IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

The Sault Ste. Marie Tribe of Chippewa Indians,

Plaintiff,

v.

Ryan Zinke, Secretary, United States Department of the Interior, and **United States Department of the Interior**,

Defendants,

MGM Grand Detroit, L.L.C., Detroit Entertainment, L.L.C., and **Greektown Casino, L.L.C.**,

Movant-Intervenor-Defendants.

No. 18-cv-2035-TNM

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE IN SUPPORT OF DEFENDANTS BY MGM GRAND DETROIT, L.L.C., DETROIT ENTERTAINMENT, L.L.C., AND GREEKTOWN CASINO, L.L.C.

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INTRODUCTION

In this case, the Sault Ste. Marie Tribe of Chippewa Indians ("Sault" or "the Tribe"), seeks to fundamentally alter the casino-gaming landscape in Michigan, particularly in the State's Lower Peninsula. Sault challenges the Department of Interior's decision declining to take into trust three parcels Sault has allegedly purchased or agreed to purchase. The Tribe asks this Court to order Interior to take those parcels into trust, which it says would "pav[e] the way for potential gaming" on the parcels. ECF 1 ¶ 3. In so doing, that relief would concretely affect MGM Grand Detroit, L.L.C., Detroit Entertainment, L.L.C. (doing business as MotorCity Casino), and Greektown Casino, L.L.C. (collectively, "the Detroit Casinos"), three casinos in Detroit that would directly compete with the intended Sault casinos. One of Sault's parcels is just a short drive (26 miles) from Detroit (and less than five miles from the city's international airport), and the others are only 90 miles away, giving Sault the opportunity to divert a substantial portion of the Detroit Casinos' customers and the associated revenues (the taxes on which currently provide Detroit's third-largest income stream as the City recovers from its bankruptcy). Given their clear stake in this litigation, the Detroit Casinos should be granted leave to intervene in support of Defendants (the Interior Department and Secretary of the Interior Ryan Zinke).

The Detroit Casinos easily pass the test for intervention of right under Rule 24(a)(2). They have constitutional standing, because Sault seeks relief that would expose the Detroit Casinos to increased competition. They also satisfy the four requirements embedded in Rule 24(a)(2) itself: (1) This Motion is timely, as the case is still in a nascent stage. (2) The Detroit Casinos have a legally protected interest in being free from new competition. (3) That interest obviously could be impaired by the resolution of this case, given the relief Sault seeks. (4) Interior and Secretary Zinke will not adequately represent the Detroit Casinos' private commercial interests, and instead can be counted on to properly advance governmental interests as representatives of the public.

Alternatively, the Detroit Casinos should be permitted to intervene under Rule 24(b)(1)(B). This rule sets a low bar: all that is required (beyond timeliness, which obviously exists) is that the Detroit Casinos be asserting a defense that raises a legal or factual question in common with the main action. That is clearly the case, given the Detroit Casinos' interest in defending Interior's decision. Nor will any party be prejudiced by the Detroit Casinos' intervention at this early stage.

The Court should grant the Detroit Casinos leave to intervene.

BACKGROUND

A. Gaming in Michigan

Michigan is home to two types of casinos: commercial casinos and tribal casinos. Whereas tribal casinos are primarily creatures of federal law (as further discussed below), Michigan voters themselves authorized three commercial casinos in 1996. *See generally* Michigan Gaming Control & Revenue Act, 1996, Initiated Law 1 (codified at Mich. Comp. Laws Ann. § 432.201 *et seq.*).

The Detroit Casinos are the only commercial casinos in the State, and the only casinos in the City of Detroit. Isaacson Decl., Ex. A at 2 (hereinafter "Spectrum Report"). The MGM Grand and MotorCity Casino both opened in 1999, and the Greektown Casino opened in 2000. The three casinos are all located in downtown Detroit, within an approximately 1-mile radius of one another.

The Detroit Casinos provide a substantial source of tax revenue to both Michigan and Detroit. Under Michigan law, they pay an 8.1% tax on their adjusted gross receipts into a state fund for public education, and a 10.9% tax on adjusted gross receipts to Detroit. Mich. Comp. Laws § 432.212(1), (4), (7). Each casino also pays Detroit what is effectively an additional 1% tax on its adjusted gross revenues pursuant to a Development Agreement with the City of Detroit, which increases to 2% for revenues that exceed $400 million in a calendar year. Mich. Gaming Control Bd., *Annual Report* at 18 (2016), https://goo.gl/7Up5d1. In 2017, the Detroit Casinos' tax payments totaled $113 million to Michigan and $177 million to Detroit. Mich. Gaming Control Bd.,

Annual Report at 17–18 (2017), https://goo.gl/UVf3PS. Altogether, the Detroit Casinos have paid $2.04 billion to Michigan and $2.79 billion to Detroit. *Id.* at iii. The Detroit Casinos are playing a key role in Detroit's emergence from bankruptcy, providing the city's third-largest source of revenue. City of Detroit, *Four-Year Financial Plan FY 2019–2022* at A11, https://goo.gl/m5jgVc.

In addition to the Detroit Casinos, there are 23 tribal casinos in Michigan. Mich. Gaming Control Bd., *Indian Gaming Annual Report* at 2 (2017), https://goo.gl/3GcpK9.

B. Sault's Attempt to Open Casinos in the Lower Peninsula

Sault does not currently operate any casinos in the Lower Peninsula. This case is about its attempt to do so.

1. Statutory framework

This attempt centers on two federal statutes, the Indian Gaming Regulatory Act ("IGRA," 25 U.S.C. § 2701 *et seq.*), and the Michigan Indian Land Claims Settlement Act ("MILCSA," Pub. L. No. 105-143, 111 Stat. 2652 (1997)).

IGRA erects a "comprehensive scheme of regulation over Indian gaming." *Colo. River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 383 F. Supp. 2d 123, 126 (D.D.C. 2005), *aff'd*, 466 F.3d 134 (D.C. Cir. 2006). Relevant here, IGRA authorizes tribes to conduct Class III gaming (which includes blackjack, slots, and similar games commonly played in casinos) only on "Indian lands." § 2710(d)(1); *see also* § 2703(6)–(8) (defining the three classes of gaming). IGRA defines "Indian lands," in turn, as including "any lands title to which is … held in trust by the United States for the benefit of any Indian tribe." § 2703(4)(B). Thus, the federal government's taking of land into trust is one means by which a tribe may be able to gain the right to operate a casino on that land. (Even then, IGRA sets forth circumstances in which gaming "shall *not* be conducted" on land taken into trust by Interior. § 2719(a) (emphasis added).)

Here, Sault is seeking to establish "Indian land" status for land it allegedly acquired or agreed to acquire using money from a trust fund (the "Self-Sufficiency Fund" or "the Fund") established under MILCSA. That statute places different restrictions on Sault's use of amounts from the Fund, based on whether it spends principal or "interest and other investment income." This case involves only alleged expenditures of interest, which MILCSA authorizes Sault to spend for five enumerated purposes: (1) "as an addition to the principal"; (2) "as a dividend to tribal members"; (3) as a "per capita payment" to some subset of tribal members; (4) "for educational, social welfare, health, cultural, or charitable purposes which benefit" the Tribe's members; or (5) "for consolidation or enhancement of tribal lands." MILCSA § 108(c).

If Sault properly acquires land using Fund interest for an authorized purpose, MILCSA provides that those land "shall be held in trust by the Secretary for the benefit of the tribe." § 108(f). This would then qualify the land as Indian land under IGRA, creating the possibility that Class III gaming could be conducted on that land.

2. Sault purportedly acquires interests in three parcels in Michigan's Lower Peninsula, intending to conduct gaming on those parcels.

The three parcels at issue here ("the Sault Parcels") are all located in Michigan's Lower Peninsula. All of Sault's other landholdings, by contrast, are in the Upper Peninsula. Compl. ¶ 18.

The largest of the three parcels, the "Sibley Parcel," comprises 71 acres in Huron Charter Township, Wayne County. Ex. II at 3.[1] The Sibley Parcel is roughly a 26-mile drive from Detroit and in the same County as Detroit. *See* Google Maps, https://goo.gl/ALSEBk.[2] It is also one highway exit (less than five miles) from the Detroit Metropolitan Airport, the nation's 19th busiest

[1] All citations to "Ex." reference Exhibits to the Complaint (ECF 1).

[2] "The court has the authority to take judicial notice of information contained within the public domain, such as the distance between two locations." *Villa v. Salazar*, 933 F. Supp. 2d 50, 53 n.3 (D.D.C. 2013) (quoting *Richard v. Bell Atl. Corp.*, 209 F. Supp. 2d 23, 27 n.2 (D.D.C. 2002)).

airport in terms of passenger traffic. Google Maps, https://goo.gl/JDtTxo; Airports Council International, *2017 North American Airport Traffic Summary*, https://goo.gl/p6tMGP. Sault represents that it has entered an agreement to purchase the Sibley Parcel using Fund interest. Ex. II at 5.

The other two parcels, collectively referred to as the "Lansing Parcels," are located in the City of Lansing: the 0.43-acre "Corner Parcel," and the 2.26-acre "Showcase Parcel." Ex. III at 4. The lots are directly next to the Lansing Center, a large convention center. *Id.* at 6. Lansing is a roughly 90-mile drive from Detroit. Google Maps, https://goo.gl/tWTaEa. Sault represents that it has purchased the Corner Parcel—and has entered an agreement to purchase the Showcase Parcel—using Fund interest. Ex. III at 6.

Sault's objective is and has always been to conduct Class III gaming on each parcel. Compl. ¶ 35; *see also* Ex. II at 3 n.1; Ex. III at 4 n.1. Any such casinos would be closer to the Detroit Casinos than any other Michigan casino. Spectrum Report at 2. Today, the tribal casino nearest Detroit is the FireKeepers Casino in Battle Creek, Michigan, over 110 miles from Detroit. *Indian Gaming Annual Report* at 8; Google Maps, https://goo.gl/LqXMkR. The proposed casinos would also be closer than the Detroit Casinos to a number of major metropolitan areas, including: Grand Rapids (population: 188,000), Lansing (114,000), Ann Arbor (114,000), and Toledo, Ohio (287,000).[3] The increased competition from these casinos would have a significant negative impact on the Detroit Casinos' revenues (and the correlated tax payments that the Detroit Casinos make to Michigan and to cash-strapped Detroit). Spectrum Report at 2.

[3] All population data is based on the Census Bureau's 2017 population figures. U.S. Census Bureau, *American Fact Finder*, https://goo.gl/m5p3kC. The Court can take judicial notice of population data. *Connecticut v. U.S. Dep't of Interior*, No. 17-cv-2564-RC, 2018 WL 4681619, at *10 n.15 (D.D.C. Sept. 29, 2018).

3. Sault asks Interior to take the three parcels into trust.

On June 10, 2014, Sault submitted two applications (one for the Sibley Parcel and one for the Lansing Parcels) asking the Secretary of the Interior to take the Sault Parcels into trust. Ex. II; Ex. III. Sault argued that the Secretary is "require[d]" to take acquired parcels into trust under § 108(f) of MILCSA "when the statute's requirements are met." Ex. II at 5; Ex. III at 6. The Tribe thus sought to prove that "those requirements are met here" (*id.*), by explaining why its acquisitions were proper uses of Fund interest under § 108(c). Ex. II at 7–10; Ex. III at 8–11; *see also* Ex. II at 7 ("The requirements of MILCSA have been satisfied with respect to the Parcel, thus triggering the mandatory duty to take the Parcel into trust under MILCSA § 108(f)."); Ex. III at 8 (same).

Primarily, the Tribe argued that each acquisition was or would be an "enhancement of tribal lands" under § 108(c)(5), because each would "increas[e] the total land possessed by the Tribe." Ex. II at 8; Ex. III at 9. Sault also contended that, even under a "narrow reading of 'enhancement,'" the acquisitions were proper because each "would increase the value of the Tribe's existing land-holdings" by "generat[ing] revenues that will be used to improve, restore, or otherwise increase the usefulness or value of the Tribe's existing lands." Ex. II at 9; Ex. III at 10. Sault anticipated that these revenues would come from gaming, once the Sault Parcels were taken into trust and thereby established as Indian lands under IGRA. Ex. II at 3 n.1; Ex. III at 4 n.1.

In addition to its "enhancement" argument, Sault argued that the acquisitions complied with MILCSA's separate provision authorizing interest expenditures "for educational, social welfare, health, cultural, or charitable purposes which benefit" the Tribe's members, under § 108(c)(4). Ex. II at 10; Ex. III at 10–11. Sault claimed the parcels would "provide a land base" for tribal members, "facilitate the delivery of services" to those members, "generate revenues" needed to provide social services, and "create hundreds of jobs for those members." Ex. II at 8; Ex. III at 10–11.

Interior spent over two-and-a-half years engaging with Sault on its applications. On multiple occasions, Interior raised questions about whether the acquisitions complied with MILCSA's requirements, including whether the Sault Parcels had in fact been acquired (or were set to be acquired) using Fund interest or other income, and whether the acquisitions would in fact enhance Sault's tribal lands. Sault responded to these inquiries with supplemental submissions seeking to demonstrate that the purchases comply with MILCSA. For instance, in an April 2015 submission, Sault acknowledged that it "must demonstrate that acquisition of the Sibley and Lansing Parcels" was for a purpose authorized by MILCSA, and then expanded on its argument that the acquisitions "consolidate[e] or enhance[]" the Tribe's existing land (under § 108(c)(5)) and furthered "social welfare, health, cultural, or charitable purposes" (under § 108(c)(4)). Ex. IV at 4–20. Over a year and a half later, in December 2016, Sault provided another submission responding to questions Interior had raised regarding its "enhancement" argument. Compl. ¶¶ 54–55.

4. Interior denies Sault's applications.

The January Letter. On January 19, 2017, Interior issued an initial letter ("the January Letter") concluding that Sault had submitted "insufficient evidence" supporting its request for the Sault Parcels to be taken into trust. Interior agreed with the Tribe that, "*if* lands are acquired using Self-Sufficiency Fund income in accordance with the provisions of Sections 108(c) and (f)," the Secretary would be "required to hold those lands in trust for the Tribe." Ex. V at 3 (emphasis added). But Interior concluded that Sault had failed to show that the acquisitions were made in accordance with those statutory requirements.

In the January Letter, Interior focused on explaining why Sault's primary argument—that the acquisitions represented an "enhancement of tribal lands"—failed. Interior rejected Sault's preferred interpretation of the term "enhancement," which would encompass any purchase that "augmented, or made greater, the total land possessed by" the Tribe. *Id.* at 4 (citation omitted). The

problem with this interpretation, Interior explained, is that it would authorize "any acquisition of land using income from the Self-Sufficiency Fund"—a conclusion inconsistent with the fact that Congress limited the use of Fund interest to only those acquisitions that "consolidate[] or enhance[]" tribal lands." *Id.* Interior also considered Sault's alternative argument that the acquisitions would enhance its existing lands by generating revenue that could be used to make those lands more valuable. Although Interior found this potential enhancement of existing lands "consistent with the framework" it had previously used for interpreting MILCSA's use of the term "enhancement," it concluded that Sault had not yet made "a sufficient showing" that the acquisitions *would* enhance the value of the Tribe's existing lands. *Id.* at 5. Interior also rejected Sault's attempt at demonstrating that the acquisitions were for "educational, social welfare, health, cultural, or charitable purposes," finding "too attenuated" the theory that the acquisitions would yield these benefits by enabling the Tribe "to start an economic enterprise" on the Sault Parcels, "which may generate its own profits, which profits might then be spent on social welfare purposes." *Id.* at 4 n.25.

Because Sault had not demonstrated that its acquisitions furthered one of the purposes for which MILCSA authorizes the use of Fund interest, Interior concluded that it "need not consider" whether the Sault Parcels had in fact been (or would be) acquired with Fund interest rather than principal. *Id.* at 6. It made clear, however, that its decision was not final, and that it would "keep the Applications open so that the Tribe may present evidence of an enhancement." *Id.*

The July Letter. Sault did not take advantage of the opportunity to submit additional evidence supporting its applications. Accordingly, after waiting six months, Interior issued a second letter denying the Tribe's applications on July 24, 2017 ("the July Letter"). Ex. VI at 1. Interior again explained that, to show an enhancement of its tribal lands, Sault needed to establish that the acquisitions would make those existing lands "greater, as in cost, value, attractiveness, etc." *Id.* at

2. But despite "bear[ing] the burden of making this showing," the Tribe had "made no such demonstration even after being offered the additional opportunity to do so" in the January Letter. *Id.* at 3. In fact, Sault's counsel had, in a meeting with Interior, "acknowledged they did not believe the Tribe could provide such evidence." *Id.* at 1 n.4. Interior also expressed skepticism of any argument that the Sault Parcels would increase the value of Sault's existing lands. For one thing, Interior noted the parcels' substantial distance from the Tribe's headquarters: "260 miles (287 miles by road) from the Lansing Parcels, and approximately 305 miles (356 miles by road) from the Sibley Parcel." *Id.* at 4. Additionally, Interior again cast doubt on Sault's "attenuated" theory that the acquisitions could enhance the Tribe's existing land's value by "allow[ing] for economic development" that "might generate revenue" that "might be used to enhance lands in the Upper Peninsula." *Id.* Interior also noted that, even if it accepted this theory, "the Tribe has not offered any evidence of its plans to use the gaming revenue to benefit its existing lands or its members." *Id.*

5. Sault files this lawsuit.

On August 30, 2018—more than a year after Interior issued its ruling—Sault filed this lawsuit. Among other things, Sault asks this Court to "vacate the final decision denying the Tribe's trust submissions," and "order Defendants to take the parcels into trust (or in the alternative, to order Defendants to resolve any remaining ministerial issues in the Tribe's favor)." ECF 1 at ¶ 5.

ARGUMENT

This litigation directly implicates the Detroit Casinos' interests. The relief Sault seeks—an order requiring Interior to take the Sault Parcels into trust, which the Tribe says would "pav[e] the way for potential gaming" (ECF 1 ¶ 3)—would expose the Detroit Casinos to increased competition from multiple casinos closer to Detroit than any other Michigan casino. The Detroit Casinos thus satisfy the requirements for intervention as of right under Rule 24(a)(2). Even if they did not, there would be every reason to grant the Detroit Casinos permission to intervene under Rule 24(b)(1)(B).

I. The Detroit Casinos Are Entitled to Intervene As Of Right Under Rule 24(a)(2).

The Detroit Casinos have a right to intervene under Rule 24(a)(2). That Rule's straightforward requirements are clearly satisfied here. As a threshold matter, this Circuit requires a proposed intervenor-as-of-right to possess Article III standing. *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003). Once a party establishes standing, its ability to intervene as of right turns on the four factors in Rule 24(a)(2) itself: (1) the timeliness of the motion to intervene; (2) whether the applicant "claims an interest relating to the property or transaction that is the subject of the action"; (3) whether "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest"; and (4) whether "existing parties adequately represent that interest." FED. R. CIV. P. 24(a)(2); *see also, e.g.*, *Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 10–11 (D.D.C. 2016) (setting forth this four-factor standard). The Detroit Casinos undeniably have standing to participate in this action, and satisfy all four of the Rule 24(a)(2) factors.

A. The Detroit Casinos Have Article III Standing to Defend Interior's Decision.

There is no denying the Detroit Casinos' constitutional standing to intervene in this case. Where, as here, "a party seeks to intervene as a defendant in order to … defend an agency action," the party must establish that: (1) it "would suffer a concrete injury-in-fact if the action were to be set aside"; (2) its "injury would be fairly traceable to the setting aside of the agency action"; and (3) the injury "would be prevented if the agency action were to be upheld." *Forest Cty.*, 317 F.R.D. at 11 (citation omitted). The Detroit Casinos satisfy all three requirements: they would be concretely injured by an order overturning Interior's refusal to take the Sault Parcels into trust, as this would expose the Detroit Casinos to new competition from casinos on those parcels; that injury would be directly traceable to this Court's decision; and the injury will not occur if this Court instead upholds Interior's decision.

Injury. The Detroit Casinos' injury-in-fact is clear-cut: If this Court were to reverse Interior's decision and require Interior to take the parcels into trust, the Detroit Casinos would face the threat of competition from multiple new casinos on the Sault Parcels. This injury falls neatly within two related strands of this Circuit's standing jurisprudence: *First*, a party presents a constitutionally sufficient injury where that party "benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads Grassroots Policy Strategies v. F.E.C.*, 788 F.3d 312, 317 (D.C. Cir. 2015); *see also, e.g.*, *Military Toxics Project v. E.P.A.*, 146 F.3d 948, 954 (D.C. Cir. 1998) (finding intervenor had standing where it "would suffer concrete injury if the court grants the relief the petitioners seek"). *Second*, the benefit at issue can take the form of exposure to increased competition, under the competitor-standing doctrine. That doctrine "recogniz[es] that economic actors 'suffer an injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition' against them." *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (quoting *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998)); *see also, e.g.*, *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998) ("There is no dispute that … a firm has constitutional standing to challenge a competitor's entry into its market."). Together, these principles establish that where, as here, a plaintiff challenges an agency decision that has the effect of protecting some other party from competition, that other party has a cognizable injury that supports allowing it to intervene in the case and defend the agency ruling from which it benefits.

Twice in the past few years—including mere months ago—judges of this Court have, based on these principles, granted intervention as of right in cases materially indistinguishable from this

case. In both cases, tribes challenged Interior decisions that prevented them from gaining advantages in the casino industry. And in both cases, the Court granted motions to intervene as of right by third parties who benefited from those Interior decisions.

First, in *Forest County*, the Forest County Potawatomi Community challenged Interior's disapproval of a gaming-compact amendment that would have required Wisconsin to compensate the tribe for "any lost revenue" resulting from the Governor's concurrence in any other tribe's attempt to operate a casino within 30 to 50 miles of the Potawatomi's casino, creating a "50-mile non-competition zone." 317 F.R.D. at 9. The Menominee Indian Tribe, which had long been seeking to open a casino in that zone, moved to intervene. The Court granted the motion, concluding that the Menominee "would suffer concrete injury" if the Court "overturn[ed] a favorable administrative action sought by the Menominee and which benefitted the Menominee." *Id.* at 12. Specifically, an order requiring Interior to approve the amendment "would put the Menominee at a 'competitive disadvantage when seeking state approval for'" a casino in the relevant area, given that any such approval would obligate the State to offset the Potawatomi's lost revenue. *Id.*

Less than three months ago, the Court granted intervention in similar circumstances in *Connecticut v. U.S. Department of Interior*, No. 17-cv-2564-RC, 2018 WL 4681619, __ F. Supp. 3d __ (D.D.C. Sept. 29, 2018). There, Connecticut's two tribes had reached an agreement with the State under which they alone could operate a new casino without terminating the State's right to hundreds of millions of dollars in annual royalties from the tribes' existing casinos. *Id.* at *4. When Interior declined to provide the needed authorization for this agreement, the tribes sued to overturn Interior's decision. *Id.* at **4–5. MGM Resorts then moved to intervene, citing one casino it operates near the tribes' proposed casino (in Massachusetts) and its desire to open a casino in Connecticut—which, unlike a casino operated by the tribes, *would* terminate the State's substantial royalty

receipts. *Id.* at *5. This Court granted the motion, finding MGM would be doubly injured by an order overturning Interior's decision: First, that order would injure MGM in its efforts to open any *new* casino in Connecticut by "giv[ing] the Tribes an advantage … over private casino developers like MGM." *Id.* at *9. Second, MGM's *existing* Massachusetts casino would be injured by the "'imminent increase in competition' from the Tribes' casino less than twenty miles away[—]the core injury-in-fact underlying competitor standing." *Id.* at *10 (quoting *Am. Inst. of Certified Pub. Accountants v. IRS*, 804 F.3d 1193, 1197–98 (D.C. Cir. 2015) ("*AICPA*")). As the Court explained, "'basic economic logic' suggests that two large casinos within fifteen miles of one another would compete for patrons." *Id.* (quoting *AICPA*, 804 F.3d at 1198).

The injury here falls neatly in line with *Forest County* and *Connecticut*. Just like the plaintiff tribes in those cases, Sault seeks to overturn an Interior decision that hinders its efforts to conduct gaming. Just like the intervenors in those cases, the Detroit Casinos benefit from Interior's decision, which prevents the opening of multiple new casinos that would directly compete with the Detroit Casinos for business. The relief that Sault seeks would eliminate this benefit, removing a "hurdle to development of" the new casinos. *Connecticut*, 2018 WL 4681619, at *11. The same "basic economic logic" animating *Connecticut* thus makes clear that the introduction of multiple new casinos in the Lower Peninsula—including one just 26 miles from Detroit and 5 miles from an international airport—would increase the competition that the Detroit Casinos face. Recent history confirms this: in the two years after the May 2012 opening of a casino in Toledo—just over 60 miles from Detroit—the Detroit Casinos' revenues decreased by $84 million (with a corresponding reduction in their tax payments). Spectrum Report at 3. This is consistent with developments in other markets in the Midwest and Northeast, where the opening of new casinos has led to substantial reductions in existing casinos' revenues. *Id.* at 4–6. There is every reason to expect

that the opening of *multiple* new casinos—including one twice as close as the Toledo casino—would similarly have a negative impact on the Detroit Casinos. *Id.* at 2.

Indeed, the injury here is even *more* concrete and obvious than those found sufficient in *Forest County* and *Connecticut*. In those cases, the Court concluded that competition-based injuries were cognizable even though the relief the plaintiffs sought would not necessarily cost the intervenors a cent or result in a new casino competing with intervenors' existing casinos. In *Forest County*, the intervenors did not have an existing casino in the relevant area, and the relief sought would not have denied them a new casino in that area; it would have merely created a financial disincentive to approving the new casino. It was enough that an order overturning Interior's decision would "impede the Menominee's efforts to obtain a gubernatorial concurrence" in any effort to open a new casino in the relevant area, which in turn would "impede their efforts to develop a gaming facility." 317 F.R.D. at 12. Similarly, the Court in *Connecticut* found a sufficient injury where, even though MGM does not operate *any* casino in Connecticut, a ruling overturning Interior's decision would put MGM at a competitive disadvantage if it ever sought approval to construct and operate such a casino. 2018 WL 4681619, at *9. Here, the Detroit Casinos' injury is not contingent on any future attempts to open new casinos, or on any other events—they already own and operate three casinos in the same area in which Sault seeks to open multiple new casinos, and those casinos would directly compete with these existing Detroit Casinos. This exposure to increased competition is a sufficient injury. The Detroit Casinos need not "wait until [that] increased competition actually occurs"—the threatened "lifting of … restrictions alone" is sufficient constitutional injury. *La. Energy & Power Auth.*, 141 F.3d at 367; *see also AICPA*, 804 F.3d at 1198 ("[A]lthough the Institute has offered no evidence that the competitive harm has yet occurred, our precedent imposes no such requirement.").

Causation and Redressability. In light of the Detroit Casinos' clear injury, the causation and redressability requirements are easily satisfied. That injury would occur only if this Court granted Sault's requested relief (demonstrating causation), whereas an order denying that relief and preserving Interior's decision would protect the Detroit Casinos from increased competition (demonstrating redressability). Just as in *Forest County* and *Connecticut*, this is more than enough. *See Connecticut*, 2018 WL 4681619, at **12–13 (finding causation because a decision *overturning* Interior's decision would "cause MGM's competitive injury described above" and finding redressability because *preserving* that decision would "preserve MGM's ability to compete with the Tribes on equal footing" and "prevent the introduction of a competitor"); *Forest Cty.*, 317 F.R.D. at 13 ("Having found that the Menominee would be so injured, the Court notes that the Menominee also satisfy the remaining two elements of Article III standing—causation and redressability.").

* * * * *

For these reasons, the Detroit Casinos have constitutional standing to intervene.

B. The Detroit Casinos Satisfy the Rule 24(a)(2) Requirements.

Just as clearly, the Detroit Casinos satisfy all four of the Rule 24(a)(2) requirements: (1) this Motion is timely; (2) they have a legally protected interest in the subject-matter of this lawsuit; (3) disposition of this case could impair or impede their ability to protect that interest; and (4) no existing party will adequately represent the Detroit Casinos' interest.

1. This Motion is timely.

This Motion is indisputably timely. The timeliness requirement "is aimed primarily at preventing potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties." *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). Here, the Court has entered a schedule under which summary-judgment briefing will not even begin until (at the earliest) April 8, 2019. ECF 14. The Detroit Casinos will have no difficulty fully complying with this schedule.

Thus, allowing intervention at this juncture, months before dispositive-motion briefing is set to commence, will in no way disrupt—much less *unduly* disrupt—this case. *See, e.g.*, *Safari Club Int'l v. Jewell*, No. 14-cv-670-ABJ, 2015 WL 13651265, at *5 (D.D.C. Mar. 12, 2015) (deeming motion timely because it "was filed before briefing on the merits was scheduled," even though the motion was filed *after* the parties had litigated a prior motion to dismiss).

2. The Detroit Casinos have a legally protected interest in this action.

For reasons already made clear, the Detroit Casinos have a legally protected interest in this litigation. The "liberal and forgiving standard" of "legally protected interest" (*Am. Horse Prot. Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 157 (D.D.C. 2001)) is aimed at "disposing of disputes with as many concerned parties as may be compatible with efficiency and due process" (*100Reporters LLC v. U.S. D.O.J.*, 307 F.R.D. 269, 275 (D.D.C. 2014) (citation omitted)). Where, as here, an intervenor "has constitutional standing, it *a fortiori* has 'an interest relating to the property or transaction which is the subject of the action.'" *Crossroads*, 788 F.3d at 320; *see also, e.g.*, *Fund For Animals*, 322 F.3d at 735 (explaining that the interest requirement is "readily dispatched" where an intervenor has established its constitutional standing); *Mova Pharm.*, 140 F.3d at 1076 (explaining that a movant "need not show anything more than that it has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a)"). So, for the same reasons that the Detroit Casinos have standing—reversal of Interior's decision would expose them to new competition—they clearly have a legally protected interest in this action.

3. The Detroit Casinos' legally protected interest may be impaired by disposition of this action.

Resolution of this action without the Detroit Casinos' involvement, moreover, would threaten their ability to protect their competition-based interest. In assessing this factor, "courts in this circuit look to the 'practical consequences' that the applicant may suffer if intervention is

denied." *Forest Cty.*, 317 F.R.D. at 14 (quoting *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977)). Once again, the Detroit Casinos' constitutional standing quickly puts this factor to rest. "[T]he challenged decision was favorable to [the Detroit Casinos], and the present action is a direct attack on that decision." *Id.* It follows that "disposition of this action could seriously impair the ability of the [Detroit Casinos] to protect their interests." *Id.*; *see also Connecticut*, 2018 WL 4681619, at *14 ("For the same reasons MGM has standing to intervene … MGM has demonstrated a legally protected interest in the action that may be impaired if intervention is denied."); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 14 (D.D.C. 2010) (finding that intervenor's interest could be impaired where, "[s]imply put, the Bureau's decision below was favorable to Antelope, and the present action is a direct attack on that decision"). Precisely because the Detroit Casinos benefit from the Interior decision at issue here and would be harmed by the overturning of that decision, their interests would be impaired if they were excluded from this litigation.

4. Interior will not adequately represent the Detroit Casinos' commercial interests.

Finally, no existing party to the litigation adequately represents the Detroit Casinos' interests. The Detroit Casinos' burden on this issue is "minimal"; they need only "show[] that representation of [their] interest '*may be'* inadequate." *Connecticut*, 2018 WL 4681619, at *14 (quoting *Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972) (emphasis added)); *see also Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (explaining that the burden is "not onerous"). This minimal requirement is quickly satisfied in cases where the existing defendants are governmental entities, as "courts in this Circuit 'have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.'" *Forest Cty.*, 317 F.R.D. at 14 (quoting *Fund For Animals*, 322 F.3d at 736). The reason for this rule is simple: As an arm of the federal government, Interior's "overarching 'obligation is to represent the interests

of the American people,'" and it can thus be expected to focus on defending the integrity of its administrative process in reviewing and denying Sault's applications. *Connecticut*, 2018 WL 4681619, at *14 (quoting *Fund For Animal*, 322 F.3d at 736). The Detroit Casinos' "obligation," by contrast, is simply "to represent [their] own interests," including their commercial objectives of minimizing competition and maximizing revenue. *Id.* Because Interior cannot, should not, and will not seek to advance those commercial objectives, it is incapable of adequately representing the Detroit Casinos' interests in this litigation.

* * * * *

The Detroit Casinos have standing to participate in this litigation, and satisfy every requirement for intervention as of right under Rule 24(a)(2).

II. Alternatively, The Detroit Casinos Should Be Permitted To Intervene Under Rule 24(b)(1)(B).

Even if the Detroit Casinos were not entitled to intervene as of right, they should be permitted to intervene under Rule 24(b)(1)(B). Under that rule, "[o]n timely motion, the court may permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(1)(B). The Court also "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(3). The Detroit Casinos clear the low bar that Rule 24(b)(1)(B) sets.

First, this Motion is undeniably timely for the reasons set forth above. *Supra* at I.B.1.

Second, the Detroit Casinos have a "claim or defense that shares with the main action a common question of law or fact"—namely, the defense that Interior properly exercised its authority in denying Sault's applications. This is more than enough under Rule 24(b)(1)(B). *See, e.g.*, *Nuesse v. Camp*, 385 F.2d 694, 704 (D.C. Cir. 1967) (explaining that the Rule's use of "claim or

defense" "is not interpreted strictly"); *100Reporters*, 307 F.R.D. at 287 (granting permissive intervention where intervenor and the Department of Justice took the same position on the plaintiff's FOIA claims); *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 10 (D.D.C. 2007) (granting permissive intervention where intervenors "present defenses to the precise claims brought by plaintiffs").

Third, allowing the Detroit Casinos to intervene at this early juncture will not in any way—let alone unduly—delay or prejudice any of the original parties' rights. Instead, allowing intervention will enable "all interested parties to present their arguments in a single case at the same time, especially [given that] the [Detroit Casinos] have timely moved to join this litigation at such a nascent stage." *100Reporters*, 307 F.R.D. at 286–87.

III. The Detroit Casinos Will Gladly Stipulate To Certain Conditions To Ensure That Their Intervention Promotes The Efficient And Just Resolution Of This Case.

In prior cases, courts have found it appropriate to impose certain conditions on an intervenor's participation in a case. The objective of such conditions is to "ensure the fair, efficacious, and prompt resolution of the litigation." *Forest Cty.*, 317 F.R.D. at 15; *see also Connecticut*, 2018 WL 4681619, at *15 (adopting "certain conditions of intervention"). To that end, the Detroit Casinos have no objection to the following conditions, which were implemented by the *Forest County* and *Connecticut* courts:

- The Detroit Casinos will coordinate with Interior to avoid duplicative arguments to the greatest extent possible.
- The Detroit Casinos will comply with all of the directives in the Standing Order for Cases Before Judge Trevor N. McFadden (ECF 7), including the page limits set forth at Rule 11(A).

CONCLUSION

For the foregoing reasons, the Detroit Casinos respectfully request that the Court grant their motion for leave to intervene in support of Defendants.

Respectfully submitted,

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