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COA # 36130-2
NO. 78829-4

SUPREME COURT
OF THE STATE OF WASHINGTON

SUSAN P. MUDARRI, Personal Representative of the ESTATE OF
EUGENE "CHIP" MUDARRI, an individual; LAKESIDE CASINO, LLC
AND C.F.S. LLC d/b/a FREDDIE'S CLUB OF FIFE,

Petitioners,

v.

THE STATE OF WASHINGTON, which is comprised of various State
entities including, but not limited to, CHRISTINE GREGOIRE, Governor
of the State of Washington; GARY LOCKE, former Governor of the State
of Washington, and as an individual; RICK DAY, Director of the
WASHINGTON STATE GAMBLING COMMISSION; Commissioners
JANICE NIEMI, ALAN PARKER, CURTIS LUDWIG, and GEORGE
ORR; and the WASHINGTON STATE LOTTERY COMMISSION:
Commissioners RACHEL GARSON, CAROL KELJO, ROBERT
SCARBROUGH, LARRY TAYLOR, and MELINDA TRAVIS,

Respondents.

PETITIONERS' REPLY BRIEF

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A. The State's Mythical Constellation of "Law" Does Not Exist.

The State's brief is replete with its mantra that somehow federal and state law combined with case law interpretation confers an exclusive gaming right upon the Puyallup tribe to operate electronic scratch ticket gaming. Respondent's brief at 4, 9, 11, 18, 31, 37, 38, 41, 42, and 44. Apparently the State's strategy is to assert it repeatedly as if it were true, so as to breathe life into something that does not exist. The State fails to identify any law whereby electronic scratch ticket gaming is a permitted gaming activity for a tribal entity and no one else. The trial court recognized this fact: "referring to the Plaintiff's reply brief here where the complaint was made that your brief was heavy with assertions but little analysis, and I have to say that I found that to be the case. And I would like to have the analysis behind some of the assertions that you've made here...that there's a confluence between federal, state law and judicial decision that leads me to some sort of clear resolution." VRP 13 (48). The trial court's written opinion indicates the trial court understood the State has the discretion to offer electronic scratch ticket gaming. CP 2730.

This discretionary authority is the precise legal conclusion Mudarri sought by way of declaratory relief so that he could get the Lottery Commission to consider his proposal. Absent court intervention, Mudarri could not get the Lottery Commission to consider electronic

scratch ticket terminals because the attorney general's office was advising the games were "illegal" as reflected in the responses to Mudarri's written requests to negotiate. CP 454, 1843-1846.

Electronic scratch ticket gaming is legal because gambling is legal in this State, and there are no prohibitions on electronic gaming. RCW 67.70, RCW 9.46. Scratch tickets are sold daily in gas stations and grocery stores. CP 450. Federal law, IGRA in particular, establishes a compact process for negotiating state and tribal regulatory control over gaming that is legal. 25 U.S.C. 2710(d)(1)(B). IGRA does not dictate which forms of gaming are legal. IGRA establishes "compacts" as the tool for states to negotiate regulatory controls over gaming that is "permitted". *Rumsey v. Wilson*, 64 F.3rd 1250 (9th Cir. 1994). Whether a game is "permitted" remains the state's decision. The Puyallup Compact specifically provides: "Indian tribes have the exclusive right under IGRA, to regulate gaming activity on Indian lands if gaming activity is not specifically prohibited by federal law and is conducted within a State which does not, as a matter of criminal and public policy, prohibit such gaming activity." CP 634.

Federal law does not compel a State to negotiate exclusive gaming by tribes. *Id.* In this state, there are two Commissions that determine what gaming is permitted under the broad authority granted by the

Legislature: the Lottery Commission and the Gambling Commission. Neither Commission's statutory authority specifically prohibits, nor permits electronic scratch ticket gaming. As a result, if the Lottery Commission authorizes a lottery game it is "legal" and the Gambling Commission has no authority to stop it. RCW 67.70.210.

One of the most significant challenges to the breadth of approved gambling using "slot" machine technology in this State was the "Friendly Lawsuit." Both the Gambling Commission and the Lottery Commission agreed to be bound by the federal court's interpretation of state law. CP 2717. The "Friendly Lawsuit" set the stage for electronic scratch ticket gaming in this State. VRP 21, CP 510. Nothing in the Federal Court opinion suggests electronic scratch ticket gaming is a tribal right. Instead, the Court concluded certain gambling devices are permitted in Washington. CP 508. After the litigation, the Governor and the Gambling Commission authorized electronic scratch ticket gaming to include more than eighteen thousand terminals in this state. CP 448-449. Most recently the Governor approved a Spokane compact that will expand the number of terminals to 27,300. CP 2432, and see Spokane Compact at http://www.wsgc.wa.gov/docs/tribal/spokane_proposed_compact.pdf.

The Legislature has never approved the terminals, nor has it prohibited the terminals. CP 449. Not one proposal has ever been

advanced to the Legislature to grant exclusive authority over the profitable terminals to any tribe, nor has any measure passed to prohibit the terminals by non-tribal entities. Initiative 892, referenced by the State, was a proposal for electronic scratch ticket games in private casinos. Tribal groups invested heavily to successfully defeat this proposition. CP 2003-2007. Also, two measures failed in the legislature, referenced by the State, which proposed electronic terminals in private casinos. Respondent's Brief at 12. The defeat of all three measures changes nothing about the legality of electronic scratch ticket gaming. Notably, none of the measures were amended to grant exclusivity to any tribe. Defeated measures hardly define the law. The defeated measures indicate more about politics and the benefit of weighty financing than either the legality (CP 2008-2239) or the popularity of electronic scratch ticket gaming in this State where the revenue from such gaming is in the billions of dollars. CP 2345; CP 1323; CP 2253. No one has ever proposed and passed a ban on electronic games.

The Legislature's 2006 amendment to the Lottery Act, SSB 6613, wherein it requires a supermajority vote of the Legislature to approve the Lottery's approval of any electronic technology does not moot the merits of Mudarri's case. Respondent's Brief at 28. For several reasons, the Legislature's actions strengthen his position.

First, Mudarri seeks damages, not just declaratory relief. If the amendment changes the authority to offer him the games, he is still entitled to damages.

Second, the title of SSB 6613 is “An Act relating to reaffirming and clarifying the prohibition against internet and certain other interactive electronic or mechanical devices to engage in gambling...”

EST is not mechanical, and it is not an “interactive” electronic device. The technology does not play against the device. Slot machines are “interactive” as the play is against the device. A player “interacting with” the device is simply another way of explaining the limitation, which has always existed in the law, regarding stand-alone technology.

Reaffirming “interactive” devices are prohibited is consistent with the title and intent that the bill clarifies existing law. The bill report does not and legislative history does not state that the Legislature intends to prohibit EST by the State Lottery. The bill is silent as to whether Mudarri could negotiate EST with the Lottery. The Legislature appears to have reiterated true “slot machines” require Legislative approval. Clearly the Legislature was aware of Mudarri’s litigation, yet failed to state the State Lottery is prohibited from offering EST.

If the act is truly “reaffirming and clarifying” what has always been the law, then the bill did not change the interpretation from the

“Friendly Lawsuit” that EST is permitted, and interactive machines are prohibited

If, however, the bill is interpreted to change the legality of EST, then the change affects the Governor’s authority and the Gambling Commission’s authority derived from the Lottery Act to approve EST. There is a mirror relationship between the Lottery Act and the scope of tribal compact negotiations under IGRA. If state authority changes, the State must renegotiate the compacts. CP 642; CP 652; CP 743. If SSB 6613 changed the legality of EST then it did so for both the tribe and anyone else. SSB 6613 makes no distinction between tribal and non-tribal gaming. If no one can operate EST without legislative approval then the gaming cannot be regulated by compact under IGRA. Supermajority approval is required for the new compacts, including the addition of more EST under the Spokane compact. The State cannot have it both ways. If the activity requires legislative approval, then the compacts allowing EST require supermajority legislative approval.

Further, if the supermajority provision of SSB 6613 is interpreted to be a new regulatory control limiting only the State Lottery’s authority to offer EST and is inapplicable to tribal negotiations, then Mudarri prevails on his theory that the technology was permitted prior to the Act, and he should receive damages for the State’s failure to negotiate with him in

good faith. Even if he cannot get the technology without legislative approval, he should be compensated for the State's erroneous actions up to the date of the Act.

The State's references to "hybrid" devices based upon the State "lotto" are without authority of any kind. The only reference to the "lotto" is in the State's briefing. CP 2726-2727. There is no indication in the record to support the State's briefing in this regard. Whether electronic scratch ticket gaming is a "hybrid" innovation is of no significance to the ability to operate the technology. If state law prohibits the technology, that form of gaming cannot be the subject of compact negotiations. Thus, electronic scratch ticket gaming is legal because it is not prohibited and it complies with the legal perimeters governing authorized gaming.

B. Mudarri Should Get EST Because the State Supports EST in His Venue.

Recognizing EST is permitted, the next step in the analysis to address is why Mudarri should have the technology. The reason Mudarri should get the technology is because the State supports EST in his venue; thus, there is no legitimate or rational basis to prohibit the activity, and the Lottery Commission needs to compete to fulfill its statutory obligation.

Nothing in the law compels the executive branch to offer exclusive tax free gaming rights to Indian tribes. IGRA does not compel compact

negotiations as claimed by the State. Respondent's Brief at 38. IGRA requires compact negotiations for any state wishing to regulate Class III gaming on Indian lands. 25 U.S.C. 2710 (3)(B). The federal government cannot require states to negotiate a compact. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996). Several states do not have tribal state compacts, and the Spokane Tribe has operated without a compact in this state until this year. CP 454. In States where there are no compact negotiations, a tribe may request federal regulation over gaming where the state has rejected compact negotiations. *USA v. The Spokane Tribe of Indians*, 139 F.3d 1297 (1998).

Washington happens to be a state that has elected to enter compact negotiations. In support of its profound commitment to tribal negotiations, Washington is one of the few states to waive state sovereign immunity so that a tribe may sue the state when the state refuses to negotiate in good faith. RCW 9.43.36001. This state was not required to waive its immunity, it elected to do so. This state's voluntary participation in Class III gaming negotiations does not derive from legal obligations, but rather from political aspirations supported with significant campaign contributions documented by the public disclosure commission. CP 2003-2239; CP 2551-2553. Further, this State's generosity with respect to

Class III gaming indicates the State is not adverse to gambling. Public policy permits electronic gaming.

Mudarri happens to be the one person in a position of legal standing to object to the State's exclusivity by operation of executive action alone. First, Mudarri is the only person to have ever officially requested negotiations from the Lottery Commission to undertake a joint venture to play State Lottery scratch ticket games in his facility on electronic scratch ticket terminals. Second, the State misappropriated its legitimate discretionary authority when the Governor permitted EST on fee land in Fife next to his casino, which damaged his legitimate business and property interests. CP 333-338.

Washington citizens have paid millions to resolve jurisdictional disputes in Fife in the Land Claims Settlement Act. CP 447. Mudarri is the exclusive casino owner in the position of operating a state regulated casino within the traditional reservation boundaries of any tribe, where jurisdiction and regulatory authority connected to those traditional reservation boundaries have been altered by way of a land settlement agreement between the tribe, the state, and approved by the federal government. CP 892-895; CP 1018. The Governor has absolutely zero authority to gift away jurisdictional control to another sovereign to the detriment of a Washington citizen. Even if the Governor had such

unlimited power, the State should see fit to compensate any citizen directly impacted by the shift in jurisdictional control. The analysis is similar to that of a condemnation or takings case where the state is obligated to compensate a property owner when the state takes the property of a citizen to effect a legitimate government interest. *Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998). Here, the executive has no legitimate state interest in granting exclusive gaming rights while prohibiting such gaming by non-tribal interests. There is no evidence in the record at all to justify the executive branch grant of exclusivity. The State should compensate Mudarri for its erroneous and unjustified actions.

1. The State's Duty to Maximize Lottery Revenue

Recognizing the value of machine gaming, somewhere in excess of \$120.00 per day per machine, Mudarri contacted the State Lottery in hopes of competing in the industry. CP 2577; CP 338. State Lottery revenues had plummeted since electronic scratch ticket gaming became so prolific. CP 1320-1323; CP 1843-1844. Mudarri recognized the business opportunity where he could benefit and the state could benefit from terminals that are tremendously popular. He understood the Lottery Commission has a duty to generate revenue to maximize the state's benefit from gambling dollars. RCW 67.70.040. His business is regulated by the

Gambling Commission, making it a controlled environment free of minors and other corrupt influences. CP 336-343. Further, Fife labeled itself a gaming venue, welcoming to tribal and non-tribal casinos. CP 2246. His proposal was consistent with the Legislature's directive to the State Lottery to maximize profits. If the Lottery offered the games, Mudarri would provide the terminals. Mudarri's inquiry was rejected, without consideration, on the grounds that the equipment in play at his neighbor's facility was "illegal" for him. CP 1845-1846; CP 454. The State Lottery Commission never had Mudarri's offer on its agenda. The Commission never even debated the merits of his proposal. VRP 16, 2283-2810.

Mudarri pointed out to the State in this litigation that the State Lottery was operating scratch tickets in an electronic format already in private venues. CP 385. The State responded by terminating its contracts for the ZIP game, which presumably it negotiated in good faith. VRP at 18. Rather than embracing electronic technology for the State's benefit, the State actively pursued the expansion of electronic scratch ticket terminals exclusively for tribal interests without revenue sharing in the significant profits generated from Washington State taxpayers who voluntarily spend remarkable amounts of money at the terminals. CP 2333-2419. Such a dichotomy cannot be supported by the law and contravenes the Legislative directive that requires some benefit to the state

from legal gambling activities. The Legislature dedicated lottery revenues to education and other meritorious projects. RCW 67.70.240. The State is not benefiting from the most profitable form of gambling that exists. The State has breached its duty, and is negligent.

2. The State's Promotion of EST Proves the State Has No Legitimate Interest in Prohibiting the Activity.

If the Gambling Commission and the Governor can negotiate the operation of more than 27,000.00 terminals in this State, there is absolutely no basis for the State to contend government should prohibit the terminals. State regulatory control is derived from police powers, or the need to provide for public health, safety, and welfare. *Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998). The State does not have arbitrary power to limit the actions of its citizens. The State must have some justification for its actions. Here it has none. There is absolutely no explanation for the executive branch to think it has the power to grant exclusive authority over an activity to one entity and not to its own citizen.

Fundamental to state government is the notion that citizens are free from arbitrary governmental interference. *Duranceau v. City of Tacoma*, 27 Wn. App. 777, 620 P.2d 533 (1980). Here the executive branch of government restricted Mudarri's business activities, while promoting the same business activity in the same jurisdiction to the same consumers.

The deliberate gift of exclusive rights by the executive branch violates basic constitutional principles.

The State's approach to this case is the classic defense to any constitutional challenge: define the right so narrowly so as to make the proposition unreasonable or meaningless. The State suggests it is irrational for Mudarri to claim he has a right to EST machines. Mudarri claims no such right. Instead, Mudarri claims a right to freedom to pursue his business and develop his property without irrational government interference. If government can contract for EST by an agreement that expressly provides Washington is a state that does not prohibit EST "as a matter of criminal law and public policy" (CP 634-635), then government cannot claim a legitimate interest in prohibiting Mudarri from using EST. In fact the State must acknowledge its admission in the compact that EST can be regulated, rather than prohibited, to protect the State's interests and the health and safety of Washington citizens. CP 634-635.

Specific authorization of EST does not need to be spelled out in the constitution in order to prohibit the executive branch from granting exclusive business rights to a sovereign. To the contrary, the presumption is the opposite. Citizens are free to carry out any activity that is not prohibited. For any regulatory control government must provide, at a minimum, a rational basis for reasonable government regulation. Here,

18,000EST terminals have been in operation in this State since 1997. CP 449. Another 10,000 have been authorized under the Spokane Compact. Thousands of these terminals are operating in Mudarri's neighborhood, and the Governor approved EST in Fife on non-trust land for use by Washington State citizens. When the State, through the executive, chose to actively pursue such activity in Mudarri's neighborhood via the III Amendment, altering the preexisting prerequisites that compact gaming be limited to "trust" land, the State compromised the business and property interests of Mudarri. Mudarri's rights were equal to the Tribe's rights as a property owner regarding non-trust land under Washington statute. RCW 64.20. The executive has no authority to disregard the interests of an affected citizen without compensation. He should be allowed reasonable use of the terminals or compensation.

The interest at issue in this case, whether via due process, equal protection, or privileges and immunities is the right to be treated fairly as a citizen without unreasonable government interference. *Duranceau v. City of Tacoma*, 27 Wn. App. 777, 620 P.2d 533 (1980). Mudarri has a right to operate his business. *Amunrud v. Board of Appeals*, 158 Wn. 2d 208, 143 P.2d 571 (2006). He has a right to fair tax treatment. *Black v. State*, 67 Wn. 2d 97, 406 P.2d 761 (1965). He has a right not to compete against a government created monopoly. Wash. Const. Art. XII, §22. The State

cannot justify prohibition when it is already regulating the activity. At a minimum, Mudarri has an equal right to reasonable regulation, an absolute bar on use of EST is necessarily unreasonable. The executive's actions in Fife support Mudarri's claim for EST or damages. The executive granted exclusive rights to EST gaming on fee land. When the Governor took that action, Mudarri's suit was justified.

Mudarri is entitled to compensatory damages for the State's negligence and violation of his constitutional rights. Mudarri respectfully requests this Court find the State's actions improper and remand this matter to state court for a determination of damages and relief.

C. States Unwilling To Allow Indian Tribes to Dictate State Gambling Law Reject Equitable Relief Under Civil Rules of Indispensable Party

The State occupies much of its brief asserting indispensable party arguments, which have never been successful in any state addressing the issue. The State never even attempts to reconcile the multiple state decisions cited by Mudarri to support the legal conclusion that his case does not involve the Puyallup Tribe. *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 N.Y. 2nd 801, 798 N.E.2d 1047, 1057 (2003); *Panzer v. Doyle*, 271 Wis.2d 295, 680 N.W.2d 666 (2004); *Dairyland Greyhound Park, Inc. v. McCallum*, 258 Wis.2d 210, 655 N.W.2d 474 (Wis.App. 2002); *State ex rel. Clark v. Johnson*, 120 N.M.

562, 904 P.2d 11, 19 (1995). Instead, the State focuses on federal law, which does not control this court. CP 2645; *In re Detention of Turay*, 139 Wn.2d 379, 402, 986 P.2d 790 (1999).

Mudarri's case is far different from the federal case repeatedly cited to by the State. *American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002) was a request to prohibit the Governor from future acts of negotiating new compacts and renewing old compacts. In this matter, it is absolutely no business of the Puyallup Tribe whether Mudarri gets machine gaming in his facility. If the end result is competition in gaming, that result is not sufficient to support an indispensable party claim because the tribe's interest must be more than financial. *Makah Indian Tribe v. Verity*, 910 F.2d 555 (1990). The State has been given absolutely zero consideration for exclusive gaming rights to the tribe, and the State's assertion that the tribe has a vested interest in protecting an "exclusive right", which the State has no authority to grant, is infuriating. There is no authority for this State to protect such a monopoly for the benefit of another sovereign.

In this matter, Mudarri challenges the Governor's authority to grant exclusive gaming to the tribe in his jurisdiction and deny him the same activity without relief. His case concerns the propriety of executive branch state action and the detrimental effects of such misconduct on him.

The effect of this case on any tribe or anyone other than the parties to this action is entirely within the discretion of the Legislature. Certainly the sovereign tribes will not adhere to any order in this matter. Mudarri's right to relief cannot be controlled by another government. Unrestrained power in the executive branch defies all fundamental principles upon which state government was formed, including checks and balances, due process, privileges and immunities, and equal protection. If a tribe is indispensable, then no one can ever challenge the states actions and the Governor has exclusive power and control over gambling in this state. Such a result is in direct contravention of this State's constitution vesting authority over gambling in the Legislature. Wash. Const. Art. II §24.

Mudarri attempted to negotiate participation in this litigation by the Puyallup tribe. Appendix A. The tribe ignored him. The trial court authorized the tribe's participation without requiring the tribe act as a party. CP 2618; VRP 60-61.

The declaratory action statutes presume an affected party can be made a part of action, and is silent regarding circumstances such as this where a tribe asserts sovereign immunity. The trial court specifically found that the Declaratory Judgment Act is equal to CR 19 in terms of analysis. VRP 60. In matters where a sovereign refuses to participate as a party, there is no justification to apply an equitable principle to bar any

form of relief to a Washington citizen. Such result is wholly inequitable and unwarranted under factual circumstances where Mudarri can be made whole without effect on the tribe.

Finally, the State's assignment of error to the Court's ruling on indispensable parties should be dismissed because the State never appealed the order. A party failing to enter a notice of appeal is barred from requesting such relief. RAP 5.1, 5.2; *Deschenes v. King County*, 83 Wn.2d 714, 716, 521 P.2d 1181 (1974).

D. The State's Challenge to the Court's Order on Indispensable Parties Is Time Barred.

The State's contention that Mudarri's case does not warrant direct review is inconsistent with the State's assertion that a decision in this matter impacts twenty-nine tribal entities and compromises tribes' "valuable exclusivity" in electronic gaming. Obviously this matter involves "a fundamental and urgent issue of broad public import which requires prompt and ultimate determination." RAP 4.2 (a)(4). Further, if as the State contends, the Governor has unchallengeable authority to grant exclusive gaming rights without contribution to this state, the citizens of this state are particularly vulnerable to the political whims of the sitting administration, without any avenue of relief. It takes little foresight to envision the harm to local infrastructure and community health: Where is

the avenue of relief for a problem gambler suffering without treatment because the dollars committed to such services have never been provided?; How does a city suffering a significant impact on its law enforcement services obtain necessary relief?; and How does the rural taxpayer appeal unreasonable taxing necessary to build the infrastructure to support the growth in tribal gaming? When there is no judicial avenue of relief to challenge executive action, then the public suffers. Particularly, when significant financial resources are available to obtain a desired outcome with elected officials. Fundamental constitutional issues are at stake in this matter, including due process and privileges and immunities, which warrant direct review. Clearly this matter will be before this Court now or later. Principles of judicial economy support Supreme Court review.

E. The Governor Was Not Authorized to Give Away Land; Trust Status Does Not Correct the Governor's Erroneous Act.

Mudarri asserts the Governor requires legislative approval to sign an agreement with a sovereign tribe that in any way alters state jurisdiction over the land. RCW 37.12.010; *City of Sherill v. Oneida Indian Nation of New York*, 544 U.S. 197, 125 S. Ct. 1478 (2005). The State contends the conversion of land to trust status moots the fact that the Governor violated the law. The legal authority cited is *Everett v. State*, 99 Wn.2d 264, 267, 661 P.2d 588 (1983). *Everett* supports Mudarri. In *Everett*, the Court

stated the *current* question of dental authority was “moot” by legislative act; however, the Court would consider whether the authority existed from the date the action was initiated to the date of the legislative change:

The recent legislation clearly allows a dentist with the proper qualifications to engage in the practice of general anesthesiology. RCW 18.71.030(11). Nevertheless, appellant's action for damages against the State and the University is still pending in the Thurston County Superior Court. We therefore must determine whether appellant had authority to administer non-dental anesthesia at the time the challenge to his authority first arose in 1978. We emphasize, however, that the question of damage liability is not before this court. This opinion addresses only the declaratory judgment question relating to the dental licensing scheme as it existed in 1978.

Everett v. State, 99 Wn.2d 264, 267, 661 P.2d 588, 589 (1983).

Mudarri asks this court to consider the impropriety of the Governor's acts at the time the Governor executed the third amendment to the date the land was converted to trust status. The action should be remanded to the trial court for a determination of damages because the Governor had NO authority to do what he did.

Trust status was a prerequisite for any compact approval prior to the III Amendment. CP 639. The purpose of the III Amendment was to change the trust status requirement in the compact. CP 703. The power of the Governor related to Indian lands is derived from RCW 37.12, not

RCW 9.46.360. Any authority by the Legislature to authorize the Governor to negotiate gaming rights on non-trust land would require an amendment to RCW 37.12. Federal law cannot and did not alter the state limitations on the Governor's authority over trust land.

The State cannot legitimately contend LCSA had no effect on state and local jurisdiction in Fife. While LCSA includes language that the historical reservation boundaries are not altered, LCSA did change the jurisdictional control over land within those historical boundaries to prohibit use of the federal definition of Indian lands to assert tribal control over non-trust lands. CP 892. The resulting effect is the historical boundaries do not delineate such jurisdictional control.

The State's position that IGRA does not require "jurisdiction" contradicts the State's efforts to change the agreements and negotiating documents to reflect tribal jurisdiction. CP 1648, 1643, 1636. Just as LCSA required legislative approval, so did the III Amendment which alters LSCA. CP 1016. If IGRA and federal approval of the compact was not dependent upon jurisdictional control, then the Governor did not need to execute the III Amendment at all. If the State is to be believed, the Governor was irrelevant to the entire process. The State's position now contravenes the advice provided by staff to the Governor at the time. CP 1646, 1635, 1632, 1637, 1604.

The Governor acted erroneously. Mudarri suffered as a result. This matter should be remanded to state court for a determination of damages.

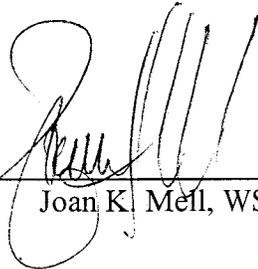
CONCLUSION

Mudarri presents a case that warrants direct review by the Supreme Court. His business and property interests have been restricted at the same time the State was promoting such business in his jurisdiction. The State's actions are unwarranted and Mudarri is entitled to relief.

DATED this 29th day of March, 2007.

MILLER QUINLAN & AUTER, P.S., INC.

By



Joan K. Meil, WSBA #21319

CERTIFICATE OF SERVICE

On said day below I had delivered via hand delivery by legal messenger service a true and accurate copy of the following document: **Petitioners' Reply Brief** in Court of Appeals No. 78829-4 to the following:

Jerry A. Ackerman
Office of the Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
Attorney for Respondents

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 30th day of March, 2007, at Fircrest,
Washington.



Darla Moran, Paralegal
Miller Quinlan & Auter, P.S., Inc.

APPENDIX A

LAW OFFICES OF
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November 28, 2005

VIA FACSIMILE 253-680-5998

John Bell
Tribal Attorney
Attorney for Puyallup Tribe of Indians
1850 Alexander Avenue
Tacoma, WA 98421

Re: *Mudarri, et al. v. State of Washington*

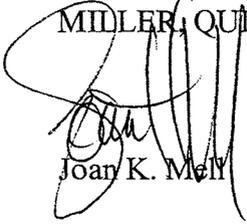
Dear Mr. Bell:

I have reviewed the materials submitted in support of Defendant State's motion to dismiss. My question is whether the Puyallup Tribe would agree to transfer of the limited question regarding the validity of the Compact to federal court given its waiver of sovereign immunity in the Compact.

I appreciate your consideration of this issue.

Very truly yours,

MILLER, QUINLAN & AUTER, P.S., INC.



Joan K. Mell