

**STATE OF WISCONSIN
SUPREME COURT**

MARY E. PANZER, personally and as
Majority Leader of the Wisconsin Senate;
JOHN G. GARD, personally and as
Speaker of the Wisconsin Assembly; and
Joint Committee on Legislative Organization

Petitioners

v. Case No. _____

JAMES E. DOYLE, in his official
capacity as Governor of Wisconsin,
and MARC J. MAROTTA, in his official
capacity as acting Secretary of the Wisconsin
Department of Administration,

Respondents.

**PETITION TO COMMENCE AN ORIGINAL ACTION PURSUANT TO
WISCONSIN STATUTE SECTION 809.70 AND ARTICLE VII § 3
WISCONSIN CONSTITUTION**

Petitioners, by their attorney, Gordon B. Baldwin, respectfully request that the Wisconsin Supreme Court exercise its original jurisdiction to address the scope of the Governor's authority to enter into, extend or renew gaming compacts between the state and an Indian tribe. Petitioners seek an early determination of the following remedies:

- (1) A declaratory judgment finding that certain provisions of the Proposed Amendments to the Gaming Compact Between the Forest County

Potawatomi Community of Wisconsin and the State of Wisconsin dated as of February 19, 2003 (the "Potawatomi Compact") are in violation of the Constitution of the State of Wisconsin; and

- (2) An injunction forbidding the Governor from entering into, extending, or renewing any compact with an Indian tribe in Wisconsin until the legal issues presented in this Petition are decided by this Court.

This Petition is supported by the Affidavit of Senate Majority Leader Panzer (Exhibit A) and a Memorandum in Support of the Petition.

A. Statement Of The Issues.

There are four issues that question the extent of the separation of powers between the Executive and Legislative branches of government:

1. Did the Governor violate Article IV, Section 24 of the Wisconsin Constitution by signing a compact that permits a tribe to conduct games explicitly prohibited under the Constitution as amended in 1993?

2. Did the Governor violate Article VIII, Section 2 of the Wisconsin Constitution by signing a compact that designates monies paid by the tribe for purposes not directed or appropriated by the Legislature and by signing a compact that appropriates future funds to be paid by the State to the tribe without any Legislative oversight?
3. Did the Governor violate Article IV, Section 27 of the Wisconsin Constitution by signing a compact that waives the state's sovereign immunity?
4. Did the Governor lack authority to bind the state to a compact of perpetual duration, and thus violate Wisconsin's separation of powers principle, by precluding the Legislature and future governors from actions regarding Class III gaming in Wisconsin?

B. Statement Of The Facts Necessary To An Understanding Of The Issues.

The facts necessary to an understanding of the issues include:

1. Governor James Doyle is the current governor of the State of Wisconsin.
2. Section 14.035, Wis. Stats., authorizes the Governor to negotiate Indian gaming compacts on behalf of the state.
3. The original gaming compacts with the 11 tribes and bands in the state were signed between August 16, 1991 and June 11, 1992, with a term of seven years. (See Exhibit A, ¶ 5.)
4. Between February 1998 and March 1999, Wisconsin tribes and bands completed new agreements with the state, extending the terms of the original compacts for five years. (See Exhibit A, ¶ 6.)
5. Under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq. ("IGRA"), the tribes and the states can authorize gaming only pursuant to compacts. IGRA provides that tribes may conduct gambling activities on Indian lands or certain lands taken into trust for the tribes after October 17, 1988, only if the state law where the land is located permits the gaming activity.

6. In 1993, the Wisconsin Constitution was amended in Article IV, § 24(6), to prohibit the authorization of gambling in any form, except bingo, raffles, pari-mutuel on-track betting and the current state-run lottery.

7. On February 19, 2003, the Governor signed a compact with the Forest County Potawatomi Community of Wisconsin (the "Potawatomi Compact")
 - (a) authorizing various games prohibited by Article IV, § 24(6) of Wisconsin's Constitution,
 - (b) waiving the State's sovereign immunity, (c) appropriating funds from the state Treasury for the University of Wisconsin without legislative approval, and (d) approving a refund of all fees to the tribe at a future date. (A copy of the compact is included with the Affidavit, Exhibit A.)

8. Upon information and belief, the Governor plans to sign similar compacts with other Indian tribes. (See Exhibit A, ¶ 7.)

9. The Wisconsin Joint Committee on Legislative Organization on April 1, 2003 authorized the

initiation of an action on behalf of itself and on behalf of the State Senate, by its Majority Leader, and the State Assembly, by its Speaker, to challenge the Governor's actions regarding the Potawatomi Compact. (See Exhibit A, ¶ 3.)

C. Statement Of The Relief Sought.

Petitioners request that this Court issue:

1. A declaratory judgment declaring that the Potawatomi Compact is in violation of the Constitution of the State of Wisconsin; and
2. An injunction forbidding the Governor from entering into, extending, or renewing any compact with an Indian tribe in Wisconsin until the legal issues presented in this Petition are decided by this Court.

D. Statement Of The Reasons Why The Court Should Take Jurisdiction.

Several compelling reasons show why this Court must assert jurisdiction. First, this challenge to the Governor's authority to enter into, extend or renew a gaming compact for a perpetual duration presents an issue

of statewide concern because the compact promises to open Wisconsin to virtually unrestricted casino gaming.

Second, the Potawatomi Compact invades the legislative authority to specify by law how to distribute revenues by directing various tribal payments to the "University of Wisconsin, in lieu of and to supplant funds that would otherwise have been provided to the University of Wisconsin from the general fund of the State of Wisconsin." (See Compact at Exhibit A, at Exhibit 1, p. 12.)

Third, the Potawatomi Compact and the Governor's authority under Section 14.035 of the Wisconsin Statutes prevent any future amendments to the Wisconsin Constitution related to gaming by the Legislature, the future governors and the citizens of this state.

CONCLUSION

For the reasons stated above and set forth in the accompanying Memorandum, Petitioners respectfully request that the Court exercise the authority granted to it under Article VII, Section 3 of the Constitution and hear the issues presented in this Petition as an original action.

Dated this _____ day of April, 2003.

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