insistence on the possibility of settlement—demonstrates that the Governor's priorities have diverged from the Saginaw Tribe's. The Governor no longer adequately protects or represents the Saginaw Tribe's interests. Far from establishing that settlement is conclusively off the table, the present parties' responses to the intervention motion and representations in later briefing demonstrate that settlement remains possible. Allowing the Saginaw Tribe to intervene now would ensure that it has the chance to protect its interests before any such settlement occurs.

When denying the Saginaw Tribe's motion for permissive intervention, the district court ignored the only factors specified in the text of Rule 24(b): it (1) erroneously concluded, without explanation, that there were no common claims or defenses; and (2) made no findings whatsoever that the motion was untimely or that existing parties would be prejudiced by the Saginaw Tribe's intervention. Moreover, the district court's Rule 24(b) analysis erroneously added two additional requirements to the Tribe's permissive-intervention motion: (1) a demonstration

that the Saginaw Tribe had standing; and (2) determination of whether the Governor adequately represented the Saginaw Tribe's interests. For all these reasons, the district court's order should be reversed.

Standard of Review

The district court's denial of the Saginaw Tribe's motion for permissive intervention is reviewed for abuse of discretion. *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997). "A district court abuses its discretion when it applies the incorrect legal standard, misapplies the correct legal standard, or relies upon clearly erroneous findings of fact." *Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224, 230 (6th Cir. 2003) (quoting *Schenck v. City of Hudson*, 114 F.3d 590, 593 (6th Cir. 1997)); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Deference is due to the district court's decision "only if the district court properly understood the pertinent law and applied it in a defensible manner to the facts as they appear in the record." *Hamad*, 328 F.3d at 230 (quoting *United States v. 2903 Bent Oak Highway*, 204 F.3d 658, 665 (6th Cir. 2000)). Because neither happened here, the Saginaw Tribe respectfully requests that this Court reverse the district court's order and remand for further proceedings.

Argument

"[T]he rules governing intervention are construed broadly in favor of the applicants," and an applicant's burden is "minimal." *Mich. State AFL-CIO*, 103

F.3d at 1246-47 (internal citation and quotation omitted). Here, the Saginaw Tribe's intervention was appropriate under Rule 24(b). The district court abused its discretion when it denied the Saginaw Tribe's motion because it misconstrued the law: it ignored the well-established test for permissive intervention and instead imposed requirements imported from the test for mandatory intervention under Rule 24(a).

I. The Saginaw Tribe met the Rule 24(b) test for permissive intervention.

The Saginaw Tribe sought permissive intervention. Under Rule 24(b), a proposed intervenor must demonstrate only that: (1) its motion is timely; and (2) it alleges at least one common question of law or fact. *Mich. State AFL-CIO*, 103 F.3d at 1248. If a party demonstrates these two preliminary factors, the court must consider any undue delay and prejudice to the original parties and any other factors relevant to whether, in the court's discretion, intervention should be allowed. *Id.* While inadequate representation is a requirement for mandatory intervention under Rule 24(a), permissive intervention under Rule 24(b) can be proper even when an intervenor's interests are adequately represented by an existing party. *Little Traverse Bay Bands of Odawa Indians v. Snyder*, No. 1:15-cv-850, R. 50, Page ID ## 568, 570 (W.D. Mich. March 10, 2016) ("[T]he Court declines to import [the adequate-representation] factor from Rule 24(a) into Rule 24(b).").

A. The Saginaw Tribe showed that its motion to intervene was timely.

Although Bay Mills and the Governor argued that the Saginaw Tribe's motion was untimely, the district court was silent on the issue. Presumably, if the district court had agreed with the existing parties' objections to timeliness, it would have found the Saginaw Tribe's motion untimely. It did not.

Regardless, the Saginaw Tribe established that its motion was timely. The timeliness of an intervention motion "should be evaluated in the context of all relevant circumstances." *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990) (reversing denial of motion to intervene). These include: (1) how far the suit has progressed; (2) why intervention is sought; (3) how long the movant knew or reasonably should have known of its interest in the case before seeking to intervene; (4) whether the existing parties will be prejudiced because the movant did not seek to intervene sooner; and (5) whether any "unusual circumstances" weigh in favor of or against intervention. *See id.* The lapse of time between the filing of a complaint and a motion to intervene, however long, must be weighed against these circumstances. *See* 7C Charles A. Wright, Arthur M. Miller & Mary Kay Kane, Federal Practice & Procedure Civ. § 1916 (3d ed.). In this calculus, "[t]he absolute measure of time between the filing of the complaint and the motion to intervene is one of the least important of these circumstances[.]" *Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000).

Protecting rights in the event of a settlement is a legitimate purpose for intervention, *see Midwest Realty Mgmt. Co. v. City of Beavercreek*, 93 F. Appx. 782, 787 (6th Cir. 2004), and it is awareness of the need to intervene—not awareness of the suit—that triggers timeliness, *see Jansen*, 904 F.2d at 341. For example, the *Jansen* intervenors knew for months that a pending suit would affect their rights under a consent decree, but they relied on the City of Cincinnati to represent their interests. *Id.* The intervenors did not learn until after discovery was taken and after the City filed its response to the plaintiffs' summary judgment motion that the City was not relying on the paragraphs of the consent decree that the intervenors sought to enforce. *Id.* Because "the proposed intervenors filed their motion to intervene as soon as they realized that their interest was not protected," the motion was timely—even though the case was halfway through discovery and in the midst of dispositive briefing. *Id.*

A motion to intervene may be timely even when a suit is well advanced. For example, in a products-liability class action, several class members' motions to intervene were timely even though the case had been litigated for two years and a settlement had been proposed. *In re Telectronics Pacing Sys., Inc.*, 221 F.3d 870, 881-82 (6th Cir. 2000). As in *Jansen*, the Sixth Circuit focused on the intervenors' awareness of inadequate representation, recognizing that the intervenors "did not have reason to intervene until *after* they received notice of the settlement and

found reason to object." *Id.* at 882. Prejudice to the existing parties is "[t]he most important consideration" in deciding timeliness; where there is none, the motion is usually timely. 7C Federal Practice and Procedure § 1916. Thus, courts have allowed intervention four years after a suit was filed when "there were no depositions taken, dispositive motions filed, or decrees entered during the four year period in question." *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 370 (3d Cir. 1995), *cited in Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000). So it is here.

Although pending since 2011, this case "ha[d] progressed very little down the 'litigation continuum'" when the Saginaw Tribe moved to intervene. *Cf. City of St. Louis v. Velsicol Chem. Corp.*, 708 F. Supp. 2d 632, 666 (E.D. Mich. 2010) (concluding that intervention motion was timely when discovery had not yet taken place). This litigation was far less advanced than *Jansen* or *Telectronics*, and like *Mountain Top*, the parties still have not begun discovery. Rather, they agreed to frontload a single legal question in a motion for summary disposition, and they agreed to hold in abeyance all other dispositive motions and all discovery until after the district court answered that question. *See* R. 21, Page ID # 102 ¶¶ 5, 6, 7. That threshold motion remains undecided, and the existing parties cannot be prejudiced by the Saginaw Tribe's intervention.

Moreover, the Saginaw Tribe's need to intervene to protect its interests in a

potential settlement between the existing parties weighs in favor of finding the motion timely. *Midwest Realty*, 93 F. Appx. at 786-87. The Saginaw Tribe acted as soon as the potential-settlement cat fled its proverbial bag. Reed Decl., R. 46, Page ID ## 304-05, ¶¶ 22-24. Notice of objectionable terms in a settlement triggers the need to intervene, *Midwest Realty*, 93 F. Appx. at 788, but here, the Saginaw Tribe sought intervention even *before* that point. Like the intervenors in *Jansen* and *Telectronics*, the Saginaw Tribe acted diligently when it learned of the need to intervene.

Finally, unusual circumstances weigh in favor of determining that the Saginaw Tribe's motion was timely because this lawsuit impacts strong federal interests. At base, this case is an IGRA case. The Indian Gaming Regulatory Act is so inherently intertwined with Bay Mills' novel claim that Bay Mills seeks relief under IGRA, not MILCSA. Although IGRA limits Indian gaming to "Indian lands," within the last few months, the Governor began negotiating an agreement that would expand off-reservation gaming outside of IGRA "Indian lands." Reed Decl., Ex. H, R. 46-8, Page ID ## 351-52. Those negotiations could resume at any time (if they have not already), culminating in a consent decree filed with the district court. "Consent decrees entered in federal court must be directed to protecting federal interests." *Frew v. Hawkins*, 540 U.S. 431, 437 (2004). But, as the Governor's recent negotiations demonstrate, the Governor has pivoted toward

protection of State, not federal, interests. This makes sense: it is the Governor's job is to advocate for Michigan citizens, not for the federal government. By contrast, the Saginaw Tribe participated in the federal legislative process that brought about the Indian Gaming Regulatory Act, is regulated by IGRA, and has an interest in ensuring that IGRA is enforced as written. Reed Decl., R. 46, Page ID # 298, ¶ 3. These unusual circumstances favor the Saginaw Tribe's intervention so that it can demonstrate why expanding the definition of "Indian lands" to allow off-reservation gaming contravenes IGRA's careful balance of federal interests.

Each of the five *Jansen* factors demonstrate that the Saginaw Tribe's motion to intervene is timely. The district court should have found the first factor of the Rule 24(b) test favored granting the Saginaw Tribe's motion to permissively intervene. Its silence on the question was an abuse of discretion.

B. The Saginaw Tribe showed that its proposed claims and defenses shared questions of law and fact in common with the main action.

For permissive intervention, the intervenor's claim or defense must also share a question of law or fact in common with the main action. *Mich. State AFL-CIO*, 103 F.3d at 1248. As the Saginaw Tribe's Proposed Answer and Affirmative Defenses—filed with its intervention motion—demonstrated, the Saginaw Tribe's responses to over four-fifths of the paragraphs in the Amended Complaint are either substantively identical to or substantially overlap the positions advanced in Governor Snyder's Answer. The Saginaw Tribe's proposed answer could not be so

parallel without relying on common questions of law and fact. *Compare* Governor's Answer, R. 26, Page ID ## 228-30, *with* Saginaw Tribe's Proposed Answer, R. 44-1, Page ID ## 295-96. A comparison of the Saginaw Tribe's proposed answer and the Governor's Answer shows that there are numerous common questions of law and fact, fully satisfying this element of the Rule 24(b) test. And because seven of the Saginaw Tribe's affirmative defenses are identical to the Governor's, the district court should have found that the Saginaw Tribe alleged sufficient common questions of law and fact to meet the second part of the Rule 24(b) test for permissive intervention.

Instead, the district court disposed of this factor in a single conclusory sentence, characterizing Bay Mills' lawsuit as seeking "a declaration regarding MILCSA, not the IGRA" and noting that the Saginaw Tribe was not a beneficiary of MILCSA. Order Denying Mots. Intervene, R. 69, Page ID ## 745-46. But the district court's characterization of the underlying suit is incorrect. Bay Mills' amended complaint asks the court to "[d]eclar[e] that the Vanderbilt Parcel is 'Indian lands' *as defined in the Indian Gaming Regulatory Act*, 25 U.S.C. §§ 2701 *et seq.*, and in the Tribe's Class III gaming compact with the State of Michigan." Am. Compl., R. 25, Page ID # 171 (emphasis added). Bay Mills did not seek relief under MILCSA. *Id.* In response, the Governor asserted *three different* affirmative defenses grounded in IGRA. Governor's Answer Am. Compl., R. 26, Page ID ##

229-30 ¶¶ 6, 7, 9. And in a brief recently filed with the district court, the Governor asked the court to "affirmatively state that purchasing lands with the Bay Mills Land Trust does not automatically make them Indian lands eligible for gaming *under IGRA*[.]" Governor's Summ. J. Br., R. 54, Page ID # 409 (emphasis added).

MILCSA is the stepping stone that Bay Mills tries to jump across to reach IGRA. But it is IGRA that decides the parties' rights—and it is IGRA relief Bay Mills seeks—because it is IGRA that restricts Indian gaming to "Indian lands." The district court cannot rewrite Bay Mills' complaint or the Governor's answer. Because the Saginaw Tribe showed that its claims and defenses shared common questions of law and fact with those that the parties pled in the main action, the district court should have found that this factor supported the Saginaw Tribe's motion for permissive intervention. Its failure to do so was an abuse of discretion.

C. The Saginaw Tribe showed its intervention would not cause undue delay or prejudice the existing parties.

To decide whether to allow permissive intervention, a district court must consider whether intervention "will unduly delay or prejudice the adjudication of the rights of the original parties." *Purnell v. City of Akron*, 925 F.3d 941, 951 (6th Cir. 1991). The Saginaw Tribe showed that allowing it to intervene would neither unduly delay the proceedings below nor prejudice the existing parties. But the district court was silent on this factor of the Rule 24(b) test. Although this action was filed in 2011, it made little progress before the Saginaw Tribe moved to

intervene. Stipulation after stipulation extended deadlines while the original parties prioritized a single threshold issue—that remains undecided. *See* Stipulation, R. 21, Page ID ## 102-105; Stipulation, R. 28, Page ID ## 233-235; Stipulation, R. 30, Page ID ## 237-38; Stipulation, R. 39, Page ID ## 261-62; Stipulation, R. 41, Page ID ## 267-70.

Moreover, no party disputes that IGRA regulates the Saginaw Tribe's gaming operations. Bay Mills attempts to use a MILCSA shoehorn to crack open IGRA's Indian lands definition and operate an off-reservation casino under IGRA without meeting Congress's carefully crafted requirements for IGRA Indian lands. To decide Bay Mills' claim, a court must construe IGRA in a way that, for better or worse, will inevitably affect the Saginaw Tribe's operation of its own casinos under IGRA. The Saginaw Tribe can offer the Court its perspective on how expanding IGRA's Indian Lands definition to include MILCSA lands will affect IGRA-operated casinos and tribes statewide. The district court's rejection of the Saginaw Tribe's permission intervention without considering this factor was an abuse of discretion.

II. The district court abused its discretion in adding mandatory-intervention requirements to the test for permissive intervention.

The Rule 24(b) test for permissive intervention only requires a showing that (1) the motion is timely; and (2) the proposed intervenor alleges at least one question of law or fact in common with the main action. *Mich. State AFL-CLO*,

103 F.3d at 1248. If that threshold showing is met, the district court may exercise its discretion in deciding whether to grant the request. *Id.* The district court "must, except where the basis for the decision is obvious in light of the record, provide enough of an explanation for its decision" to allow meaningful appellate review of its decision to deny permissive intervention. *Id.*

A. The district court abused its discretion by requiring an intervenor under Rule 24(b) to establish standing.

At pages 6 and 7 of its order, the district court states that the Saginaw Tribe has failed to show common questions of law or fact because it is not asserting rights under MILCSA or the gaming compact between Bay Mills and the State of Michigan. To be sure, not even Bay Mills seeks relief under MILCSA. Am. Compl., R. 25, Page ID # 171 (seeking a declaration concerning IGRA). But the district court has conflated the requirements for permissive intervention with the standing required to bring a lawsuit.

It is well-settled in this Circuit that an intervenor "need not possess the standing to initiate a lawsuit." *Purnell*, 925 F.3d at 948. Requiring a standing showing from the Saginaw Tribe in this case is particularly unwarranted because the Saginaw Tribe seeks to intervene as a *defendant*, not a plaintiff. But even if the Saginaw Tribe could properly have been required to show some form of standing, its submissions to the district court would have done so. The district court's power to deliver the relief requested by Bay Mills under MILCSA necessarily implicates

the district court's authority under IGRA; therefore, the district court cannot construe MILCSA without also construing IGRA. And the court's construction of IGRA will directly affect the Saginaw Tribe.

The district court erred in requiring the Saginaw Tribe to show more than Rule 24(b) required—specifically, to show that the Saginaw Tribe had an interest in MILCSA when this case concerns both MILCSA and IGRA. The Saginaw Tribe's standing is not and should never have been at issue in a motion for permissive intervention. The district court abused its discretion in importing a standing requirement that this Court has expressly disclaimed into its Rule 24(b) analysis. Its decision should be reversed.

B. The district court abused its discretion by requiring a permissive intervenor to show that the intervenor's interests were not adequately represented by an existing party.

The district court also denied the Saginaw Tribe's motion for Rule 24(b) permissive intervention because it believed that the Governor adequately represents the Saginaw Tribe's interests. But Rule 24(b) imposes no such prohibition. Courts consider whether an existing party adequately represents a proposed intervenor's interests when a party seeks to intervene *as of right* under Rule 24(a). Fed. R. Civ. P. 24(a). By contrast, permissive intervention can be proper even where an intervenor's interests are adequately represented by an existing party. *Little Traverse*, No. 1:15-cv-850, R. 50, Page ID # 570. Indeed,

this Court has cautioned that if mandatory intervention is unavailable because a proposed intervenor is adequately represented, then "the district court must analyze the issue of permissive intervention under Rule 24(b)." *C.M. v. G.M.*, 238 F.3d 420 (Table), 2000 WL 1721041, at *4 (6th Cir. 2000).

In denying permissive intervention on adequate-representation grounds, the district court cited a 1996 district court order and two cases from other circuits for the proposition that "where the existing parties will adequately represent the interests of the potential intervenors, the case for permissive intervention disappears." Order at 7 (internal quotation omitted) (citing *Menominee Indian Tribe of Wis. v. Thompson*, 164 F.R.D. 672, 678 (W.D. Wis. 1996); *Tri-State Generation and Transmission Ass'n, Inc. v. N.M. Pub. Regulation Comm'n*, 787 F.3d 1068, 1075 (10th Cir. 2015); *Acra Turf Club, LLC v. Zanzuccki*, 561 F. Appx. 219, 222 (3d Cir. 2014)). But that proposition misstates the requirements of Rule 24(b) and is not the law of this circuit.

As other courts have recognized, the 1996 *Menominee* order relied on no authority to support its statement, and the issue was never appealed to this Court. *See Menominee Indian Tribe of Wis.*, 164 F.R.D. at 678; *Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16 C 4945, 2016 WL 3269001, at *3 (N.D. Ill. June 15, 2016) (observing that the *Menominee* court cited no authority for the proposition that "the case for permissive intervention disappears"). And just last

year in another case, *the same district court that denied intervention here* concluded that *Menominee* was "unpersuasive" and expressly "decline[d] to import a factor from Rule 24(a) into Rule 24(b)." *Little Traverse*, No. 1:15-cv-850, R. 50, Page ID # 570. Rule 24(b) simply does not require a showing of inadequate representation.

The other federal circuit cases cited by the district court are equally unpersuasive. Unlike the Third and Tenth Circuits, *Tri-State Generation & Transmission Ass'n*, 787 F.3d at 1075; *Acra Turf Club, LLC*, 561 F. Appx. at 222, this Circuit has never required a proposed permissive intervenor to show that its interests were inadequately represented. Indeed, as the Seventh Circuit has noted, Rule 24(b) itself imposes no additional requirements:

> But 'interest' does not appear in Rule 24(b). All that is required for permissive intervention, so far as bears on this case, is that the applicant have a claim or defense in common with a claim or defense in the suit. If this condition is satisfied, as it appears to be, the judge must then decide as a matter of discretion whether intervention should be allowed.

Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 101 F.3d 503, 509 (7th Cir. 1996). *Cf. Security Ins. Co. of Hartford v. Schipporeit*, 69 F.3d 1377 (7th Cir. 1995) ("Two requirements must be met before a court may exercise its discretionary power to grant intervention under 24(b)(2). The proposed intervenor must demonstrate that there is (1) a common question of law or fact, and (2) independent jurisdiction.").

Lower-court confusion on this question requires this Court's clarification. *Compare* Order Denying Mots. Intervene, R. 69, Page ID ## 746-47 (relying on adequacy of representation to reject Rule 26(b) permissive intervention), *with Little Traverse*, No. 1:15-cv-850, R. 50, Page ID # 570 (refusing to consider adequacy of representation for Rule 26(b) permissive intervention). The Saginaw Tribe respectfully submits that the Seventh Circuit's position is better-reasoned and should be adopted by this Court.

The district court erred when it held that the Governor's adequate representation of the Saginaw Tribe's interests prohibited the Saginaw Tribe's permissive intervention. As this Court's *C.M.* decision and the structure of Rule 24(b) indicate, adequacy of representation has no bearing on Rule 24(b) decision. The district court abused its discretion by adding this prohibition to Rule 24(b), and its decision should be reversed.

C. The Saginaw Tribe's interests are not adequately protected by an existing party.

Although the text of Rule 26(b) does not include an adequate-representation prohibition, even if this Court read that prohibition into the rule, it would not preclude intervention here. Borrowing from law analyzing the Rule 26(a) mandatory-intervention inadequacy-of-representation requirement, the required showing of inadequate representation is "minimal[.]" *Mich. State AFL-CIO*, 103 F.3d at 1247. It is enough for the movant to show that "representation may be

inadequate." *Id*. And it "may be enough to show that an existing party who purports to seek the same outcome will not make all of the prospective intervenor's arguments" or will not appeal an adverse judgment. *Id.* at 1247-48.

The Saginaw Tribe appreciates that the Governor earlier appeared to represent the Saginaw Tribe's interests in this case, but that pre-settlement-talk behavior cannot answer whether the Governor adequately represented the Saginaw Tribe's interests in this litigation *today*. The Saginaw Tribe need show only the *possibility* of inadequate representation going forward. *Mich. State AFL-CIO*, 103 F.3d at 1247. And today, settlement talks are confirmed; even *after* moving for summary judgment, the Governor emphasized that that settlement door remains open. Br. Opp. Mot. Clarify Intervention Order, R. 84, Page ID # 888. ("The [district] court has not barred the parties from settling.").

The Saginaw Tribe seeks an adjudicated decision barring Bay Mills from using MILCSA to crack open IGRA in a manner that could allow off-reservation gaming state-wide. The fact that the Saginaw Tribe represents "'narrower and more parochial interests than the [Governor's] interests at stake in this lawsuit' actually militates in favor of intervention[.]" *Little Traverse*, No. 1:15-cv-850, R. 50, Page ID # 572 (citation omitted). In contrast, the Governor seeks to conclude this case—through litigated judgement *or* settlement. The Governor has thus demonstrated that he could be satisfied with a different "ultimate objective"

than the Saginaw Tribe, shredding any presumption of adequate representation under *United States v. Michigan*, 424 F.3d 438, 443-44 (6th Cir. 2005). And if the present parties do reach a negotiated settlement, it is unlikely that the Governor would appeal that settlement. That potential outcome further demonstrates the inadequacy of the Governor's representation of the Saginaw Tribe. *See Mich. State AFL-CIO*, 103 F.3d at 1247-48.

The Governor might litigate this case to conclusion. But he might not. Because it is enough to show that "representation *may* be inadequate," *id.* at 1247 (emphasis added), the district court's decision that the Governor adequately represents the Saginaw Tribe was an abuse of discretion.

Conclusion

Governor Snyder's departure from his terms-long pledge to oppose expansion of off-reservation gambling was, to put it mildly, a surprise. But when it became clear the Saginaw Tribe could no longer count on Governor Snyder to adequately represent the Saginaw Tribe's substantial interests in this case, the Saginaw Tribe moved to intervene. The Saginaw Tribe met the requirements of Rule 24(b), and the district court should have granted its motion for permissive intervention. Accordingly, the Saginaw Tribe respectfully requests that this Court reverse the district court's order denying the Saginaw Tribe's motion to intervene and remand for further proceedings.

Dated: May 16, 2017

s/Jessica Intermill

William A. Szotkowski
Jessica Intermill
Hogen Adams PLLC
1935 W. County Road B2, Suite 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
E-mail: bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed
General Counsel of
Soaring Eagle Gaming and
Intergovernmental Affairs
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: sreed@sagchip.org

Counsel for Proposed Intervenor
Saginaw Chippewa Indian Tribe of Michigan

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a). This brief contains 7,086 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) because it is prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman typeface.

Dated: May 16, 2017

s/Jessica Intermill

William A. Szotkowski
Jessica Intermill
Hogen Adams PLLC
1935 W. County Road B2, Suite 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
E-mail: bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed
General Counsel of
Soaring Eagle Gaming and
Intergovernmental Affairs
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: sreed@sagchip.org

Counsel for Proposed Intervenor
Saginaw Chippewa Indian Tribe of Michigan

CERTIFICATE OF SERVICE

I certify that on May 16, 2017, I served the above Brief of Proposed Intervenor Saginaw Chippewa Indian Tribe of Michigan upon the Bay Mills Indian Community and upon Governor Snyder, through counsel who have entered appearances in this matter, by means of the Court's ECF system as follows:

Kathryn L. Tierney: candyt@bmic.net

Chad P. DePetro: cdepetro@bmic.net

Margaret Bettenhausen: Bettenhausenm@michigan.gov

Jaclyn Shoshana Levine: Levinej2@michigan.gov

Dated: May 16, 2017

s/Jessica Intermill

William A. Szotkowski
Jessica Intermill
Hogen Adams PLLC
1935 W. County Road B2, Suite 460
St. Paul, Minnesota 55113
Tele: (651) 842-9100
Fax: (651) 842-9101
E-mail: bszotkowski@hogenadams.com
jintermill@hogenadams.com

Sean Reed
General Counsel of Soaring Eagle Gaming and Intergovernmental Affairs
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48858
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: sreed@sagchip.org

Counsel for Proposed Intervenor
Saginaw Chippewa Indian Tribe of Michigan

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record Entry	Date Filed	Page ID Range	Description
R. 1	07/15/2011	1-6	Bay Mills' Complaint
R. 21	09/23/2015	100-107	Stipulation
R. 22	09/24/2015	108	Order Entering Stipulation
R. 25	11/09/2015	163-171	Bay Mills' Amended Complaint
R. 26	12/07/2015	208-230	Governor's Answer to Amended Complaint
R. 28	01/07/2016	233-235	Stipulation
R. 29	01/08/2016	236	Order Entering Stipulation
R. 30	03/22/2016	237-238	Stipulation
R. 32	03/31/2016	243-244	Order Entering Stipulation
R. 39	11/28/2016	261-262	Stipulation
R. 40	11/30/2016	265-266	Order Entering Stipulation
R. 41	12/07/2016	267-270	Stipulation
R. 42	12/07/2016	271-272	Order Entering Stipulation
R. 44	01/12/2017	274-277	Saginaw Tribe's Motion to Intervene
R. 44-1	01/12/2017	278-296	Saginaw Tribe's Proposed Answer
R. 46	01/12/2017	298-305	S. Reed Declaration in Support of Saginaw Tribe's Motion to Intervene
R. 46-8	01/12/2017	351-352	Letter from National Indian Gaming Commission to Bay Mills (Dec. 5, 2016)
R. 47	01/12/2017	376-386	Saginaw Tribe's Memorandum in Support of Intervention

R. 53	01/13/2017	389-400	Governor's Motion for Summary Judgment
R. 54	01/13/2017	401-432	Governor's Brief in Support of Summary Judgment
R. 58	01/25/2017	552-554	Nottawaseppi's Motion to Intervene
R. 59	01/25/2017	574-587	Nottawaseppi's Memorandum in Support of Intervention
R. 61	01/26/2017	590-604	Governor's Response to Saginaw Tribe's Motion to Intervene
R. 62	01/26/2017	638-648	Bay Mills' Response to Saginaw Tribe's Motion to Intervene
R. 63	01/31/2017	649-650	Saginaw Tribe's Motion for Leave to File Reply Brief
R. 63-1	01/31/2017	651-660	Saginaw Tribe's Proposed Reply Brief in Support of Intervention
R. 64	01/31/2017	661-663	Saginaw Tribe's Memorandum in Support of Motion for Leave to File Reply Brief
R. 66	02/01/2017	665	Order Denying Motion for Leave to File Reply Brief
R. 67	02/08/2017	666-679	Governor's Response to Nottawaseppi's Motion to Intervene
R. 68	02/08/2017	728-739	Bay Mills' Response to Nottawaseppi's Motion to Intervene
R. 69	03/08/2017	740-749	Order Denying Saginaw Tribe and Nottawaseppi's Motions to Intervene
R.70	03/17/2017	750-781	Bay Mills' Memorandum Opposing Summary Judgment
R. 76	03/29/2017	850	Saginaw Tribe's Notice of Appeal

R. 77	04/04/2017	851-852	Nottawaseppi's Motion to Clarify Order Denying Intervention
R. 78	04/04/2017	853-856	Nottawaseppi's Brief in Support of Motion to Clarify Order
R. 81	04/07/2017	862-876	Governor's Reply Brief in Support of Motion for Summary Judgment
R. 84	04/18/2017	885-889	Governor's Brief Opposing Nottawaseppi's Motion to Clarify Order