

IN THE SUPREME COURT OF FLORIDA  
Case No. SC07-2154

FLORIDA HOUSE OF REPRESENTATIVES,  
and MARCO RUBIO, individually and in his  
capacity as Speaker of the Florida House of  
Representatives,

Petitioners,

v.

CHARLIE CRIST, in his capacity as  
Governor of Florida,

Respondent.

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SEMINOLE TRIBE OF FLORIDA'S MOTION TO JOIN  
THIS PROCEEDING AS RESPONDENT

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The Seminole Tribe of Florida [Tribe], pursuant to Fla. R. App. P. 9.300, moves to join this proceeding as a Respondent and in support of same states:

1. The Tribe is a federally recognized Indian tribe whose reservations and trust lands are located in the State of Florida [State]. The Tribe currently operates Class II gaming facilities on its lands under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 [IGRA], offering low stakes poker games and electronically-aided bingo games. IGRA, under certain circumstances, also

provides for the operation of Class III gaming -- which includes a variety of games including slot machines and banked card games.

2. Since 1994, the Tribe has attempted to secure authority to conduct Class III gaming activities on its lands in accordance with IGRA by several means -- including negotiations with the State. The Tribe has also initiated litigation to compel the Secretary of the Interior [Secretary] to issue procedures, as provided by the Secretary's Regulations, where previous negotiations with the State failed and the State asserted its sovereign immunity to block the judicial remedy provided by the IGRA. Without a Compact or procedures issued by the Secretary, the Tribe is precluded from operating Class III gaming on its lands.

3. In November 2004, Florida voters approved an amendment to the Florida Constitution to allow the operation of slot machines at pari-mutuel facilities in Broward and Dade Counties Florida, subject to ratification by the voters of each county and implementing legislation by the Florida Legislature [the "Amendment"]. On March 8, 2005, pursuant to voter referenda as required by the Amendment, the voters of Broward County voted to accept the slot machine gaming now authorized by the Florida Constitution. The slot machines authorized under the Florida Constitution and accepted by the voters of Broward County would be Class III gaming devices if operated by the Tribe.

4. On December 8, 2005, the Florida Legislature enacted implementing legislation to allow 6,000 slot machines to be offered at pari-mutuel facilities in Broward County — the same County in which the Tribe has three Class II gaming facilities currently in operation. Three non-Indian slot machine operations at the pari-mutuel facilities in Broward County licensed by the State are up and running and directly competing with the Tribe; another is expected to be operational in 2008. The inability to conduct Class III gaming places the Tribe at a competitive disadvantage to those pari-mutuel facilities in Broward which has resulted in a significant loss of revenue to the Tribe.

5. After more than 13 years of failed negotiations and legal wrangling, on November 5, 2007, the Secretary advised the State and the Tribe “that the Department will issue Class III gaming procedures if a signed Tribal-State compact is not submitted by November 15, 2007.” App. 1. In doing so, the Secretary recognized:

the Department has a responsibility to the Tribe. The State constitution has recently been amended to authorize slot machines in several counties. **This leaves the Tribe on an unfair playing field if it is allowed to offer only Class II games.** Moreover, the Tribe has filed suit in Federal district court demanding the issuance of Secretarial procedures so it may engage in Class III gaming.<sup>1</sup>

App. 1 (emphasis added).

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<sup>1</sup> That action, pending in the Southern District of Florida, has been stayed for 60 days. App. 2.

6. On November 14, 2007 the Tribe and the State entered into a Compact with respect to the operation of certain Class III “Covered Games” (as defined in the Compact), enabling the Tribe to engage in the Class III gaming to which it is entitled under IGRA.

7. As a party to the underlying Compact that is now challenged by Petitioners, the Tribe has a direct and substantial stake in the outcome of this proceeding such that it should be joined as a Respondent. *See City of Auburndale v. State ex rel. Landis*, 184 So. 787 (1938) (holding co-relators had “every right to intervene in [former quo warranto] suit” to assert and protect their property rights in the subject proceedings); *see also* Fla. R. App. P. 9.020(g)(4) (defining “Respondent” as “[e]very other party in a proceeding brought by a petitioner”);<sup>2</sup> Fla. R. Civ. P. 1.230 (“Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention....”).

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<sup>2</sup> As recognized by Fla. R. App. P. 9.360(a), “[a] party to a cause in the lower tribunal who desires to join in a proceeding as a petitioner or appellant shall file a notice to that effect . . . .” By analogy, the Tribe as party to the Compact under challenge should be allowed to join this proceeding in defense of its rights. In addition, “[a]t any time in the interest of justice, the court may permit any part of the proceeding to be amended so that it may be disposed of on the merits. In the absence of amendment, the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties.” Fla. R. App. P. 9.040(d). Allowing the Tribe to join as a Respondent will allow this proceeding to be disposed of upon the merits without prejudice to the substantial rights of the parties.

8. Florida law is clear that where one seeks to enjoin the performance of a contract, the parties to the contract are indispensable and must be joined in the lawsuit. *Dade Enterprises Inc. v. Wometco Theatres Inc.*, 160 So. 209, 214 (1935); *1800 Atlantic Condominium Association v. 1800 Atlantic Developers*, 569 So.2d 885, 886 (Fla. 3d DCA 1990); *see also W.F.S. Co. v. Anniston National Bank*, 191 So. 300, 301 (1939); *Blue Dolphin Fiberglass Pools of Florida, Inc. v. Swim Industries Corp.*, 597 So.2d 808, 809 (Fla. 2d DCA 1992); *Bermudez v. Bermudez*, 421 So.2d 666, 668 (Fla. 3d DCA 1982); *Loxahatchee River Environmental Control District v. Martin County Little Club*, 409 So.2d 135, 136-37 (Fla. 4<sup>th</sup> DCA 1982). The Compact is, by its nature, a contract and is to be interpreted as such. *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wash. 2d 734, 750, 958 P.2d 260, 267 (1998).

9. Because the Tribe is a party to the underlying Compact at issue and, therefore, indispensable to this proceeding, and due to the direct and significant stake it has in the adjudication of the issues herein, the Tribe should be joined as a Respondent.

**WHEREFORE**, for all of the foregoing reasons the Court is respectfully requested to enter an order allowing the Seminole Tribe of Florida to join in this proceeding as a Respondent.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail to the following this 20<sup>th</sup> day of November 2007:

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**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this brief was written in a proportionally spaced Times New Roman 14-point font in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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