

No. 16-1137

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

COMMONWEALTH OF MASSACHUSETTS; AQUINNAH/GAY HEAD
COMMUNITY ASSOCIATION, INC.; TOWN OF AQUINNAH, MA,
Plaintiffs-Appellees

v.

WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH); THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD; THE AQUINNAH
WAMPANOAG GAMING CORPORATION,
Defendants-Appellants

v.

CHARLES D. BAKER, in his official capacity as Governor of the
Commonwealth of Massachusetts; MAURA T. HEALY, in her capacity
as Attorney General of the Commonwealth of Massachusetts;
STEPHEN P. CROSBY, in his official capacity as Chairman of the
Massachusetts Gaming Commission,
Third-Party Defendants

**MOTION OF THE UNITED STATES TO PARTICIPATE
AS AMICUS CURIAE IN ORAL ARGUMENT**

The United States hereby moves for permission to participate in oral argument in this matter pursuant to Rule 29(g) of the Federal Rules of Appellate Procedure. Appellants support this motion. Appellees do not take a position on the motion, as long as any time

allotted to the United States would not come out of the time allotted to Appellees.¹

1. As explained in the United States' amicus brief in support of Appellants, the United States has a trust responsibility to the Aquinnah Tribe. The United States has an interest in the administration of both the Massachusetts Indian Land Claims Settlement Act of 1987 ("Massachusetts Settlement Act"), 25 U.S.C. §§ 1771–1771i, and Indian Gaming Regulatory Act of 1988 ("IGRA"), 25 U.S.C. §§ 2701–2721, and how the statutes inter-relate.
2. The United States has an interest in ensuring the Massachusetts Settlement Act is fairly implemented. The Department of the Interior administers aspects of the Massachusetts Settlement Act related to the settlement lands. *See* 25 U.S.C. §§ 1771a, 1771d.

¹ The Court has scheduled oral argument for December 6, 2016, and the time for argument has not yet been determined or allocated. In the event that the United States' motion to participate is granted and the Court allots argument time on a per side basis, the United States will discuss with Appellants how to allocate Appellants' argument time with the United States.

3. The United States also has an interest in the proper implementation of IGRA, by which Congress “struck a careful balance among federal, state, and tribal interests.” *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1247 (11th Cir. 1999). The National Indian Gaming Commission (NIGC) has significant responsibilities under IGRA. The NIGC Chair approves gaming ordinances and may exercise enforcement authority. 25 U.S.C. §§ 2705, 2706, 2710. Both NIGC and the Department of the Interior have opined that IGRA applies to the settlement lands.
4. The United States believes that its participation in argument may be of assistance to the Court.

For the foregoing reasons, the United States respectfully asks that the Court grant it permission to participate in oral argument in this matter.

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October 18, 2016

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system, which will serve a copy of the same on the other participants in this case.

s/ Judy B. Harvey
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