UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

SEMINOLE TRIBE OF FLORIDA,

Plaintiff,

CONSOLIDATED CASE
CASE NO.: 4:15-CV-516-RH/CAS

v.

STATE OF FLORIDA,

Defendant.

SEMINOLE TRIBE'S MEMORANDUM IN OPPOSITION TO STATE OF FLORIDA'S POST-TRIAL MOTION

The State's motion offers nothing to indicate that the findings of fact and conclusions of law contained in the Court's thorough, well-reasoned Opinion on the Merits (the Opinion) was not fully supported by evidence in the record and controlling law. The motion simply takes issue with the findings and conclusions and repeats the same arguments previously made in the case. The Tribe's more particular response is set forth below.

Brighton and Big Cypress

The Opinion found that the State had permitted others to offer banked card games and thereby triggered provisions in the Compact authorizing the Tribe to offer such games in all seven of its facilities for the full term of the Compact. The State argues that, even if the State engaged in actions that permitted others to offer banked card games, such games cannot be offered at the Tribe's Brighton and Big

Cypress facilities because the Legislature has not changed state criminal laws to allow such games.

As has been demonstrated in prior filings in this case, Florida criminal laws do not apply on Indian lands except as provided by federal law. Under IGRA, a Tribe is authorized to conduct any Class III gaming authorized in the Compact. The Court's finding that the State's conduct triggered provisions of the Compact that authorize the Tribe to offer the games at all seven locations for the full 20-year term of the Compact is well-supported both by the evidence cited in the Opinion and by the language of the Compact. The State ignores Part III, Section F.2. of the Compact, which authorizes the Tribe to conduct:

> Banking or banked card games, including baccarat, chemin de fer, and blackjack (21); provided, that the Tribe shall not offer such games at its Brighton or Big Cypress Facilities *unless and until the State of Florida permits any other person, organization or entity to offer such games*.

(emphasis added). This provision was approved by the Legislature along with the rest of the Compact.

Designated Player Games

With the exception of an affidavit that is both irrelevant and inadmissible, the State offers nothing not already argued and rejected by the Court. The State simply takes issue with the Court's findings and conclusions, erroneously stating that they are unsupported by evidence in the record.

The Court found that the designated player games are "banked card games" based upon reasonable interpretations of IGRA and Section 849.086, Florida Statutes, common understanding of the term in the gaming industry, testimony of both expert and lay witnesses, and legislative history. The State ignores virtually all of that evidence, disregards the Court's reasoning, and presents its argument as though there had been no comprehensive briefing on the relevant issues and no trial.

The Boylan Declaration

The State offers a declaration, executed on December 14, 2016 by Virginia Boylan, a staff attorney for the Senate Committee on Indian Affairs in 1988. Ms. Boylan testifies to her current belief that when Congress included reference to chemin de fer in IGRA, it did not intend the reference to be to player-banked games. The declaration should be rejected for multiple reasons.

First, the declaration is untimely. The State offers no explanation of why the testimony would not have been available before trial.

Second, the declaration would not have been admissible in evidence at trial in lieu of Ms. Boylan's in-person or deposition testimony.

Third, federal courts have consistently concluded that after-the-fact testimony by individuals regarding congressional intent has no persuasive value. This applies to congressional staff members, *In Re International Judicial Assistants*, 936 F.2d 702, 706 (2nd Cir. 1991) ("Staff members have ample

opportunity to draft language that members of congress may choose to use in committee reports and statutory texts but they may not elucidate congressional intent by bearing witness to congressional thinking."), as well as to individual members of Congress. *Blanchette v. Connecticut General Ins. Corporations*, 419 U.S. 102, 132 (1974) ("But post-passage remarks of legislators, however explicit, cannot serve to change the legislative intent of Congress expressed before the act's passage. * * * Such statements represent only the personal views of these legislators, since the statements were made after passage of the act.")

Even contemporaneous statements of members of Congress involved in passage of an act have been rejected for purpose of determining congressional intent. *Garcia v. United States*, 469 U.S. 70, 75 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation [citation omitted]. We have eschewed reliance on the passing comments of one Member [citation omitted] and casual statements from the floor debates."

Fourth, Ms. Boylan's testimony is unsupported by the report of the very committee that she worked for and that passed out the bill that enacted IGRA. *See* Seminole Tribe Exhibit 061, pp. 7, 16.

Finally, Ms. Boylan's declaration fails to explain away the multiple other sources cited in the Opinion as the basis for the Court's conclusion that player-banked games, including designated player games, are "banked card games" within the meaning of the Compact.

Conclusion

For the foregoing reasons, the Seminole Tribe respectfully urges the Court to deny the State's Post-Trial Motion.

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, a true and correct copy of the foregoing was served to the following counsel of record:

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