UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

NARRAGANSETT INDIAN TRIBE
OF RHODE ISLAND

CONSOLIDATED

v.

C.A. No. 94-0618-T

THE STATE OF RHODE ISLAND and
JEFFREY B. PINE, in his
capacity as Attorney General for
the State of Rhode Island; and
LINCOLN C. ALMOND, in his capacity
as Governor of the State of Rhode
Island

THE STATE OF RHODE ISLAND and
JEFFREY B. PINE, in his capacity
as Attorney General for the
State of Rhode Island; and LINCOLN
C. ALMOND, in his capacity as
Governor of the State of Rhode Island

v.

C.A. No. 94-0619-T

THE NARRAGANSETT INDIAN TRIBE
OF RHODE ISLAND

LINCOLN C. ALMOND, in his Official
Capacity as Governor of the
State of Rhode Island

v.

C.A. No. 95-0034-T

NARRAGANSETT INDIAN TRIBE OF
RHODE ISLAND

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge

The principal issue in these consolidated cases is whether a

"compact" purportedly entered into on August 29, 1994, by the Narragansett Indian Tribe and the State of Rhode Island pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA) is valid. See 25 U.S.C. § 2710(d)(3).

In their amended complaints, the State, Jeffrey B. Pine, as Attorney General and Lincoln C. Almond, as Governor, seek a declaration that provisions in the "compact" authorizing types of Class III gaming prohibited by Rhode Island law "are unlawful and void under IGRA"[1] and that the "compact" is "null and void" because former Governor Sundlun lacked authority to enter into it or to bind the State of Rhode Island to its provisions.[2] Also sought are declarations that the portion of the "compact" limiting the State's law enforcement powers on casino property violates the terms of a federal statute vesting the State with criminal jurisdiction over Tribal lands;[3] that "telephone betting" games authorized by the "compact" would violate the "Federal Anti-Wagering Act"[4] and that, under IGRA, any future compact between the parties may not permit any type of Class III gaming prohibited by Rhode Island law.[5] In

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[1]The identical claim for relief is made in Count I of the amended complaints in both State, et als v. Narragansett Tribe (C.A. 94-0619) and Almond v. Narragansett Tribe (C.A. 95-0034).

[2]See Count III of the amended complaint in State, et als v. Narragansett Tribe (C.A. 94-0619).

[3]See, Id., Count IV.

[4]See, Id., Count V.

[5]See, Count I of amended complaints in State, et als v. Narragansett Tribe (C.A. 94-0619) and Almond v. Narragansett Tribe (C.A. 95-0034).

addition, the State, Pine and Almond have asked that the Tribe be enjoined from engaging in "any activities preliminary to or attendant to the construction and/or operation of a Class III gaming facility."[6]

The Tribe's amended complaint, on the other hand, asks for a declaration that the "1994 compact" "is a valid and binding contract between the Tribe and the State of Rhode Island" (Count I) and for an injunction requiring the State to abide by the terms of the "1994 compact" (Count II).

In a Memorandum and Order dated January 20, 1995, this Court concluded that the threshold question was whether, under state law, former Governor Sundlun had authority to sign the compact on behalf of the State. This Court certified that question to the Rhode Island Supreme Court which responded by saying that "the Governor as Chief Executive lacked both Constitutional as well as legislative authority to bind the State of Rhode Island by executing the Tribal-State Compact dated August 29, 1994, between the State of Rhode Island and the Narragansett Indian Tribe." 667 A.2d 280, 282 (R.I. 1995). However, the Supreme Court was careful to note that:

> . . . Our opinion in no way suggests that the Governor, in his capacity as Chief Executive officer of this state, lacks the authority to advocate, to initiate and to negotiate, short of executing, a tribal-state compact. All that we determine herein is that the Governor, absent specific authorization from the General Assembly, had no express or implied constitutional right or statutory

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[6]See, Count II of amended complaints in State, et als v. Narragansett Tribe (C.A. 94-0619) and Almond v. Narragansett Tribe (C.A. 95-0034).

> authority to finally execute and bind the state to such a compact by his execution thereof.

Id.

Based on that response and this Court's previous Memorandum and Order, the State, Attorney General Pine and Governor Almond, now, move for summary judgment. Their motions do not specify the nature of the summary judgment they are seeking but their memoranda indicate that they seek a declaration that the "1994 compact" is "void."

The Tribe concedes that the suit it initiated (i.e., C.A. 94-0618) should be "dismissed with prejudice" and that summary judgment should be granted in favor of the State, Pine and Almond with respect to Count III of C.A. 94-0169. However, the Tribe contends that the Court should merely declare that the "1994 compact" "does not bind the State." In addition, the order proposed by the Tribe would dismiss the remaining claims in C.A. 94-0619 and C.A. 95-0034 without prejudice on the ground that they are now moot and would require the State to negotiate with the Tribe in good faith in an effort to agree on a new compact.

As far as these cases are concerned, the semantical disagreement regarding the form that summary judgment should take is "much ado about nothing." The disagreement arises from a distinction without a difference. It appears that the real source of disagreement is not whether the "1994 compact" is declared "void" or, merely, "not binding." Rather, it is the effect that the parties anticipate that the wording of the judgment may have on

a possible future dispute regarding calculation of the time period that IGRA allots for the Tribe and the State to try to negotiate a mutually agreeable compact.

IGRA prescribes a 180 day period that begins when the Tribe requests that "the State" enter into negotiations. 25 U.S.C. § 2710(d)(7)(B)(I). Moreover, it prohibits the Tribe from bringing suit before expiration of the 180 day period unless the State fails to respond "in good faith." 25 U.S.C. § 2710(d)(7)(B). Consequently, what the parties really are concerned about is that a declaratory judgment regarding the validity of the "1994 compact" might impact a later determination regarding former Governor Sundlun's authority or lack of authority to negotiate with the Tribe, thereby affecting the calculation of the 180 day period prescribed by IGRA.

However, it is difficult to see any such connection. In any event, while that issue might arise in the future, it is not an issue in this case. For present purposes, the only thing that need be said is that the "1994 compact" is void in the same sense that any document executed without proper authority is void; namely, it has no legal effect. Like the Rhode Island Supreme Court, this Court expresses no opinion as to whether Governor Sundlun had authority to negotiate or to initiate negotiations with the Tribe. Nor does this Court express any opinion as to whether any request for negotiations addressed to Governor Sundlun constituted a request to "the State" within the meaning of IGRA or whether the State currently has any obligation to negotiate. Those questions,

if they arise, are left for another day.

The only remaining question is what disposition, if any, should be made of the other claims by the State, Pine and Almond in C.A. 94-0619 and C.A. 95-0034. It is clear that, to the extent that Count I in each case seeks a declaration regarding the validity of the "1994 compact," those counts are now moot.

To the extent that Counts I and II in each case seek a declaratory judgment regarding the permissible terms of any <u>future</u> compact, those counts appear to be premature. However, the issue of whether those counts present an actual case or controversy has not been properly presented, briefed or argued. The status of those counts was raised obliquely and for the first time by the terms of the Tribe's "proposed order." Therefore, no disposition can be made of those counts at this time.

Since Counts IV and V of C.A. 94-0619 request a declaration that the "1994 compact" is void albeit for reasons other than former Governor Sundlun's lack of authority to execute it, those claims, too, are now moot.

For all of the foregoing reasons, it is hereby ORDERED that:

1. C.A. No. 94-0618 is dismissed with prejudice.

2. In C.A. No.94-0619, summary judgment shall enter with respect to Count III declaring that former Governor Bruce Sundlun was without authority to bind the State of Rhode Island by executing the Tribal-State Compact dated August 29, 1994.

3. In C.A. No. 94-0619, Counts IV and V are dismissed as moot.

4. In C.A. No. 94-0619 and C.A. 95-0034, the claims seeking a declaration that the "1994 compact" violates IGRA and/or the Johnson Act are dismissed as moot.

IT IS SO ORDERED,

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Ernest C. Torres
United States District Judge

Date: February , 1996