



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) THE CHEROKEE NATION,
a federally recognized Indian Tribe,
(2) THE CHICKASAW NATION,
a federally recognized Indian Tribe
(3) THE CHOCTAW NATION,
a federally recognized Indian Tribe,

Plaintiffs,

v.

(1) J. Kevin Stitt, in his official capacity as the
Governor of the State of Oklahoma,

Defendant.

No. CIV-19-1198-D

**COMPLAINT
BY INTERVENOR
THE MUSCOGEE (CREEK) NATION**

1. Intervenor, the Muscogee (Creek) Nation (hereafter, the “M(C)N”), adopts, ratifies and incorporates herein by reference, as if originally pled, the averments and authorities contained in the *COMPLAINT* filed by the Cherokee, Chickasaw and Choctaw Nations on 12/31/2019, which gives rise to the above-styled action.

The following averments are unique to the M(C)N:

I. NATURE OF THE ACTION

2. In 2004 the State of Oklahoma (“State”) offered to the M(C)N its model Tribal-State gaming compact under which the M(C)N could lawfully engage in Class III gaming upon tribal lands in accord with the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§2701-2721.

3. The M(C)N accepted the State's gaming Compact, which was then approved under IGRA by the Secretary of the United States Department of Interior.

4. The M(C)N's gaming Compact vests the M(C)N with rights protected by Federal law, 25 U.S.C. §2710(d)(2)(C), including the right to automatic renewal, which is expressly set forth in Part 15.B. of the gaming Compact.

5. The M(C)N seeks declaratory judgment affirming the legal effect of the "shall automatically renew" clause of its gaming Compact Part 15.B.

6. Declaratory judgment is necessary to bring to an end the immediate damage caused by the actions of Defendant J. Kevin Stitt,¹ which constitute an invasion of the M(C)N's tribal sovereignty and injures rights held by the M(C)N under Federal law.

II. INTERVENOR

7. The M(C)N is a federally recognized Indian Tribe and a sovereign tribal nation, see Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 84 Fed. Reg. 1200, 1201 (Feb. 1, 2019), with a governing body that is duly recognized by the United States Department of Interior.

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§1331 and 1362 because it is brought by a federally recognized Indian Tribe, the M(C)N seeks to protect and enforce rights held by it under IGRA, and the gaming Compact that was entered into between the State and the M(C)N continues to be in effect under IGRA and therefore has the force of Federal law. (citations omitted).

¹ Defendant is the Governor of the State of Oklahoma and, pursuant to *Ex parte Young*, 209 U.S. 123 (1908), is being sued in his official capacity.

9. Venue is proper in this Court under 28 U.S.C. §1391(b) because Defendant is a resident of the State and resides within the western district of Oklahoma and substantial events giving rise to the M(C)N's claim against Defendant occurred within the western district.

IV. RELEVANT FACTS

10. The M(C)N conducts Class III gaming under its gaming Compact that is in effect under IGRA, and which secures to the M(C)N the right to conduct Class III gaming in accordance with the Compact's terms.

11. The effective date of the M(C)N's gaming Compact with the State is on or about February 4, 2005.

12. The M(C)N has enacted ordinances authorizing Class III gaming activities on its Indian lands², and those ordinances, which satisfy IGRA requirements, were approved by the Chairman of the NIGC.

13. The M(C)N's gaming Compact Part 15.A. sets forth the requirements that must be met for the Compact to go into effect. Those conditions were satisfied by the M(C)N on or about February 4, 2005.

14. The M(C)N's gaming Compact Part 15.B. provides that the Compact's initial term will expire on January 1, 2020, and "shall automatically renew" for successive fifteen-year terms on that same date, if at that time "organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of the Compact."

² MCNCA Title 21, §1-101 *et seq.*

15. Part 15.B.'s requirements have been satisfied. Therefore, the M(C)N's gaming Compact automatically renewed on January 1, 2020, and remains in effect through another fifteen-year term.

V. DECLARATORY RELIEF

16. The M(C)N adopts, ratifies and incorporates by reference all allegations of the preceding paragraphs, as well as the averments and authorities contained in the *COMPLAINT* filed by the Cherokee, Chickasaw and Choctaw Nations on 12/31/2019.

17. The M(C)N is entitled to declaratory and, if necessary, injunctive relief to remedy the Defendant's ongoing violation of Federal law and invasion upon the M(C)N's sovereignty.

PRAYER FOR RELIEF

WHEREFORE, the M(C)N respectfully prays for a judgment in its favor as follows:

1. The M(C)N seeks a declaration that:

(a) The M(C)N possesses a Federal law right to conduct Class III gaming pursuant to 25 U.S.C. §2710(d)(2)(C) and under the Compact it has entered with the State of Oklahoma and that is in effect under IGRA;

(b) The Compact under which the M(C)N conducts Class III gaming provides in Part 15.B. that the Compact "shall automatically renew" on January 1, 2020, if at that time "organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or a court order following the effective date of this Compact";

(c) The State, which drafted and offered the terms of the Compact to the M(C)N, has taken actions that satisfy Part 15.B.'s conditions for automatic renewal;

(d) The Compact accordingly “shall automatically renewal” on January 1, 2020, for another fifteen-year term; and

(e) The Defendant’s denying, interfering with, or otherwise acting contrary to the M(C)N’s rights under its Compact as renewed on January 1, 2020, either through his direct action or through the action of any of his agents, officers, employees, or representatives, are null and void and have no legal effect.

2. Such further relief as the Court may deem appropriate.

Respectfully Submitted,

Dated: January 27, 2020.

Muscogee (Creek) Nation
Office of the Attorney General
Roger Wiley, Attorney General

By: */s/Roger Wiley*

Roger Wiley, OBA #11568
Kyle B. Haskins, OBA #12694
Office of the Attorney General
Department of Justice
P.O. Box 580
Okmulgee, Oklahoma 74447
918-295-9720
918-756-2445 – facsimile
rwiley@mcnag.com
khaskins@mcnag.com
THE MUSCOGEE (CREEK) NATION

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. Based upon the records currently on file in this case, the Clerk of the Court will transmit a Notice of Electronic filing to the following ECF registrants:

Phillip G. Whaley
pwhaley@ryanwhaley.com

Daniel G. Webber, Jr.
dwebber@ryanwhaley.com

Patrick R. Pierce, Jr.
rpearce@ryanwhaley.com

Mathew C. Kane
mkane@ryanwhaley.com

Steven K. Mullins
mullins@lytlesoule.com

Matthew K. Felty
mkfelty@lytlesoule.com

Mark E. Burget
Mark.burget@gov.ok.gov

Jeffrey C. Cartmell
Jeffrey.cartmell@gov.ok.gov

**ATTORNEYS FOR DEFENDANT J. Kevin Stitt,
As Governor of the State of Oklahoma,
And ex rel. The State of Oklahoma**

Robert H. Henry
rh@rhenrylaw.com

Douglas B. L. Endreson
dendreson@sonosky.com

Frank S. Holleman
fholleman@sonosky.com

Sara Hill
sara-hill@cherokee.org

Stephen Greetham
stephen.greetham@chickasaw.net

Bradley Mallett
bmallett@choctawnation.com

ATTORNEYS FOR PLAINTIFFS

/s/ Roger Wiley
Roger Wiley