The WAGER, Vol. 1(18) – U.S. Supreme Court rulings on Indian Gaming

April 30, 1996

On March 27, 1996, in Seminole Tribe v. Florida, the United States Supreme Court declared part of the federal Indian Gaming Regulatory Act (IGRA) unconstitutional. On the surface this case appears to be a victory for governors who are refusing to negotiate with tribes in their states: the Court ruled that states cannot be sued without their consent. However, on April 15, 1996, in the same case, the Supreme Court let stand a decision by a lower court allowing Indian tribes to go directly to the federal Secretary of the Interior for Class III gaming regulations, bypassing state governments completely.

What is the history of the decisions?

In 1987 the Supreme Court ruled in California v. Cabazon Band of Mission Indians that tribes could operate and self-regulate any form of gambling that did not violate the public policy of the state where their lands were located. Congress reacted by enacting IGRA. IGRA divides gambling into three parts. According to Professor Rose, "Class III" represents the most dangerous and most profitable forms of gambling. IGRA provided that tribes could operate Class III gaming if the state permitted that form of gambling, but only after the state and tribe negotiated an agreement, called a "compact." If a state negotiated in "bad faith", Congress gave tribes the right to sue the state in federal court.

Tribes brought suits in Florida and Alabama when the governors of those states refused to discuss casino-style gambling. The federal 11th Circuit Court of Appeals ruled that Congress had overstepped its power and that those suits had to be dismissed. The 11th Circuit reasoned that states have sovereign immunity, embodied in the 11th Amendment to the U.S. Constitution, and could not be sued without their consent. This made the compact negotiation section of IGRA unconstitutional. However, the 11th Circuit also declared that the IGRA was not unconstitutional, because Congress had provided the tribes with a substitute remedy if a state refused to negotiate. Instead of suing, the tribe could ask the Secretary of the Interior for gaming regulations.

The tribes appealed the ruling that states could not be sued without consent. The Supreme Court decided only this issue in Seminole, affirming the 11th Circuit's ruling that without state consent the tribes' law suits had to be dismissed. However, Florida attempted to appeal the other ruling of the 11th Circuit, giving tribes the right to go to the Secretary of the Interior. The Supreme Court made it clear that it was not deciding, or even considering, that question.

What impact will the ruling have?

The Supreme Court has made it clear that tribes cannot sue states that refuse to negotiate compacts, unless the state agrees to be sued. States can waive their 11th Amendment sovereign immunity: California, for example, agreed to let the federal courts decide what forms of gambling would be the basis of its tribal/state compacts. However, states that refuse to negotiate cannot now be sued and thus do not have to participate in compact negotiations. Left undecided was whether the tribes have any remedy under IGRA other than filing suit. Because the Supreme Court denied the petitions of the states of Alabama and Florida, the entire 11th Circuit's decision is now final. So, at least in the 11th Circuit, which covers much of the South, if a state refuses to negotiate with a tribe, the tribe can ask the federal Secretary of the Interior for regulations to let it set up Class III gaming.

In other parts of the country the issue of the Secretary's power has not been decided. The 9th Circuit, which covers most of the West, seems particularly opposed to the idea that the Secretary can make regulations for Indian gaming against a state's will. In Spokane Tribe v. Washington State, the 9th Circuit justices said, "The Eleventh Circuit's solution would turn the Secretary of the Interior into a federal czar, contrary to the congressional aim of state participation."

Rose speculates that we will have two different laws for Indian gaming when a state which permits Class III gaming refuses to negotiate with its tribes. In the South, tribes will ignore the states and go to the Secretary. In the West, tribes will be unable to sue the states or ask for help from the Secretary. In the South, the Secretary of the Interior will indeed be a federal gaming czar. In the West, tribes will have rights without a remedy. Rose feels that both situations are intolerable and that once the impact of the Supreme Court's decisions are understood, Congress will be forced to act drastically to amend the Indian Gaming Regulatory Act.

Source: (1996). Professor I. Nelson Rose, Whittier Law School, Los Angeles, CA, 'Gambling and the Law®'.

This public education project is funded, in part, by The Andrews Foundation and the Massachusetts Department of Public Health.