

No. 19-1981

In the
United States Court of Appeals
for the Seventh Circuit

ONEIDA NATION,

Plaintiff-Appellant,

v.

VILLAGE OF HOBART, WISCONSIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Wisconsin, No. 1:16-cv-01217-WCG.
The Honorable **William C. Griesbach**, Judge Presiding.

**UNOPPOSED MOTION FOR LEAVE TO FILE OVERSIZED
REPLY BRIEF OF PLAINTIFF-APPELLANT ONEIDA NATION**

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Pursuant to Fed. R. App. P. 27(a), Plaintiff-Appellant Oneida Nation (the “Nation”) hereby moves the Court for leave to file an oversized reply brief. The bases for the motion are set forth below and in the Affidavit of Arlinda Locklear in Support of Unopposed Motion for Leave to file Oversized Reply Brief of Plaintiff Oneida Nation filed contemporaneously herewith.

On October 3, 2019, Defendant-Appellee, Village of Hobart, Wisconsin (“the Village”) filed an “Unopposed Motion for Extension of Time and For Leave to File Oversized Brief of Defendant-Appellee Village of Hobart Wisconsin.” (ECF # 37-1). The Village’s motion sought additional time to file its response brief and for leave to file an oversized brief “not to exceed 50 pages unless the brief contains no more than 23,000 words (excluding the parts of the brief exempted by Fed. R. App. 32(f)).” *Id.*

Prior to filing its motion, counsel for the Village conferred with counsel for the Nation who did not oppose the Village’s motion, but informed the Village’s counsel that it may request its own overlength brief if warranted. *Id.*; (Aff. of A. Locklear, ¶ 3). The Court granted the Village’s motion, (ECF # 38), and on November 4, 2019, the Village submitted an 81-page response brief, totaling 22,926 words. (ECF # 39 at 82); (Aff. of A. Locklear, ¶ 3).

The Nation has begun drafting its reply brief and respectfully requests that the Court grant it an oversized reply brief totaling 12,000 words (excluding the parts of the brief exempted by Fed. R. App. 32(f)). Counsel for the Nation has conferred with

counsel for The Village who does not oppose the Nation's motion. (Aff. of A. Locklear, ¶ 4). This is the Nation's first request to file an oversized brief as it did not file a motion for leave to file an oversized principal brief. *Id.*

The Nation's request for an oversized reply brief is warranted. As the Village noted in its motion for an oversized brief, this appeal involves complex issues of law and fact that were the subject of hundreds of pages of briefing in the court below. (ECF # 37-1 at 2); (Aff. of A. Locklear, ¶ 5). There is also an enormous historical record consisting of thousands of pages that is at issue in the Village's 22,926-word response brief. (Aff. of A. Locklear, ¶ 5). For these reasons alone there is good cause for the Court to allow the Nation the additional words it seeks in reply.

Further, the Village's response brief raises new arguments that are not responsive to those presented in the Nation's principal brief, including approximately eleven pages devoted to the Village's argument—rejected by the court below—that the Nation's reservation has been disestablished and that no court can hold otherwise on grounds of issue preclusion. (ECF # 39 at 17-26); (Aff. of A. Locklear, ¶ 6). The Village did not cross-appeal the Court's rejection of its issue preclusion argument. *Id.*

The Village also did not cross-appeal another argument it raises in its response brief that is not presented in the Nation's principal brief—that “exceptional circumstances” justify the Village's imposition of its Special Event Ordinance on the Nation. (ECF # 39 at 77-80); (Aff. of A. Locklear, ¶ 7). The Nation's requested reply brief

length will enable it the necessary space to address the procedural and substantive issues raised by the Village's arguments, including whether The Village has waived them by virtue of its failure to cross-appeal. (Aff. of A. Locklear, ¶ 8).

Based on the foregoing, the Nation requests that this Court grant its unopposed motion for leave to file an oversized reply brief of 12,000 words (excluding the parts of the brief exempted by Fed. R. App. 32(f)).

Dated this 22nd day of November, 2019.

Respectfully submitted,

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Hon. William C. Griesbach
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AFFIDAVIT OF ARLINDA LOCKLEAR IN SUPPORT OF UNOPPOSED
MOTION FOR LEAVE TO FILE OVERSIZED REPLY BRIEF
OF PLAINTIFF-APPELLANT ONEIDA NATION

I, Arlinda Locklear, being first duly sworn states as follows:

1. I am an attorney admitted to practice before this Court and am one of the attorneys representing plaintiff-appellant Oneida Nation ("the Nation") in this matter.

The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. I make this affidavit in support of the Unopposed Motion for Leave to File Oversized Reply Brief of Plaintiff-Appellant Oneida Nation filed contemporaneously herewith.

3. Before filing this motion the Nation did not oppose defendant-appellee Village of Hobart, Wisconsin's ("the Village's") Motion for Leave to File Oversized Brief and the Village filed a response brief totaling 22,926 words. Counsel for the Nation have begun drafting the Nation's reply brief and seek leave to file an oversized reply brief totaling 12,000 words (excluding the parts of the brief exempted by Fed. R. App. 32(f)).

4. Counsel for the Nation has conferred with counsel for the Village who does not oppose the Nation's motion. This is the Nation's first request to file an oversized brief as it did not file a motion for leave to file an oversized principal brief.

5. The Nation's request for an oversized reply brief is warranted because this appeal involves complex issues of law and fact that were the subject of hundreds of pages of briefing in the court below. There is also an enormous historical record consisting of thousands of pages that is at issue in the Village's 22,926-word response brief.

6. Further, the Village's response brief raises new arguments that are not responsive to those presented in the Nation's principal brief, including approximately eleven pages devoted to the Village's argument—rejected by the court below—that the Nation's reservation has been disestablished and that no court can hold otherwise on grounds of issue preclusion. The Village did not cross-appeal the Court's rejection of its issue preclusion argument.

7. The Village also did not cross-appeal another argument it raises in its response brief that is not presented in the Nation's principal brief—that "exceptional circumstances" justify the Village's imposition of its Special Event Ordinance on the Nation.

8. The Nation's requested reply brief length of 12,000 words will enable it the necessary space to address the procedural and substantive issues raised by the Village's arguments, including whether the Village has waived them by virtue of its failure to cross-appeal.

Further your affiant sayeth naught,

/s/Arlinda F. Locklear

Arlinda F. Locklear

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/Arlinda F. Locklear

Arlinda F. Locklear

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing motion complies with Fed. R. App. P. 27(a) and the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 615 words.

The undersigned further certifies that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word Version 2016 in 12-point Palatino Linotype font.

Dated: November 22, 2019

/s/Arlinda F. Locklear

Arlinda F. Locklear

One of the Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2019, the motion was filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system.

I further certify that all participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/Arlinda F. Locklear

Arlinda F. Locklear