

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 03-2684L & No. 01-568L (consolidated)

(Filed: December 14, 2010)

SHELDON PETERS WOLFCHILD, <i>et</i>)
<i>al.</i> ,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)

ORDER

Pending before the court is a motion by putative *amici curiae* Shakopee Mdewakanton Sioux Community and Prairie Island Indian Community for leave to file a memorandum in opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment. Plaintiffs have responded with an opposition to putative *amici*'s motion, and putative *amici* have replied.

Plaintiffs oppose putative *amici curiae*'s motion on the grounds that: (1) the motion contravened a prior order of the court that such a motion had to be filed at least 21 days in advance of the time for submission of such a brief, and (2) *amici* have demonstrated a propensity to interfere with participation by others in judicial proceedings, as shown by their action to forestall the submission of a brief by the Oglala Sioux as *amicus curiae* in the proceedings in the Supreme Court attendant to the petition for certiorari from *Wolfchild v. United States*, 559 F.3d 1228 (Fed. Cir. 2009). Pls.' Opp'n to Shakopee and Prairie Island *Amici* Br. (Pls.' Opp'n to *Amici* Br.) at 2-3.¹

Putative *amici* contest plaintiffs' first ground for denial of their motion, asserting that "[t]he CM/ECF filing system available on September 22, 2010 to [a]mici for filing their Motion [f]or Leave to File did not present any option for a subsequent filing, after 21 or more days, of the Memorandum and Exhibits which [a]mici proposed in their Motion to be filed." Partial Resp. of *Amici* to Pls.' Opp'n (Partial Resp. of *Amici*) at 2. Secondly, putative *amici* argue that

¹Plaintiffs have also filed a motion requesting that the court "enjoin [the Shakopee Mdewakanton Sioux Community] . . . and the federal government from allowing any prospective use of IGRA gaming revenue in a manner that would interfere with the judicial and legal process of the instant matter." Pls.' Mot. for a Hrg. to Enjoin and for Miscellaneous Relief (Pls.' Mot. to Enjoin) at 23. Putative *amici* have filed a memorandum in opposition to plaintiffs' motion to enjoin. See Shakopee and Prairie Island *Amici* Mem. in Opp'n to Pls.' Mot. to Enjoin (Shakopee and Prairie Island *Amici* Opp'n).

the Shakopee Mdewakanton Sioux Community did not interfere with the submission of a brief by Oglala Sioux Tribe as *amicus*, and even if an offer of a grant to the Oglala had been made with the intent that the Oglala would not then file, it would not be improper because no law prohibits such an action. See *Shakopee and Prairie Island Amici Opp'n* at 7-12.

This is not the first time that the court has been confronted with an accusation that these putative *amici* have engaged in behavior unbecoming of participants in the legal process. In 2006, the plaintiffs presented evidence that the Shakopee Mdewakanton Sioux Community interfered with the plaintiffs' attempts to publish a court-ordered notice of the case in the *Lakota Journal*. See *Wolfchild v. United States*, 68 Fed. Cl. 779, 804-805 (2005) (ordering publication in the *Lakota Journal*); see Pls.' Mot. to Enjoin at 14-15.

If plaintiffs' present accusations are true, putative *amici*'s actions are troubling to the court. While *amici* correctly assert that no law prohibits their alleged conduct, such behavior would greatly diminish the court's confidence that the value of putative *amici*'s contributions outweighs their increasingly unattractive and disruptive behavior in this case. See *Fluor Corp. v. United States*, 35 Fed. Cl. 284, 285 (1996) ("The decision whether to allow participation by *amici curiae* is left entirely to the discretion of the court."). Despite that concern, the court will accept the brief of *amici curiae* notwithstanding plaintiffs' allegations and *amici*'s failure to comply with the court's prior timeliness order. This result should not be interpreted as an indication that the court will accept any future proffers by *amici* of further briefs.

Amici curiae's motion for leave to file a memorandum in opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment is GRANTED. The court will deem the memorandum filed as of September 22, 2010, the date on which the court received *amici*'s motion. Plaintiffs' motion to enjoin is DENIED because that motion requests relief that the court arguably is not empowered to grant.

It is so ORDERED.

s/ Charles F. Lettow

Charles F. Lettow
Judge