

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

CITY OF COUNCIL BLUFFS, IOWA,

Plaintiff,

and

STATE OF NEBRASKA, ex rel., DOUGLAS
J. PETERSON, Attorney General of the State of
Nebraska,

and

STATE OF IOWA,

Intervenor-Plaintiffs

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, RYAN K. ZINKE, in his
official capacity as Secretary of the United
States Department of the Interior; NATIONAL
INDIAN GAMING COMMISSION; JONODEV
OSCEOLA CHAUDHURI, in his official
Capacity as Chairman of the National Indian
Gaming Commission; and KATHRYN ISOM-
PROVISION, in her official capacity as Vice Chair
of the National Indian Gaming Commission,

Defendants.

Civ. No. 1:17-cv-00033-SMR-CFB

**MOTION OF GALLUP, INC. AND
OWEN INDUSTRIES, INC. FOR
LEAVE TO PARTICIPATE AS
AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS**

Gallup, Inc. and Owen Industries, Inc., respectfully move this Court for leave to participate in this action as *amici curiae*, and to file a brief in support of Plaintiff's motion for summary judgement. In support of its motion, Gallup and Owen Industries state:

I. THIS COURT HAS AUTHORITY TO ACCEPT AMICUS BRIEFS

Federal district courts possess the inherent authority to accept amicus briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the court’ to assist in their proceedings.”); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (2d Cir. 1982); *United States ex rel. Gudur v. Deloitte Consulting Llp*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007) (“The extent to which the court permits or denies amicus briefing lies solely within the court’s discretion.”). “No statute, rule, or controlling case defines a federal district court’s power to grant or deny leave to file an amicus brief, . . . and in the absence of controlling authority, district courts commonly refer to [Federal Rule of Appellate Procedure] 29 for guidance.” *Gudur*, 512 F. Supp. 2d at 927.

“Factors relevant to the determination of whether amicus briefing should be allowed include whether the proffered information is ‘timely and useful’ or otherwise necessary to the administration of justice.” *Id.* *Amici*’s role is to assist the court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *N.A.A.C.P. v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991). This authority supports the Court’s exercise of its discretion to accept this amicus brief.

II. THE PROPOSED AMICU BRIEF WILL BE HELPFUL TO THE COURT.

Owen Industries, Inc. and Gallup, Inc. (“*Amici*”), own land and operate large successful businesses in Carter Lake, Iowa and Omaha, Nebraska, respectively. These parcels of land, however, are in close proximity to a tract of property in Carter Lake, Iowa that is held in trust by the United States Secretary of the Interior for the benefit of the Ponca Tribe of Nebraska. The

Ponca Tribe has begun construction of a casino on said trust land even though this land is not eligible for gaming activities under the Indian Gaming Regulatory Act.

As such, *Amici* have a common interest in this Court vacating and setting aside as unlawful, the National Indian Gaming Commission's 2017 Order in which it found that the Ponca's trust land was a restored land eligible for gaming. While *Amici* agree with the points raised in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgement which argues this court should reverse the Commission's 2017 decision, they write separately to address concerns unique to their respective proximity to the Ponca's casino and their individual connections with the cities of Carter Lake and Omaha.

In particular, *Amici* contend that allowing gaming on said tract would be harmful to the their longstanding interests as well as the surrounding communities of Carter Lake and Omaha. Gallup believes the National Indian Gaming Commission erred in failing to consider the inappropriateness of a casino within the neighborhood in which the casino is being built. Owen Industries argues the National Indian Gaming Commission failed to consider the City of Carter Lake's lack of infrastructure capable of handling the additional water usage and waste generated by a casino on the Carter Lake Tract.

III. CONSENT OF THE PARTIES

Pursuant to LR. 7(k), the undersigned inquired of other counsel whether they consent to the motion. Counsel for the Plaintiffs consents. Counsel for the Defendants does not object to this motion.

IV. CONCLUSION

Gallup and Owen Industries respectfully ask the Court to grant this motion, to allow them to participate as *amicus curiae*. Gallup and Owen Industries' proposed brief is filed contemporaneous with this motion.

Respectfully submitted this 11th day of September, 2018.

Respectfully Submitted,

s/ Katherine J. Spohn

Katherine J. Spohn

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 11, 2018, I electronically filed a true and accurate copy of the foregoing document with the Clerk of the Court using the CM/ECF System. Participants in the case who are registered CM/ECF users will be served through the CM/ECF System.

/s/ Katherine J. Spohn
Katherine J. Spohn