

Native American Gaming

Background

Gaming has always been a traditional part of Native American culture, just as it has been a part of European culture, Asian culture and African culture.

Legal tensions between Native American rights and the powers of the United States are as old as the country itself. The Supreme Court's decision in *Johnson v. McIntosh* 21 U.S. 543 (1823), essentially removed any recognition of Native American property rights based on the proclamation of a "the universal recognition" of two legal principles: (1) that European discovery of lands in America "gave exclusive title to those who made it"; and (2) that such discovery necessarily diminished the power of the Native American nations to "dispose of the soil at their own will, to whomever they pleased."

Through a history of wars, displacement, and treaties, the history of the relationship between the United States and Native Americans has been at best cooperative though contentious and at worst tragic.

The study of federal law with regard to Native American tribes and tribe members could easily encompass its own class; however, for the Federal Gaming Law class, the important things to remember are that federally recognized tribes have some level of sovereign power within federally recognized tribal lands. The concept of dependent nations within the United States has been used to describe the nature of the status of Native American nations and tribes since at least John Marshall's opinion in *Cherokee Nation v. Georgia*, 30 U.S. 1, (1831). This concept is not unlike the concept of state governments within the framework of the federal government.

Just as states in the United States have certain powers of jurisdiction within their boundaries, so Native American nations and tribes have certain governmental powers within their boundaries. Native American tribes, like states, cannot exercise powers such as raising an army or issuing currency; however, they possess powers to: determine their respective forms of government, define citizenship, pass and enforce laws through their own police forces and courts, collect taxes, regulate the domestic affairs of their citizens, and regulate property use. Also, Native American Tribes, like states, have the power to determine whether they will engage in gaming operations and to regulate those activities within certain parameters.

Public Law 280

Prior to 1953, states lack criminal jurisdiction over crimes committed by or against Indians in Indian country unless Federal legislation expressly grants such authority. Absent that legislation, tribal and Federal law enforcement generally share authority over those crimes, although a realm of exclusive tribal jurisdiction also exists. Enacted in 1953, Public Law 83–280 (PL 280) shifted Federal jurisdiction over offenses involving Indians in Indian country to six states and gave other states an option to assume such jurisdiction.

PL 280 transferred Federal criminal jurisdiction in Indian country to six states that could not refuse jurisdiction, known as “mandatory” states. The law did not provide for the consent of affected tribes. Thus, criminal laws in those States became effective over Indians within as well as outside “Indian Country.” PL 280 provided no financial support for the newly established State law enforcement responsibilities.

The law also permits other States, at their option and without consulting tribes, to choose to assume complete or partial jurisdiction over crimes committed by or against Indians in Indian country. Ten States chose to do so; these are referred to as “optional” States. In 1968, an amendment to PL 280 required tribal consent before additional States could extend jurisdiction to Indian country. Since 1968, no tribe has consented. Through PL 280’s retrocession provision, several mandatory and optional States have returned jurisdiction over nearly 30 tribes to the Federal government, thereby reinstating tribal/ Federal responsibility for law enforcement.

PL 280’s scope in terms of affected tribes and Indian population is put into perspective once the broad contours of Indian country are sketched. Federally recognized tribes are spread across 56 million acres in the contiguous 48 States and millions of additional acres in Alaska. Of the 562 federally recognized tribes, more than 330 live in the contiguous 48 States. The U.S. Census Bureau estimates an Indian population of about 2,786,652 (including Alaska Natives), or 0.9 percent of the estimated U.S. population in 2003.³ All but an estimated 106,450 live in the contiguous 48 States. Almost half of this population does not live on a reservation and is therefore subject to State authority independent of PL 280. About 23 percent of the reservation based tribal population in the contiguous 48 States and all Alaska Natives⁴ fall under PL 280. The statute covers 28 percent of all federally recognized tribes in the contiguous 48 states and 70 percent of all federally recognized tribes (including Alaska Native villages).

PL280

18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation

thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

18 U.S.C § 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Seminole Tribe v. Butterworth

658 F.2d 310

SEMINOLE TRIBE OF FLORIDA, an Organized Tribe of Indians, as
recognized under and by the Laws of the United
States, Plaintiff-Appellee,

v.

Robert BUTTERWORTH, the duly elected Sheriff of Broward
County, Florida, Defendant-Appellant.

No. 80-5496.

United States Court of Appeals,
Fifth Circuit.

Unit B *

Oct. 5, 1981.

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Appeal from the United States District Court for the Southern District of
Florida.

Before MORGAN, RONEY and KRAVITCH, Circuit Judges.

LEWIS R. MORGAN, Circuit Judge:

This appeal involves a question arising under Public Law 280, the federal
law permitting states to exercise civil and criminal jurisdiction over the Indian
tribes. All parties agree that the case turns on the determination of whether
Florida Statute Section 849.093 which permits bingo games to be played by
certain qualified organizations subject to restrictions by the state is
civil/regulatory or criminal/prohibitory in nature. If the statute is civil/regulatory
within the meaning of *Bryan v. Itasca County*, 426 U.S. 373, 96 S.Ct. 2102, 48
L.Ed.2d 710 (1976), the statute cannot be enforced against the Seminole Tribe of
Florida.

This lawsuit commenced when the Seminole Indian tribe brought an action
under 28 U.S.C. §§ 2201 and 2202, seeking a declaratory judgment and
injunctive relief against Robert Butterworth, the sheriff of Broward County,
Florida. The Seminole tribe had contracted with a private limited partnership that
agreed to build and operate a bingo hall on the Indian reservation in exchange
for a percentage of the profits as management fees. Anticipating violation of the
Florida bingo statute, Sheriff Butterworth informed the tribe that he would make
arrests for any violations of Fla.Stat. § 849.093. 1 The attorney general of the
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state of Florida filed a petition on behalf of the state seeking leave to participate
in the case as amicus curiae, and leave was granted. Relying on stipulated facts,

the parties filed cross motions for summary judgment, presenting the question to the district court, 491 F.Supp. 1015, whether the statute could be enforced against the Indian nation. After finding that the case satisfied the "case or controversy" requirement of the Constitution, the district judge granted the plaintiff's motion for summary judgment on the ground that the statute in question was regulatory in nature and therefore could not be enforced against the Indian tribe. The lower court enjoined the sheriff from enforcing the statute against the plaintiff. The sheriff of Broward County and the State of Florida appealed the lower court's decision to this court, but agreeing with the lower court, we affirm its decision.

I. Can Indians Operate Bingo Halls?

The states lack jurisdiction over Indian reservation activity until granted that authority by the federal government; however, Sections 2 and 4 of Public Law 280 2 granted certain states the right to exercise

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criminal jurisdiction and limited civil jurisdiction over the Indian tribes. Section 7 of the Act 3 granted to other states the right to assume criminal and civil jurisdiction by legislative enactment, and although this section was repealed in 1968 by Section 403(b) of Public Law 90-284, any cessions of jurisdiction made pursuant to the Act prior to its repeal were not affected. Pursuant to the former Public Law 280 the state of Florida assumed criminal jurisdiction over reservation Indians in Fla.Stat. § 285.16. By this enactment, Florida assumed jurisdiction over the Indians to the full extent allowed by the law.

In *Bryan v. Itasca County*, supra, 426 U.S. at 383, 96 S.Ct. at 2108, the Supreme Court of the United States interpreted Public Law 280 as granting civil jurisdiction to the states only to the extent necessary to resolve private disputes between Indians and Indians and private citizens. In *Bryan* the petitioner Indian sought relief from a personal property tax that the state had levied against his mobile home. The Court interpreted the language of Section 4(a) of Public Law 280 4 providing for civil jurisdiction as follows:

(S)ubsection (a) seems to have been primarily intended to redress the lack of Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes (The statute) authorizes application by the state courts of their rules of decision to decide such disputes. *Id.* at 383-84, 96 S.Ct. at 2108.

After further discussion the Court concluded that "if Congress in enacting Pub.L. 280 had intended to confer upon the States general civil regulatory powers, including taxation over reservation Indians, it would have expressly said so." *Id.* at 390, 96 S.Ct. at 2111. Although the Supreme Court was interpreting the language of Public Law 280 as directed at the six mandatory states, it is clear that these same limitations on civil jurisdiction would apply to a state that assumed jurisdiction pursuant to Section 7 of the former Public Law 280. Thus, the mandate from the Supreme Court is that states do not have general regulatory power over the Indian tribes.

The difficult question remaining in a case such as the present one is whether the statute in question represents an exercise of the state's regulatory or prohibitory authority. The parties have presented the question for decision to this court in that form, and several cases out of the Ninth Circuit have addressed similar Indian problems with the same or a similar analysis. See *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980); *United States v. County of Humboldt*, 615 F.2d 1280 (9th Cir. 1980); *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977). See also *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975). Thus, under a civil/regulatory versus criminal/prohibitory analysis, we consider the Florida statute in question to determine whether the operation of bingo games is prohibited as against the public policy of the state or merely regulated by the state.

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Fla.Stat. Section 849.093 ⁵ provides that the general prohibition against lotteries does not apply to prevent "nonprofit or veterans' organizations engaged in charitable, civic, community, benevolent, religious or scholastic works or other similar activities ... from conducting bingo games or guest games, provided that the entire proceeds derived from the conduct of such games shall be donated by such organizations to the endeavors mentioned above." *Id.* Section 2 of the statute sets out conditions of operation for organizations not engaged in the charitable activities listed above. The remaining sections of the statute state restrictions for the operation of bingo games and penal sanctions for violation of those provisions. ⁶ Although the inclusion of penal sanctions makes it tempting at first glance to classify the statute as prohibitory, the statute cannot be automatically classified as such. A simplistic rule depending on whether the statute includes penal sanctions could result in the conversion of every regulatory statute into a prohibitory one. See *United States v. Marcyes*, *supra*, 557 F.2d at 1364. The classification of the statute is more complex, and requires a consideration of the public policy of the state on the issue of bingo and the intent of the legislature in enacting the bingo statute.

The Florida Constitution provides: "lotteries, other than the types of pari-mutuel pools authorized by law ..., are hereby prohibited in this state." Art. X, § 7, Fla.Const. The legislature has the power to prohibit or regulate all other forms of gambling, and in *Greater Loretta Improvement Ass'n. v. State ex rel. Boone*, 234 So.2d 665 (Fla.1970), the Florida Supreme Court recognized that bingo was one of the forms of gambling, along with horse racing, dog racing, and jai alai, excepted from the lottery prohibition and permitted to be regulated by the state. Based on the definition of "pari-mutuel" and the fact that the bingo statute was enacted the same year that the Constitution was revised, the court held that the bingo statute did not violate the Constitution of Florida. In a later constitutional challenge, *Carroll v. State*, 361 So.2d 144 (Fla.1978), the Supreme Court of Florida stated that while the legislature cannot legalize any gambling device that would in effect amount to a lottery, it has an inherit power to regulate or to prohibit any and all other forms of gambling. In exercising this power to regulate, the legislature, in its wisdom, has seen fit to permit bingo as a form of recreation, and at the same

time, has allowed worthy organizations to receive the benefits. (citations omitted) (emphasis added) *Id.* at 146-47.

Although this language suggesting that the legislature has chosen to regulate bingo is not binding on this court as to whether the statute is regulatory or prohibitory, the language indicates that the game of bingo is not against the public policy of the state of Florida. See also *State v. Appelbaum*, 366 So.2d 443 (Fla.1979) ("The statute... regulates the conduct of bingo..."). Bingo appears to fall in a category of gambling that the state has chosen to regulate by imposing certain limitations to avoid abuses. Where the state regulates the operation of bingo halls to prevent the game of bingo from becoming a money-making business, 7

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the Seminole Indian tribe is not subject to that regulation and cannot be prosecuted for violating the limitations imposed.

In holding that the bingo statute in question is regulatory, we must address two Ninth Circuit cases in which similar issues were raised. In *United States v. Marcyes*, supra, 557 F.2d at 1364, the Ninth Circuit held that a fireworks statute of the state of Washington was a prohibitory statute of the state, and therefore was necessarily included within the ambits of the Assimilative Crimes Act, 18 U.S.C. § 13. The fireworks statute, like the bingo statute in question, permitted the activity to take place under certain circumstances. Despite these exceptions, to the statute, however, the Ninth Circuit found that the statute's "intent was to prohibit the general possession and/or sale of dangerous fireworks" and that it was "not primarily a licensing law." *Id.* The lower court in the present case relied on *Marcy*es for its discussion of the regulatory/prohibitory distinction, but distinguished the case based on the fact that fireworks are dangerous items that, if bought on an Indian reservation, can be carried off of it. The operation of bingo halls, on the other hand, must necessarily remain on the reservation. Although the distinction is a legitimate one, the determination underlying it is a legislative decision which we are not at liberty to make. Instead we find that the real distinction between the cases lies in the reference to each state's law as to whether the statutes in question were prohibitory or regulatory. Legislative intent determines whether the statute is regulatory or prohibitory, and although the state of Florida prohibits lotteries in general, exceptions are made for certain forms of gambling including bingo. All parties agree that forms of gambling such as horse racing are regulated in Florida, and indeed the petitioner admits that the Indians could engage in the operation of horse racing activities without interference by the state. Petitioner suggests that the distinction between bingo and horse racing lies within the licensing requirements; however, we find that argument without merit. Regulation may appear in forms other than licensing, and the fact that a form of gambling is self-regulated as opposed to state-regulated through licensing does not require a ruling that the activity is prohibited.

In a more recent and in some respects more similar case, *United States v. Farris*, supra, 624 F.2d 890, the Ninth Circuit found that members of the Puyallup Indian tribe could not be prohibited from operating a gambling casino on the reservation because the state of Washington had not assumed jurisdiction over

gambling offenses. However, in considering whether the provisions of 18 U.S.C. § 1955 of the Organized Crime Control Act of 1970 could apply to non-Indians gambling on the reservation, the Ninth Circuit analyzed the public policy of the state of Washington and determined that the state prohibited professional gambling. The court found that the "violation of a law of a state" requirement of section 1955 was intended to exempt from federal prosecution the operators of gambling business in states where gambling was not contrary to the public policy of the state, and the legislative declaration in Washington's gambling statute indicated a clear legislative intent to prohibit professional gambling. 8 Specifically noting the exception of Florida fronton operators to the gambling provisions, the court reiterated that the federal statute could apply only in states where gambling was illegal. Washington, unlike Florida, was such a state, and thus the statute could be enforced against non-Indians gambling

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on the reservation. Cf. Rincon Band of Mission Indians v. County of San Diego, 324 F.Supp. 371 (S.D.Calif.1971), rev'd on other grounds, 495 F.2d 1 (9th Cir. 1974) (court held local ordinance prohibiting gambling was within ambit of phrase "laws of such state" of Public Law 280 so that gambling provisions could apply to Indians on the reservation).

Although the Ninth Circuit found that the casino operation of the Puyallup Indians was a "violation of the law of a state" for which non-Indians could be prosecuted under the federal gambling law, the case supports the proposition that the state's public policy determines whether the activity is prohibited or regulated. Although the Florida Constitution, the Florida Supreme Court, and the Florida legislature have in various forms denounced the "evils of gambling," it is clear from the provisions of the bingo statute in question and the statutory scheme of the Florida gambling provisions considered as a whole that the playing of bingo and operation of bingo halls is not contrary to the public policy of the state. Other courts prohibiting other forms of gambling have found those forms of gambling contrary to the public policy of the state. As the district court noted, this case presents a close and difficult question. The Supreme Court in interpreting Public Law 280 has stated that "statutes passed for the benefit of dependent Indian tribes ... are to be liberally construed, doubtful expressions being resolved in favor of the Indians." *Bryan v. Itasca County*, supra, 426 U.S. at 392, 96 S.Ct. at 2112. Although the regulatory bingo statute may arguably be interpreted as prohibitory, the resolution must be in favor of the Indian tribe.

II. Can Non-Indians Play?

Although we have concluded that the Florida bingo statute cannot be enforced against the Seminole tribe, Sheriff Butterworth and the State of Florida petition this court for a ruling requiring the Seminole Indians to distinguish between Indians and non-Indians and abide by the restrictions of the statute as to non-Indians. It is not altogether clear how petitioner proposes that such distinctions practically could be made without prohibiting non-Indians from play or imposing the restrictions on all players, Indian and non-Indian alike. Furthermore, the relief sought continues to request the right to enforce regulation of the Indians

operation of bingo games. We reject petitioner's argument for these and the following reasons.

First, as respondent strongly points out, the argument was never presented below. The issue presented to the district judge on stipulated facts involved only the question of whether the statute could be enforced to prevent the Indians from violating its restrictions. As a general rule the court of appeals need not address issues raised for the first time by a party on appeal. See *Adams v. Askew*, 511 F.2d 700 (5th Cir. 1975); *D.H. Overmyer Co. v. Lofling*, 440 F.2d 1213 (5th Cir. 1971). Furthermore, we note that the statute in question, Fla.Stat. § 849.093, makes no reference to violations of its restrictions by the players of bingo. Sheriff Butterworth suggests that several general lottery prohibition statutes, such as Fla.Stat. §§ 849.08, 849.09(1)(b), and 849.09(2), permit the arrest of bingo players as players of illegal lotteries; however, we refuse to recognize in one breath that bingo is excluded from the general lottery prohibition and in the next permit the arrest of bingo players as players of illegal lotteries. The statutes cited must be considered in *pari materia* with the bingo statute permitting the operation of bingo games. The bingo statute does not prohibit the playing of bingo games in violation of its restrictions, and if the legislature of the state of Florida desires to prohibit such, then it must act accordingly. The courts that have prohibited Indians or non-Indians from gambling on reservations have done so in light of a statute that specifically prohibits the act of gambling. In Florida, unlike in Washington, no distinction exists between Indians and non-Indians for the legality (or

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illegality) of certain gambling activities. Thus, petitioner's attempts to require the Seminoles to distinguish between Indian and non-Indian players are to no avail. 9 The decision of the lower court is

AFFIRMED.

RONNEY, Circuit Judge, dissenting:

I respectfully dissent on the ground that the State of Florida has prohibited, not regulated, the precise kind of bingo operation which the plaintiff seeks to conduct. As a matter of fact, it is because such activity is prohibited in Florida that this business was started and is successful. The reasons that Florida laws prohibit such a bingo business, focusing on the indirect consequences of it, whether right or wrong, are as applicable to a bingo casino on the Indian reservation as they are to such a business off a reservation. If only Indians were involved, or if the effects of the bingo casino were shown to be confined to the reservation, the decisions relied upon by the Court might be applicable. Without such a showing, in my opinion, they are not. I would reverse.

* Former Fifth Circuit case, Section 9(1) of Public Law 96-452 October 14, 1980.

1 The Florida bingo statute provides as follows:

849.093 Charitable, nonprofit organizations; certain endeavors permitted

(1) As used in this section:

(a) "Bingo game" means and refers to the activity commonly known as "bingo" wherein participants pay a sum of money for the use of one or more cards. When

the game commences, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the cards which they have purchased until a player receives a given order of numbers in sequence that has been preannounced for that particular game. This player calls out "bingo" and is declared the winner of a predetermined prize. More than one game may be played upon a bingo card, and numbers called for one game may be used for a succeeding game or games.

(b) "Bingo card" means and refers to the flat piece of paper or thin pasteboard employed by players engaged in the game of bingo. More than one set of bingo numbers may be printed on any single piece of paper.

(2) None of the provisions of this chapter shall be construed to prohibit or prevent nonprofit or veterans' organizations engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar activities, which organizations have been in existence for a period of 3 years or more, from conducting bingo games or guest games, provided that the entire proceeds derived from the conduct of such games, less actual business expenses for articles designed for and essential to the operation, conduct, and playing of bingo, shall be donated by such organizations to the endeavors mentioned above. In no case shall the net proceeds from the conduct of such games be used for any other purpose whatsoever. The proceeds derived from the conduct of bingo games shall not be considered solicitation of public donations.

(3) If an organization is not engaged in efforts of the type set out above, its right to conduct bingo or guest games hereunder shall be conditioned upon the return of all the proceeds from such games to the players in the form of prizes. If at the conclusion of play on any day during which a bingo or guest game is allowed to be played under this section there remain proceeds which have not been paid out as prizes, the nonprofit organization conducting the game shall at the next scheduled day of play conduct bingo or guest games without any charge to the players and shall continue to do so until the proceeds carried over from the previous days played have been exhausted. This provision in no way extends the limitation on the number of prize or jackpot games allowed in one night as provided for in subsection (5).

(4) The number of days during which such organizations as are authorized hereunder may conduct bingo or guest games per week shall not exceed two.

(5) No jackpot shall exceed the value of \$100 in actual money or its equivalent, and there shall be no more than one jackpot in any one night.

(6) There shall be only one prize or jackpot on any one day of play of \$100. All other game prizes shall not exceed \$25.

(7) Each person involved in the conduct of any bingo or guest game must be a resident of the community where the organization is located and a bona fide member of the organization sponsoring such game and shall not be compensated in any way for operation of said bingo or guest game.

(8) No one under 18 years of age shall be allowed to play.

(9) Bingo or guest games shall be held only on the following premises:

(a) Property owned by the nonprofit organization;

(b) Property owned by the charity or organization that will benefit by the proceeds;

(c) Property leased full time for a period of not less than 1 year by the nonprofit organization or by the charity or organization that will benefit by the proceeds;

(d) Property owned by and leased from another nonprofit organization qualified under this section; or

(e) Property owned by a municipality or a county when the governing authority has, by appropriate ordinance or resolution, specifically authorized the use of such property for the conduct of such games.

(10) Any organization or other person who willfully and knowingly violates any provision in this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For a second or subsequent offense, the organization or other person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2 The two sections were codified at 18 U.S.C.A. § 1162 and 28 U.S.C.A. § 1360, respectively. The first section concerned state assumption of criminal jurisdiction and the second involved assumption of civil jurisdiction. These sections were directed at the willing states of California, Minnesota, Nebraska, Oregon and Wisconsin (later adding Alaska), which are sometimes referred to as the mandatory states because the assumption of jurisdiction was dictated by the statute.

3 67 Stat. 590 (1953) (repealed by Pub.L. 90-284, Title IV, § 403, 82 Stat. 79 (1968). The former section provided:

The consent of the United States is hereby given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this act, to assume jurisdiction at such time and in such manner as the people of the state shall by affirmative legislative action obligate and bind the state to assumption thereof.

The repeal changed the law to require the consent of the Indians to any further assumption of jurisdiction.

4 See note 2 supra. Section 4(a) provides:

(a) Each of the States or Territories listed ... shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country ... to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory

5 For the text of the statute, see note 1 supra.

6 The statute as originally enacted contained no penal sanctions for its violation. The penalties were added by amendment in 1973, Laws 1973, c. 73-229, § 1. Arguably, the original enactment of the statute without penal sanctions indicates a legislative intent that the statute be construed as regulatory.

7 Arguably, the Florida bingo statute could be viewed as a narrow exception to the general prohibition against lotteries, permitting bingo operations only when the activity was recreational or charitable, and not for profit. Under this view

urged by petitioner, professional, money-making bingo operations continue to be prohibited. Even if we were to accept this view of the statute as prohibiting professional bingo, the Seminole Indian tribe could arguably qualify as a nonprofit organization "engaged in charitable, civic, community, benevolent, religious or scholastic works or other similar activities" as prescribed in the statute. The Seminole's complaint alleges that the profits received by the tribe from the bingo activities are to be invested for the betterment of the Indian community. Although the Indian nation may not qualify as a charitable organization within the letter of the statute, the Seminole tribe could be said to fall within the spirit of its permissive intent.

8 The Wash.Rev.Code § 9.46.010 provides:

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; (and) to restrain all persons from patronizing such professional gambling activities....

9 The petitioner has cited a line of cases culminating in *Washington v. Confederated Tribes*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980), for the proposition that states can require Indians to apply state regulations to non-Indians who engage in activity on Indian reservations. *Washington v. Confederated Tribes*, supra, involved the imposition of a state sales tax on the purchase of cigarettes. The Court required an Indian smoke shop owner to precollect the tax imposed on the buyer. Although we recognize the validity of the line of cases cited, we note that an important distinction exists between the present case and those cases where regulations are imposed on non-Indians. In the present case the only regulation involved is directed at the Indian operators of the bingo hall, not its non-Indian bingo player. Thus, even if we were to fully address petitioner's argument, the line of cases cited would not require a contrary holding.

California v. Cabazon Tribe

480 U.S. 202

107 S.Ct. 1083

94 L.Ed.2d 244

CALIFORNIA, et al., Appellants,

v.

CABAZON BAND OF MISSION INDIANS et al.

No. 85-1708.

Argued Dec. 9, 1986.

Decided Feb. 25, 1987.

Syllabus

Appellee Indian Tribes (the Cabazon and Morongo Bands of Mission Indians) occupy reservations in Riverside County, Cal. Each Band, pursuant to its federally approved ordinance, conducts on its reservation bingo games that are open to the public. The Cabazon Band also operates a card club for playing draw poker and other card games. The gambling games are open to the public and are played predominantly by non-Indians coming onto the reservations. California sought to apply to the Tribes its statute governing the operation of bingo games. Riverside County also sought to apply its ordinance regulating bingo, as well as its ordinance prohibiting the playing of draw poker and other card games. The Tribes instituted an action for declaratory relief in Federal District Court, which entered summary judgment for the Tribes, holding that neither the State nor the county had any authority to enforce its gambling laws within the reservations. The Court of Appeals affirmed.

Held:

1. Although state laws may be applied to tribal Indians on their reservations if Congress has expressly consented, Congress has not done so here either by Pub.L. 280 or by the Organized Crime Control Act of 1970 (OCCA). Pp. 207-214.

(a) In Pub.L. 280, the primary concern of which was combating lawlessness on reservations, California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State but more limited, nonregulatory civil jurisdiction. When a State seeks to enforce a law within an Indian reservation under the authority of Pub.L. 280, it must be determined whether the state law is criminal in nature and thus fully

applicable to the reservation, or civil in nature and applicable only as it may be relevant to private civil litigation in state court. There is a fair basis for the Court of Appeals' conclusion that California's statute, which permits bingo games to be conducted only by certain types of organizations under certain restrictions, is not a "criminal/prohibitory" statute falling within Pub.L. 280's grant of criminal jurisdiction, but instead is a "civil/regulatory" statute not authorized by Pub.L. 280 to be enforced on Indian reservations. That an otherwise regulatory law is enforceable (as here) by

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criminal as well as civil means does not necessarily convert it into a criminal law within Pub.L. 280's meaning. Pp. 207-212.

(b) Enforcement of OCCA, which makes certain violations of state and local gambling laws violations of federal criminal law, is an exercise of federal rather than state authority. There is nothing in OCCA indicating that the States are to have any part in enforcing the federal laws or are authorized to make arrests on Indian reservations that in the absence of OCCA they could not effect. California may not make arrests on reservations and thus, through OCCA, enforce its gambling laws against Indian tribes. Pp. 212-214.

2. Even though not expressly authorized by Congress, state and local laws may be applied to on-reservation activities of tribes and tribal members under certain circumstances. The decision in this case turns on whether state authority is pre-empted by the operation of federal law. State jurisdiction is pre-empted if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority. The federal interests in Indian self-government, including the goal of encouraging tribal self-sufficiency and economic development, are important, and federal agencies, acting under federal laws, have sought to implement them by promoting and overseeing tribal bingo and gambling enterprises. Such policies and actions are of particular relevance in this case since the tribal games provide the sole source of revenues for the operation of the tribal governments and are the major sources of employment for tribal members. To the extent that the State seeks to prevent all bingo games on tribal lands while permitting regulated off-reservation games, the asserted state interest in preventing the infiltration of the tribal games by organized crime is irrelevant, and the state and county laws are pre-empted. Even to the extent that the State and county seek to regulate short of prohibition, the laws are pre-empted since the asserted state interest is not sufficient to escape the pre-emptive force of the federal and tribal interests apparent in this case. Pp. 214-222.

783 F.2d 900 (CA 9 1986), affirmed and remanded.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and BRENNAN, MARSHALL, BLACKMUN, and POWELL, JJ., joined. STEVENS, J., filed a dissenting opinion, in which O'CONNOR and SCALIA, JJ., joined, post, p. ---.

Roderick E. Walston, San Francisco, Cal., for petitioner.

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Glenn M. Feldman, Phoenix, Ariz., for respondents.

Justice WHITE delivered the opinion of the Court.

The Cabazon and Morongo Bands of Mission Indians, federally recognized Indian Tribes, occupy reservations in Riverside County, California.¹ Each Band, pursuant to an

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ordinance approved by the Secretary of the Interior, conducts bingo games on its reservation.² The Cabazon Band has also opened a card club at which draw poker and other card games are played. The games are open to the public and are played predominantly by non-Indians coming onto the reservations. The games are a major source of employment for tribal members, and the profits are the Tribes' sole source of income. The State of California seeks to apply to the two Tribes Cal.Penal Code Ann. § 326.5 (West Supp.1987). That statute does not entirely prohibit the playing of bingo but permits it when the games are operated and staffed by members of designated charitable organizations who may not be paid for their services. Profits must be kept in special accounts and used only for charitable purposes; prizes may not exceed \$250 per game. Asserting that the bingo games on the two reservations violated each of these restrictions, California insisted that the Tribes comply with state law.³ Riverside

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County also sought to apply its local Ordinance No. 558, regulating bingo, as well as its Ordinance No. 331, prohibiting the playing of draw poker and the other card games.

The Tribes sued the county in Federal District Court seeking a declaratory judgment that the county had no authority to apply its ordinances inside the reservations and an injunction against their enforcement. The State intervened, the facts were stipulated, and the District Court granted the Tribes' motion for summary judgment, holding that neither the State nor the county had any authority to enforce its gambling laws within the reservations. The Court of Appeals for the Ninth Circuit affirmed, 783 F.2d 900 (1986), the State and the

county appealed, and we postponed jurisdiction to the hearing on the merits. 476 U.S. 1168, 106 S.Ct. 2888, 90 L.Ed.2d 975.4

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I

The Court has consistently recognized that Indian tribes retain "attributes of sovereignty over both their members and their territory," *United States v. Mazurie*, 419 U.S. 544, 557, 95 S.Ct. 710, 717, 42 L.Ed.2d 706 (1975), and that "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States," *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 154, 100 S.Ct. 2069, 2081, 65 L.Ed.2d 10 (1980). It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided. Here, the State insists that Congress has twice given its express consent: first in Pub.L. 280 in 1953, 67 Stat. 588, as amended, 18 U.S.C. § 1162, 28 U.S.C. § 1360 (1982 ed. and Supp. III), and second in the Organized Crime Control Act in 1970, 84 Stat. 937, 18 U.S.C. § 1955. We disagree in both respects.

In Pub.L. 280, Congress expressly granted six States, including California, jurisdiction over specified areas of Indian country⁵ within the States and provided for the assumption of jurisdiction by other States. In § 2, California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State.⁶ Section 4's grant of civil jurisdiction was more lim-

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ited.⁷ In *Bryan v. Itasca County*, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976), we interpreted § 4 to grant States jurisdiction over private civil litigation involving reservation Indians in state court, but not to grant general civil regulatory authority. *Id.*, at 385, 388-390, 96 S.Ct., at 2109, 2110-2112. We held, therefore, that Minnesota could not apply its personal property tax within the reservation. Congress' primary concern in enacting Pub.L. 280 was combating lawlessness on reservations. *Id.*, at 379-380, 96 S.Ct., at 2106-2107. The Act plainly was not intended to effect total assimilation of Indian tribes into mainstream American society. *Id.*, at 387, 96 S.Ct., at 2110. We recognized that a grant to States of general civil regulatory power over Indian reservations would result in the destruction of tribal institutions and values. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Pub.L. 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation under § 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.

The Minnesota personal property tax at issue in Bryan was unquestionably civil in nature. The California bingo statute is not so easily categorized. California law permits bingo

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games to be conducted only by charitable and other specified organizations, and then only by their members who may not receive any wage or profit for doing so; prizes are limited and receipts are to be segregated and used only for charitable purposes. Violation of any of these provisions is a misdemeanor. California insists that these are criminal laws which Pub.L. 280 permits it to enforce on the reservations.

Following its earlier decision in *Barona Group of Capitan Grande Band of Mission Indians, San Diego County, Cal. v. Duffy*, 694 F.2d 1185 (CA 9 1982), cert. denied, 461 U.S. 929, 103 S.Ct. 2091, 77 L.Ed.2d 301 (1983), which also involved the applicability of § 326.5 of the California Penal Code to Indian reservations, the Court of Appeals rejected this submission. 783 F.2d, at 901-903. In *Barona*, applying what it thought to be the civil/criminal dichotomy drawn in *Bryan v. Itasca County*, the Court of Appeals drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within Pub.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy. Inquiring into the nature of § 326.5, the Court of Appeals held that it was regulatory rather than prohibitory.⁸ This was the analysis employed, with similar results,

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by the Court of Appeals for the Fifth Circuit in *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (1981), cert. denied, 455 U.S. 1020, 102 S.Ct. 1717, 72 L.Ed.2d 138 (1982), which the Ninth Circuit found persuasive.⁹

We are persuaded that the prohibitory/regulatory distinction is consistent with Bryan's construction of Pub.L. 280. It is not a bright-line rule, however; and as the Ninth Circuit itself observed, an argument of some weight may be made that the bingo statute is prohibitory rather than regulatory. But in the present case, the court reexamined the state law and reaffirmed its holding in *Barona*, and we are reluctant to disagree with that court's view of the nature and intent of the state law at issue here.

There is surely a fair basis for its conclusion. California does not prohibit all forms of gambling. California itself operates a state lottery, Cal.Govt. Code Ann. § 8880 et seq. (West Supp.1987), and daily encourages its citizens to participate

in this state-run gambling. California also permits parimutuel horse-race betting. Cal.Bus. & Prof.Code Ann. §§ 19400-19667 (West 1964 and Supp.1987). Although certain enumerated gambling games are prohibited under Cal.Penal Code Ann. § 330 (West Supp.1987), games not enumerated, including the card games played in the Cabazon card club, are permissible. The Tribes assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State does not dispute this fact. Brief for

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Appellees 47-48. Also, as the Court of Appeals noted, bingo is legally sponsored by many different organizations and is widely played in California. There is no effort to forbid the playing of bingo by any member of the public over the age of 18. Indeed, the permitted bingo games must be open to the general public. Nor is there any limit on the number of games which eligible organizations may operate, the receipts which they may obtain from the games, the number of games which a participant may play, or the amount of money which a participant may spend, either per game or in total. In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.¹⁰

California argues, however, that high stakes, unregulated bingo, the conduct which attracts organized crime, is a misdemeanor in California and may be prohibited on Indian reservations. But that an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law within the meaning of Pub.L. 280. Otherwise, the distinction between § 2 and § 4 of that law could easily be avoided and total assimilation permitted.

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This view, adopted here and by the Fifth Circuit in the Butterworth case, we find persuasive. Accordingly, we conclude that Pub.L. 280 does not authorize California to enforce Cal.Penal Code Ann. § 326.5 (West Supp.1987) within the Cabazon and Morongo Reservations.¹¹

California and Riverside County also argue that the Organized Crime Control Act (OCCA) authorizes the application of their gambling laws to the tribal bingo enterprises. The OCCA makes certain violations of state and local gambling laws violations of federal law.¹² The Court of Appeals re-

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jected appellants' argument, relying on its earlier decisions in *United States v. Farris*, 624 F.2d 890 (CA9 1980), cert. denied, 449 U.S. 1111, 101 S.Ct. 920, 66

L.Ed.2d 839 (1981), and *Barona Group of Capitan Grande Band of Mission Indians, San Diego County, Cal. v. Duffy*, 694 F.2d 1185 (CA 9 1982). 783 F.2d, at 903. The court explained that whether a tribal activity is "a violation of the law of a state" within the meaning of OCCA depends on whether it violates the "public policy" of the State, the same test for application of state law under Pub.L. 280, and similarly concluded that bingo is not contrary to the public policy of California.¹³

The Court of Appeals for the Sixth Circuit has rejected this view. *United States v. Dakota*, 796 F.2d 186 (1986).¹⁴ Since the OCCA standard is simply whether the gambling business is being operated in "violation of the law of a State," there is no basis for the regulatory/prohibitory distinction that it agreed is suitable in construing and applying Pub.L. 280. 796 F.2d, at 188. And because enforcement of OCCA is an exercise of federal rather than state authority, there is no danger of state encroachment on Indian tribal sovereignty. *Ibid.* This latter observation exposes the flaw in appellants' reliance on OCCA. That enactment is indeed a federal law that, among other things, defines certain federal crimes over which the district courts have exclusive jurisdiction.¹⁵ There is nothing in OCCA indicating that the States

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are to have any part in enforcing federal criminal laws or are authorized to make arrests on Indian reservations that in the absence of OCCA they could not effect. We are not informed of any federal efforts to employ OCCA to prosecute the playing of bingo on Indian reservations, although there are more than 100 such enterprises currently in operation, many of which have been in existence for several years, for the most part with the encouragement of the Federal Government.¹⁶ Whether or not, then, the Sixth Circuit is right and the Ninth Circuit wrong about the coverage of OCCA, a matter that we do not decide, there is no warrant for California to make arrests on reservations and thus, through OCCA, enforce its gambling laws against Indian tribes.

II

Because the state and county laws at issue here are imposed directly on the Tribes that operate the games, and are not expressly permitted by Congress, the Tribes argue that the judgment below should be affirmed without more. They rely on the statement in *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 170-171, 93 S.Ct. 1257, 1261-1262, 36 L.Ed.2d 129 (1973), that "[s]tate laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply" (quoting *United States Dept. of the Interior, Federal Indian Law* 845 (1958)). Our cases, however, have not established an inflexible per se rule pre-

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cluding state jurisdiction over tribes and tribal members in the absence of express congressional consent.¹⁷ "[U]nder certain circumstances a State may validly assert authority over the activities of nonmembers on a reservation, and . . . in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-332, 103 S.Ct. 2378, 2385, 76 L.Ed.2d 611 (1983) (footnotes omitted). Both *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976), and *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980), are illustrative. In those decisions we held that, in the absence of express congressional permission, a State could require tribal smokeshops on Indian reservations to collect state sales tax from their non-Indian

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customers. Both cases involved nonmembers entering and purchasing tobacco products on the reservations involved. The State's interest in assuring the collection of sales taxes from non-Indians enjoying the off-reservation services of the State was sufficient to warrant the minimal burden imposed on the tribal smokeshop operators.¹⁸

This case also involves a state burden on tribal Indians in the context of their dealings with non-Indians since the question is whether the State may prevent the Tribes from making available high stakes bingo games to non-Indians coming from outside the reservations. Decision in this case turns on whether state authority is pre-empted by the operation of federal law; and "[s]tate jurisdiction is pre-empted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *Mescalero*, 462 U.S., at 333, 334, 103 S.Ct., at 2385, 2386. The inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development. *Id.*, at 334-335, 103 S.Ct., at 2386-2387.¹⁹ See also,

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Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143, 100 S.Ct. 2578, 2583, 65 L.Ed.2d 665 (1980).

These are important federal interests. They were reaffirmed by the President's 1983 Statement on Indian Policy.²⁰ More specifically, the Department of the Interior, which has the primary responsibility for carrying out the Federal Government's trust obligations to Indian tribes, has sought to

implement these policies by promoting tribal bingo enterprises.²¹ Under the Indian Financing Act of 1974, 25

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U.S.C. § 1451 et seq. (1982 ed. and Supp.III), the Secretary of the Interior has made grants and has guaranteed loans for the purpose of constructing bingo facilities. See S.Rep. No. 99-493, p. 5 (1986); *Mashantucket Pequot Tribe v. McGuigan*, 626 F.Supp. 245, 246 (Conn.1986). The Department of Housing and Urban Development and the Department of Health and Human Services have also provided financial assistance to develop tribal gaming enterprises. See S.Rep. No. 99-493, supra, at 5. Here, the Secretary of the Interior has approved tribal ordinances establishing and regulating the gaming activities involved. See H.R.Rep. No. 99-488, p. 10 (1986). The Secretary has also exercised his authority to review tribal bingo management contracts under 25 U.S.C. § 81, and has issued detailed guidelines governing that review.²² App. to Motion to Dismiss Appeal or Affirm Judgment 63a-70a.

These policies and actions, which demonstrate the Government's approval and active promotion of tribal bingo enterprises, are of particular relevance in this case. The Cabazon and Morongo Reservations contain no natural resources which can be exploited. The tribal games at present provide the sole source of revenues for the operation of the tribal gov-

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ernments and the provision of tribal services. They are also the major sources of employment on the reservations. Self-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members. The Tribes' interests obviously parallel the federal interests.

California seeks to diminish the weight of these seemingly important tribal interests by asserting that the Tribes are merely marketing an exemption from state gambling laws. In *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S., at 155, 100 S.Ct., at 2082, we held that the State could tax cigarettes sold by tribal smokeshops to non-Indians, even though it would eliminate their competitive advantage and substantially reduce revenues used to provide tribal services, because the Tribes had no right "to market an exemption from state taxation to persons who would normally do their business elsewhere." We stated that "[i]t is painfully apparent that the value marketed by the smokeshops to persons coming from outside is not generated on the reservations by activities in which the Tribes have a significant interest." *Ibid.* Here, however, the Tribes are not merely importing a product onto the reservations for immediate resale to non-Indians. They have built modern facilities which provide recreational opportunities and ancillary services to their patrons, who do not simply drive onto the reservations, make purchases and

depart, but spend extended periods of time there enjoying the services the Tribes provide. The Tribes have a strong incentive to provide comfortable, clean, and attractive facilities and well-run games in order to increase attendance at the games.²³ The tribal bingo enterprises are

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similar to the resort complex, featuring hunting and fishing, that the Mescalero Apache Tribe operates on its reservation through the "concerted and sustained" management of reservation land and wildlife resources. *New Mexico v. Mescalero Apache Tribe*, 462 U.S., at 341, 103 S.Ct., at 2390. The Mescalero project generates funds for essential tribal services and provides employment for tribal members. We there rejected the notion that the Tribe is merely marketing an exemption from state hunting and fishing regulations and concluded that New Mexico could not regulate on-reservation fishing and hunting by non-Indians. *Ibid.* Similarly, the Cabazon and Morongo Bands are generating value on the reservations through activities in which they have a substantial interest.

The State also relies on *Rice v. Rehner*, 463 U.S. 713, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983), in which we held that California could require a tribal member and a federally licensed Indian trader operating a general store on a reservation to obtain a state license in order to sell liquor for off-premises consumption. But our decision there rested on the grounds that Congress had never recognized any sovereign tribal interest in regulating liquor traffic and that Congress, historically, had plainly anticipated that the States would exercise concurrent authority to regulate the use and distribution of liquor on Indian reservations. There is no such traditional federal view governing the outcome of this case, since, as we have explained, the current federal policy is to promote precisely what California seeks to prevent.

The sole interest asserted by the State to justify the imposition of its bingo laws on the Tribes is in preventing the infiltration of the tribal games by organized crime. To the extent that the State seeks to prevent any and all bingo

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games from being played on tribal lands while permitting regulated, off-reservation games, this asserted interest is irrelevant and the state and county laws are pre-empted. See n. 3, *supra*. Even to the extent that the State and county seek to regulate short of prohibition, the laws are pre-empted. The State insists that the high stakes offered at tribal games are attractive to organized crime, whereas the controlled games authorized under California law are not. This is surely a legitimate concern, but we are unconvinced that it is sufficient to escape the pre-emptive force of federal and tribal interests apparent in this case. California does not allege any present criminal involvement in the Cabazon and Morongo enterprises, and the Ninth Circuit discerned none. 783 F.2d, at 904. An

official of the Department of Justice has expressed some concern about tribal bingo operations,²⁴ but far from any action being taken evidencing this concern—and surely the Federal Government has the authority to forbid Indian gambling enterprises—the prevailing federal policy continues to support these tribal enterprises, including those of the Tribes involved in this case.²⁵

We conclude that the State's interest in preventing the infiltration of the tribal bingo enterprises by organized crime does not justify state regulation of the tribal bingo enter-

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prises in light of the compelling federal and tribal interests supporting them. State regulation would impermissibly infringe on tribal government, and this conclusion applies equally to the county's attempted regulation of the Cabazon card club. We therefore affirm the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice STEVENS, with whom Justice O'CONNOR and Justice SCALIA join, dissenting.

Unless and until Congress exempts Indian-managed gambling from state law and subjects it to federal supervision, I believe that a State may enforce its laws prohibiting high-stakes gambling on Indian reservations within its borders. Congress has not pre-empted California's prohibition against high-stakes bingo games and the Secretary of the Interior plainly has no authority to do so. While gambling provides needed employment and income for Indian tribes, these benefits do not, in my opinion, justify tribal operation of currently unlawful commercial activities. Accepting the majority's reasoning would require exemptions for cockfighting, tattoo parlors, nude dancing, houses of prostitution, and other illegal but profitable enterprises. As the law now stands, I believe tribal entrepreneurs, like others who might derive profits from catering to non-Indian customers, must obey applicable state laws.

In my opinion the plain language of Pub.L. 280, 67 Stat. 588, as amended, 18 U.S.C. § 1162, 28 U.S.C. § 1360 (1982 ed. and Supp.III), authorizes California to enforce its prohibition against commercial gambling on Indian reservations. The State prohibits bingo games that are not operated by members of designated charitable organizations or which offer prizes in excess of \$250 per game. Cal.Penal Code Ann. § 326.5 (West Supp.1987). In § 2 of Pub.L. 280, Con-

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gress expressly provided that the criminal laws of the State of California "shall have the same force and effect within such Indian country as they have elsewhere within the State." 18 U.S.C. § 1162(a). Moreover, it provided in § 4(a) that the civil laws of California "that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State." 28 U.S.C. § 1360(a) (1982 ed., Supp.III).

It is true that in *Bryan v. Itasca County*, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976), we held that Pub.L. 280 did not confer civil jurisdiction on a State to impose a personal property tax on a mobile home that was owned by a reservation Indian and located within the reservation. Moreover, the reasoning of that decision recognizes the importance of preserving the traditional aspects of tribal sovereignty over the relationships among reservation Indians. Our more recent cases have made it clear, however, that commercial transactions between Indians and non-Indians—even when conducted on a reservation—do not enjoy any blanket immunity from state regulation. In *Rice v. Rehner*, 463 U.S. 713, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983), respondent, a federally licensed Indian trader, was a tribal member operating a general store on an Indian reservation. We held that the State could require Rehner to obtain a state license to sell liquor for off-premises consumption. The Court attempts to distinguish *Rice v. Rehner* as resting on the absence of a sovereign tribal interest in the regulation of liquor traffic to the exclusion of the States. But as a necessary step on our way to deciding that the State could regulate all tribal liquor sales in Indian country, we recognized the State's authority over transactions, whether they be liquor sales or gambling, between Indians and non-Indians: "If there is any interest in tribal sovereignty implicated by imposition

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of California's alcoholic beverage regulation, it exists only insofar as the State attempts to regulate Rehner's sale of liquor to other members of the Pala Tribe on the Pala Reservation." *Id.*, at 721, 103 S.Ct., at 3297. Similarly, in *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980), we held that a State could impose its sales and cigarette taxes on non-Indian customers of smokeshops on Indian reservations.

Today the Court seems prepared to acknowledge that an Indian tribe's commercial transactions with non-Indians may violate "the State's public policy." *Ante*, at 209. The Court reasons, however, that the operation of high-stakes bingo games does not run afoul of California's public policy because the State permits some forms of gambling and, specifically, some forms of bingo. I find this approach to "public policy" curious, to say the least. The State's policy concerning gambling is to authorize certain specific gambling activities that comply with carefully defined regulation and that provide revenues either for the State itself or for certain charitable purposes, and to prohibit all unregulated

commercial lotteries that are operated for private profit.¹ To argue that the tribal bingo games comply with the public policy of California because the State permits some other gambling is tantamount to arguing that driving over 60 miles an hour is con-

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sistent with public policy because the State allows driving at speeds of up to 55 miles an hour.

In my view, Congress has permitted the State to apply its prohibitions against commercial gambling to Indian tribes. Even if Congress had not done so, however, the State has the authority to assert jurisdiction over appellees' gambling activities. We recognized this authority in *Washington v. Confederated Tribes*, *supra*; the Court's attempt to distinguish the reasoning of our decision in that case is unpersuasive. In *Washington v. Confederated Tribes*, the Tribes contended that the State had no power to tax on-reservation sales of cigarettes to non-Indians. The argument that we rejected there has a familiar ring:

"The Tribes contend that their involvement in the operation and taxation of cigarette marketing on the reservation ousts the State from any power to exact its sales and cigarette taxes from nonmembers purchasing cigarettes at tribal smokeshops. The primary argument is economic. It is asserted that smokeshop cigarette sales generate substantial revenues for the Tribes which they expend for essential governmental services, including programs to combat severe poverty and underdevelopment at the reservations. Most cigarette purchasers are outsiders attracted onto the reservations by the bargain prices the smokeshops charge by virtue of their claimed exemption from state taxation. If the State is permitted to impose its taxes, the Tribes will no longer enjoy any competitive advantage vis-a-vis businesses in surrounding areas." *Id.*, 447 U.S., at 154, 100 S.Ct., at 2081-2082.

"What the smokeshops offer these customers, and what is not available elsewhere, is solely an exemption from state taxation." *Id.*, at 155, 100 S.Ct., at 2082.

In *Confederated Tribes*, the tribal smokeshops offered their customers the same products, services, and facilities that other tobacconists offered to their customers. Al-

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though the smokeshops were more modest than the bingo palaces involved in this case, presumably they were equally the product of tribal labor and tribal capital. What made them successful, however, was the value of the exemption

that was offered to non-Indians "who would normally do their business elsewhere." *Id.*, at 155, 100 S.Ct., at 2082.

Similarly, it is painfully obvious that the value of the Tribe's asserted exemption from California's gambling laws is the primary attraction to customers who would normally do their gambling elsewhere. The Cabazon Band of Mission Indians has no tradition or special expertise in the operation of large bingo parlors. See Declaration of William J. Wallace, ¶ 2, App. 153, 171. Indeed, the entire membership of the Cabazon Tribe—it has only 25 enrolled members—is barely adequate to operate a bingo game that is patronized by hundreds of non-Indians nightly. How this small and formerly impoverished Band of Indians could have attracted the investment capital for its enterprise without benefit of the claimed exemption is certainly a mystery to me.

I am entirely unpersuaded by the Court's view that the State of California has no legitimate interest in requiring appellees' gambling business to comply with the same standards that the operators of other bingo games must observe. The State's interest is both economic and protective. Presumably the State has determined that its interest in generating revenues for the public fisc and for certain charities outweighs the benefits from a total prohibition against publicly sponsored games of chance. Whatever revenues the Tribes receive from their unregulated bingo games drain funds from the state-approved recipients of lottery revenues just as the tax-free cigarette sales in the *Confederated Tribes* case diminished the receipts that the tax collector would otherwise have received.

Moreover, I am unwilling to dismiss as readily as the Court does the State's concern that these unregulated high-stakes bingo games may attract organized criminal infiltration.

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Brief for Appellants 25-26, 29; Reply Brief for Appellants 12. Comprehensive regulation of the commercial gambling ventures that a State elects to license is obviously justified as a prophylactic measure even if there is presently no criminal activity associated with casino gambling in the State. Indeed, California regulates charitable bingo, horseracing, and its own lottery. The State of California requires that charitable bingo games may only be operated and staffed by members of designated charitable organizations, and that proceeds from the games may only be used for charitable purposes. Cal.Penal Code Ann. § 326.5 (West Supp.1987). These requirements for staffing and for dispersal of profits provide bulwarks against criminal activity; neither safeguard exists for bingo games on Indian reservations.² In my judgment, unless Congress authorizes and regulates these commercial gambling ventures catering to non-Indians, the State has a legitimate law enforcement interest in proscribing them.

Appellants and the Secretary of the Interior may well be correct, in the abstract, that gambling facilities are a sensible way to generate revenues that are badly needed by reservation Indians. But the decision to adopt, to reject, or to define the precise contours of such a course of action, and thereby to set aside the substantial public policy concerns of a sovereign State, should be made by the Congress of the United States. It should not be made by this Court, by the temporary occupant of the Office of the Secretary of the Interior, or by non-Indian entrepreneurs who are experts in gambling management but not necessarily dedicated to serving the future well-being of Indian tribes.

I respectfully dissent.

1. The Cabazon Reservation was originally set apart for the "permanent use and occupancy" of the Cabazon Indians by Executive Order of May 15, 1876. The Morongo Reservation also was first established by Executive Order. In 1891, in the Mission Indian Relief Act, 26 Stat. 712, Congress declared reservations "for the sole use and benefit" of the Cabazon and Morongo Bands. The United States holds the land in trust for the Tribes. The governing bodies of both Tribes have been recognized by the Secretary of the Interior. The Cabazon Band has 25 enrolled members and the Morongo Band has approximately 730 enrolled members.

2. The Cabazon ordinance authorizes the Band to sponsor bingo games within the reservation "[i]n order to promote economic development of the Cabazon Indian Reservation and to generate tribal revenues" and provides that net revenues from the games shall be kept in a separate fund to be used "for the purpose of promoting the health, education, welfare and well being of the Cabazon Indian Reservation and for other tribal purposes." App. to Brief for Appellees 1b-3b. The ordinance further provides that no one other than the Band is authorized to sponsor a bingo game within the reservation, and that the games shall be open to the public, except that no one under 18 years old may play. The Morongo ordinance similarly authorizes the establishment of a tribal bingo enterprise and dedicates revenues to programs to promote the health, education, and general welfare of tribal members. *Id.*, at 1a-6a. It additionally provides that the games may be conducted at any time but must be conducted at least three days per week, that there shall be no prize limit for any single game or session, that no person under 18 years old shall be allowed to play, and that all employees shall wear identification.

3. The Tribes admit that their games violate the provision governing staffing and the provision setting a limit on jackpots. They dispute the State's assertion that they do not maintain separate funds for the bingo operations. At oral argument, counsel for the State asserted, contrary to the position taken in the merits brief and contrary to the stipulated facts in this case, App. 65, ¶ 24, 82-83, ¶ 15, that the Tribes are among the charitable organizations authorized to sponsor bingo games under the statute. It is therefore unclear whether the State intends to put

the tribal bingo enterprises out of business or only to impose on them the staffing, jackpot limit, and separate fund requirements. The tribal bingo enterprises are apparently consistent with other provisions of the statute: minors are not allowed to participate, the games are conducted in buildings owned by the Tribes on tribal property, the games are open to the public, and persons must be physically present to participate.

4. The Court of Appeals "affirm[ed] the summary judgment and the permanent injunction restraining the County and the State from applying their gambling laws on the reservations." 783 F.2d, at 906. The judgment of the District Court declared that the state statute and county ordinance were of no force and effect within the two reservations, that the State and the county were without jurisdiction to enforce them, and that they were therefore enjoined from doing so. Since it is now sufficiently clear that the state and county laws at issue were held, as applied to the gambling activities on the two reservations, to be "invalid as repugnant to the Constitution, treaties or laws of the United States" within the meaning of 28 U.S.C. § 1254(2), the case is within our appellate jurisdiction.

5. "Indian country," as defined at 18 U.S.C. § 1151, includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation." This definition applies to questions of both criminal and civil jurisdiction. *DeCoteau v. District County Court*, 420 U.S. 425, 427, n. 2, 95 S.Ct. 1082, 1084, n. 2, 43 L.Ed.2d 300 (1975). The Cabazon and Morongo Reservations are thus Indian country.

6. Section 2(a), codified at 18 U.S.C. § 1162(a), provides:

"Each of the States . . . listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State . . . , and the criminal laws of such State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State . . . :

* * * * *

"California All Indian country within the State."

7. Section 4(a), codified at 28 U.S.C. § 1360(a) (1982 ed. and Supp.III) provides:

"Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed . . . to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have

the same force and effect within such Indian country as they have elsewhere within the State:

* * * * *

"California All Indian country within the State."

8. The Court of Appeals questioned whether we indicated disapproval of the prohibitory/regulatory distinction in *Rice v. Rehner*, 463 U.S. 713, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983). We did not. We rejected in that case an asserted distinction between state "substantive" law and state "regulatory" law in the context of 18 U.S.C. § 1161, which provides that certain federal statutory provisions prohibiting the sale and possession of liquor within Indian country do not apply "provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country. . . ." We noted that nothing in the text or legislative history of § 1161 supported the asserted distinction, and then contrasted that statute with Pub.L. 280. "In the absence of a context that might possibly require it, we are reluctant to make such a distinction. Cf. *Bryan v. Itasca County*, 426 U.S. 373, 390 [96 S.Ct. 2102, 2111, 48 L.Ed.2d 710] (1976) (grant of civil jurisdiction in 28 U.S.C. § 1360 does not include regulatory jurisdiction to tax in light of tradition of immunity from taxation)." 463 U.S., at 734, n. 18, 103 S.Ct., at 3303, n. 18.

9. *Seminole Tribe v. Butterworth* was an action by the Seminole Tribe for a declaratory judgment that the Florida bingo statute did not apply to its operation of a bingo hall on its reservation. See also *Mashantucket Pequot Tribe v. McGuigan*, 626 F.Supp. 245 (Conn.1986); *Oneida Tribe of Indians of Wisconsin v. Wisconsin*, 518 F.Supp. 712 (WD Wis.1981).

10. Nothing in this opinion suggests that cock-fighting, tattoo parlors, nude dancing, and prostitution are permissible on Indian reservations within California. See post, at 222. The applicable state laws governing an activity must be examined in detail before they can be characterized as regulatory or prohibitory. The lower courts have not demonstrated an inability to identify prohibitory laws. For example, in *United States v. Marcyes*, 557 F.2d 1361, 1363-1365 (CA9 1977), the Court of Appeals adopted and applied the prohibitory/regulatory distinction in determining whether a state law governing the possession of fireworks was made applicable to Indian reservations by the Assimilative Crimes Statute, 62 Stat. 686, 18 U.S.C. § 13. The court concluded that, despite limited exceptions to the statute's prohibition, the fireworks law was prohibitory in nature. See also *United States v. Farris*, 624 F.2d 890 (CA9 1980), cert. denied, 449 U.S. 1111, 101 S.Ct. 920, 66 L.Ed.2d 839 (1981), discussed in n. 13, *infra*.

11. Nor does Pub.L. 280 authorize the county to apply its gambling ordinances to the reservations. We note initially that it is doubtful that Pub.L. 280 authorizes the

application of any local laws to Indian reservations. Section 2 of Pub.L. 280 provides that the criminal laws of the "State" shall have the same force and effect within Indian country as they have elsewhere. This language seems clearly to exclude local laws. We need not decide this issue, however, because even if Pub.L. 280 does make local criminal/prohibitory laws applicable on Indian reservations, the ordinances in question here do not apply. Consistent with our analysis of Cal.Penal Code Ann. § 326.5 (West Supp.1987) above, we conclude that Ordinance No. 558, the bingo ordinance, is regulatory in nature. Although Ordinance No. 331 prohibits gambling on all card games, including the games played in the Cabazon card club, the county does not prohibit municipalities within the county from enacting municipal ordinances permitting these card games, and two municipalities have in fact done so. It is clear, therefore, that Ordinance No. 331 does not prohibit these card games for purposes of Pub.L. 280.

12. OCCA, 18 U.S.C. § 1955, provides in pertinent part:

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more that \$20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day." (Emphasis added.)

13. In *Farris*, in contrast, the court had concluded that a gambling business, featuring blackjack, poker, and dice, operated by tribal members on the Puyallup Reservation violated the public policy of Washington; the United States, therefore, could enforce OCCA against the Indians.

14. In *Dakota*, the United States sought a declaratory judgment that a gambling business, also featuring the playing of blackjack, poker, and dice, operated by two members of the Keweenaw Bay Indian Community on land controlled by the community, and under a license issued by the community, violated OCCA. The Court of Appeals held that the gambling business violated Michigan law and OCCA.

15. Title 18 U.S.C. § 3231 provides: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

16. See S.Rep. No. 99-493, p. 2 (1986). Federal law enforcement officers have the capability to respond to violations of OCCA on Indian reservations, as is apparent from Farris and Dakota. This is not a situation where the unavailability of a federal officer at a particular moment would likely result in nonenforcement. OCCA is directed at large-scale gambling enterprises. If state officers discover a gambling business unknown to federal authorities while performing their duties authorized by Pub.L. 280, there should be ample time for them to inform federal authorities, who would then determine whether investigation or other enforcement action was appropriate. A federal police officer is assigned by the Department of the Interior to patrol the Indian reservations in southern California. App. to Brief for Appellees D1-D7.

17. In the special area of state taxation of Indian tribes and tribal members, we have adopted a per se rule. In *Montana v. Blackfoot Tribe*, 471 U.S. 759, 105 S.Ct. 2399, 85 L.Ed.2d 753 (1985), we held that Montana could not tax the Tribe's royalty interests in oil and gas leases issued to non-Indian lessees under the Indian Mineral Leasing Act of 1938. We stated: "In keeping with its plenary authority over Indian affairs, Congress can authorize the imposition of state taxes on Indian tribes and individual Indians. It has not done so often, and the Court consistently has held that it will find the Indians' exemption from state taxes lifted only when Congress has made its intention to do so unmistakably clear." *Id.*, at 765, 105 S.Ct., at 2403. We have repeatedly addressed the issue of state taxation of tribes and tribal members and the state, federal, and tribal interests which it implicates. We have recognized that the federal tradition of Indian immunity from state taxation is very strong and that the state interest in taxation is correspondingly weak. Accordingly, it is unnecessary to rebalance these interests in every case. In *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148, 93 S.Ct. 1267, 1270, 36 L.Ed.2d 1114 (1973), we distinguished state taxation from other assertions of state jurisdiction. We acknowledged that we had made repeated statements "to the effect that, even on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law. . . . Even so, in the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. Arizona State Tax Comm'n*, [411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973)], lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent." *Ibid.* (emphasis added).

18. Justice STEVENS appears to embrace the opposite presumption—that state laws apply on Indian reservations absent an express congressional statement to the contrary. But, as we stated in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 151, 100 S.Ct. 2578, 2587, 65 L.Ed.2d 665 (1980), in the context of an assertion of state authority over the activities of non-Indians within a reservation, "[t]hat is simply not the law." It is even less correct when applied to the activities of tribes and tribal members within reservations.

19. In *New Mexico v. Mescalero Apache Tribe*, 462 U.S., at 335, n. 17, 103 S.Ct., at 2387, n. 17, we discussed a number of the statutes Congress enacted to promote tribal self-government. The congressional declarations of policy in the Indian Financing Act of 1974, as amended, 25 U.S.C. § 1451 et seq. (1982 ed. and Supp.III), and in the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450 et seq. (1982 ed. and Supp.III), are particularly significant in this case: "It is hereby declared to be the policy of Congress . . . to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities." 25 U.S.C. § 1451. Similarly, "[t]he Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." 25 U.S.C. § 450a(b).

20. "It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government." 19 Weekly Comp. of Pres.Doc. 99 (1983).

21. The Court of Appeals relied on the following official declarations. 783 F.2d, at 904-905. A policy directive issued by the Assistant Secretary of the Interior on March 2, 1983, stated that the Department would "strongly oppose" any proposed legislation that would subject tribes or tribal members to state gambling regulation. "Such a proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983. . . . A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purpose enunciated in the President's Message. Given the often limited resources which tribes have for revenue-producing activities, it is believed that this kind of revenue-producing possibility should be protected and enhanced." The court also relied on an affidavit submitted by the Director of Indian Services, Bureau of Indian Affairs, on behalf of the Tribes' position:

"It is the department's position that tribal bingo enterprises are an appropriate means by which tribes can further their economic self-sufficiency, the economic development of reservations and tribal self-determination. All of these are federal goals for the tribes. Furthermore, it is the Department's position that the development of tribal bingo enterprises is consistent with and in furtherance of President Reagan's Indian Policy Statement of January 24, 1983."

22. Among other things, the guidelines require that the contract state that no payments have been made or will be made to any elected member of the tribal government or relative of such member for the purpose of obtaining or maintaining the contract. The contractor is required to disclose information on all parties in interest to the contract and all employees who will have day-to-day management responsibility for the gambling operation, including names, home and business addresses, occupations, dates of birth, and Social Security numbers. The Federal Bureau of Investigation must conduct a name-and-record check on these persons before a contract may be approved. The guidelines also specify accounting procedures and cash management procedures which the contractor must follow.

23. An agent of the California Bureau of Investigation visited the Cabazon bingo parlor as part of an investigation of tribal bingo enterprises. The agent described the clientele as follows:

"In attendance for the Monday evening bingo session were about 300 players. . . . On row 5, on the front left side were a middle-aged latin couple, who were later joined by two young latin males. These men had to have the game explained to them. The middle table was shared with a senior citizen couple. The aisle table had 2 elderly women, 1 in a wheelchair, and a middle-aged woman. . . . A goodly portion of the crowd were retired age to senior citizens." App. 176. We are unwilling to assume that these patrons would be indifferent to the services offered by the Tribes.

24. Hearings on H.R. 4566 before the House Committee on Interior and Insular Affairs, 98th Cong., 2d Sess., 15-39, 66-75 (1984); App. 197-205.

25. Justice STEVENS' assertion, post, at 226, that the State's interest in restricting the proceeds of gambling to itself, and the charities it favors, justifies the prohibition or regulation of tribal bingo games is indeed strange. The State asserted no such discriminatory economic interest; and it is pure speculation that, in the absence of tribal bingo games, would-be patrons would purchase lottery tickets or would attend state-approved bingo games instead. In any event, certainly California has no legitimate interest in allowing potential lottery dollars to be diverted to non-Indian owners of card clubs and horse tracks while denying Indian tribes the opportunity to profit from gambling activities. Nor is California necessarily entitled to prefer the funding needs of state-approved charities over

the funding needs of the Tribes, who dedicate bingo revenues to promoting the health, education, and general welfare of tribal members.

1. The Court holds that Pub.L. 280 does not authorize California to enforce its prohibition against commercial gambling within the Cabazon and Morongo Reservations. Ante, at 212. The Court reaches this conclusion by determining that § 4(a) of Pub.L. 280, 28 U.S.C. § 1360(a), withholds from the States general civil regulatory authority over Indian tribes, and that the State's rules concerning gambling are regulatory rather than prohibitory. In its opinion, the Court dismisses the State's argument that high-stakes, unregulated bingo is prohibited with the contention that an otherwise regulatory law does not become a prohibition simply because it "is enforceable by criminal as well as civil means." Ante, at 211. Aside from the questionable merit of this proposition, it does not even address the meaning of § 2(a) of Pub.L. 280, 18 U.S.C. § 1162(a) (1982 ed., Supp. III), a provision which is sufficient to control the disposition of this case. See supra, at ----.

2. The Cabazon Band's bingo room was operated under a management agreement with an outside firm until 1986; the Morongo Band operates its bingo room under a similar management agreement. App. to Brief for Appellees, C-1 to C-3; Morongo Band of Mission Indians Tribal Bingo Enterprise Management Agreement, ¶ 4B, App. 97-98.

Post Cabazon

With tribes' rights of gaming thus affirmed in Seminole and Cabazon, Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA). This Act circumscribes the rights recognized by the Supreme Court in Cabazon. Under IGRA, all gambling activities on the reservations are subject to each tribe's own gaming laws, ordinances, and commissions. Class II gambling (e.g., bingo style games, though such games may be played with electronic assistance) and Class III gambling (casino games and slot machines) are both subject to the oversight of the federal National Indian Gaming Commission. And Class III gambling may be subject to state regulation and oversight depending on how these are specified and negotiated in intergovernmental tribal-state agreements or compacts.

The following is the text of IGRA

Indian Gaming Regulatory Act

Sec. 2701 Findings

The Congress finds that -

- (1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;
- (2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;
- (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;
- (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and
- (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

Sec. 2702. Declaration of policy

The purpose of this chapter is -

- (1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong

tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

Sec. 2703. Definitions

For purposes of this chapter -

(1) The term "**Attorney General**" means the Attorney General of the United States.

(2) The term "**Chairman**" means the Chairman of the National Indian Gaming Commission.

(3) The term "**Commission**" means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term "**Indian lands**" means -

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "**Indian tribe**" means any Indian tribe, band, nation, or other organized group or community of Indians which -

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "**class I gaming**" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7) (A) The term "**class II gaming**" means -

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) -

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that -

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "**class II gaming**" does not include

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "**class II gaming**" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "**class II gaming**" includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian

lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term "**class II gaming**" includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "**class III gaming**" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "**net revenues**" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "**Secretary**" means the Secretary of the Interior.

Sec. 2704. National Indian Gaming Commission

Establishment (a) There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

Composition; investigation; term of office; removal (b) (1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2) (A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4) (A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission (i) two members, including the Chairman, shall have a term of office of three years; and (ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who -

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

Vacancies (c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

Quorum (d) Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

Vice Chairman (e) The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

Meetings (f) The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

Compensation (g) (1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5.

(3) All members of the Commission shall be reimbursed in accordance with title 5 for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

Sec. 2705. Powers of Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to -

(1) issue orders of temporary closure of gaming activities as provided in section 2713 (b) of this title;

(2) levy and collect civil fines as provided in section 2713 (a) of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710 (d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

Sec. 2706. Powers of Commission

(a) Budget approval; civil fines; fees; subpoenas; permanent orders The Commission shall have the power, not subject to delegation -

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713 (a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations The Commission -

- (1) shall monitor class II gaming conducted on Indian lands on a continuing basis;
- (2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;
- (3) shall conduct or cause to be conducted such background investigations as may be necessary;
- (4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;
- (5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;
- (6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;
- (7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;
- (8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;
- (9) may administer oaths or affirmations to witnesses appearing before the Commission; and
- (10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(c) [Omitted]

(d) Application of Government Performance and Results Act.

in accordance with that Act.

Sec. 2707. Commission Staffing

(a) General Counsel. The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(b) Staff. The Chairman shall appoint and supervise other staff of the

Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title 5 USCS §§ 5101 et seq. and 5331 et seq.] relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) Temporary services. The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Federal agency personnel. Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) Administrative support services. The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

Sec. 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

Sec. 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this Act, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before the date of enactment of this Act [enacted Oct. 17, 1988] relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

Sec. 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity.

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Any class II gaming on Indian lands shall continue to be within the

jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts.

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman. A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than--

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract

amount in excess of \$ 25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which--

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes--

- (I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;
- (II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and
- (III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if--

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph

(2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)

(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)

(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if--

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 13 of the Act [[25 USCS § 2712](#)],

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 18(a)(1) [25 USCS § 2717(a)(1)] for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on the date of enactment of this Act [enacted Oct. 17, 1988].

(iii) Within sixty days of the date of enactment of this Act [enacted Oct. 17, 1988], the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation.

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which--

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after the date of the enactment of this Act [enacted Oct. 17, 1988]; and

(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has--

(A) conducted its gaming activity in a manner which--

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for--

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b) [[25 USCS § 2706\(b\)\(1\)-\(4\)](#)];

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(2)(C) [[25 USCS § 2710\(b\)\(2\)\(C\)](#)] and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 18 [[25 USCS § 2717](#)] in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact.

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are--

(A) authorized by an ordinance or resolution that--

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)

(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that--

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 12(e)(1)(D) [[25 USCS § 2711\(e\)\(1\)\(D\)](#)]. Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)

(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

- (I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and
- (II) (II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)

(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the

Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135) [15 USCS § 1175] shall not apply to any gaming conducted under a Tribal-State compact that--

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7) Jurisdiction

(A) The United States district courts shall have jurisdiction over--

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)

(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that--

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith, the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian

tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe [tribe] to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court--

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this Act and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures--

- (I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this Act, and the relevant provisions of the laws of the State, and
- (II) (II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has

jurisdiction.

(8)

(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates--

(i) any provision of this Act,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 12 [[25 USCS § 2711\(b\)-\(d\), \(f\)-\(h\)](#)]. (e) Approval of ordinances. For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this Act.

Sec. 2711. Management contracts

(a) Class II gaming activity; information on operators.

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 11(b)(1)

[25 USCS § 2710(b)(1)], but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this Act, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval. The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least--

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term

that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues.

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension. By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection. (e) Disapproval. The Chairman shall not approve any contract if the Chairman determines that--

(1) any person listed pursuant to subsection (a)(1)(A) of this section--

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (a)(2); or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a

threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) Modification or voiding. The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land. No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority. The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), relating to management contracts regulated pursuant to this Act, is hereby transferred to the Commission. (i) Investigation fee. The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

Sec. 2712. Review of existing ordinances and contracts

(a) Notification to submit. As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act [enacted Oct. 17, 1988], adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this Act, or any amendment made by this Act, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution.

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a), the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 11(b) of this Act [\[25 USCS § 2710\(b\)\]](#). (

2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) conforms to the requirements of section 11(b) [\[25 USCS § 2710\(b\)\]](#), the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) does not conform to the requirements of section 11(b) [\[25 USCS § 2710\(b\)\]](#), the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance. (c) Approval or modification of management contract. (1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 [\[25 USCS § 2711\]](#). (2) If the Chairman determines that a management contract submitted under subsection (a), and the management contractor under such contract, meet the requirements of section 12 [\[25 USCS § 2711\]](#), the Chairman shall approve the management contract. (3) If the Chairman determines that a contract submitted under subsection (a), or the management contractor under a contract submitted under subsection (a), does not meet the requirements of section 12 [\[25 USCS § 2711\]](#), the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to the date of enactment of this Act [enacted Oct. 17, 1988], the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

Sec. 2713. Civil penalties

(a) Authority; amount; appeal; written complaint.

(1) Subject to such regulations as may be prescribe Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed \$ 25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act, any regulation prescribed by the Commission pursuant to this Act, or tribal regulations, ordinances, or resolutions approved under section 11 or 13 [\[25 USCS § 2710 or 2712\]](#).

(2) The Commission shall, by regulation, provide an opportunity for an

appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this Act, by regulations prescribed under this Act, or by tribal regulations, ordinances, or resolutions, approved under section 11 or 13 [[25 USCS § 2710](#) or [2712](#)], that may result in the imposition of a fine under subsection (a)(1), the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing.

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this Act, of regulations prescribed by the Commission pursuant to this Act, or of tribal regulations, ordinances, or resolutions approved under section 11 or 13 of this Act [[25 USCS § 2710](#) or [2712](#)].

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision. A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code.

(d) Regulatory authority under tribal law. Nothing in this Act precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this Act or with any rules or regulations adopted by the Commission.

Sec. 2714. Judicial review

Decisions made by the Commission pursuant to sections 11, 12, 13, and 14 shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code.

Sec. 2715. Subpoena and deposition authority

(a) Attendance, testimony, production of papers, etc. By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location. The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt. Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice. A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required. Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All

depositions shall be promptly filed with the Commission.

(f) Witness fees. Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Sec. 2716. Investigative powers

(a) Confidential information. Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) Provision to law enforcement officials. The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General. The Attorney General shall investigate activities associated with gaming authorized by this Act which may be a violation of Federal law.

Sec. 2717. Commission funding

(a)

(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this Act.

(2)

(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be--

(i) no more than 2.5 percent of the first \$ 1,500,000,
and

(ii) no more than 5 percent of amounts in excess of the first \$ 1,500,000, of the gross revenues from each activity regulated by this Act.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming

operations subject to regulation under this Act.

(C) Inapplicability of Nov. 14, 1997 amendments to the Mississippi Band of Choctaw. Act Nov. 14, 1997, **P.L. 105-83**, Title I, § 123(a)(2)(C), **111 Stat. 1566**; Oct. 21, 1998, **P.L. 105-277**, Div A, § 101(e) [Title III, § 338], **112 Stat. 2681-295**, provides: "Nothing in subsection (a) of this section [amending this section] shall apply to the Mississippi Band of Choctaw."

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)

(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

Sec. 2717a. Availability of class II gaming activity fees to carry out duties of Commission

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 18 of the Act shall be available to carry out the duties of the Commission, to remain available until expended.

Sec. 2718. Authorization of appropriations

(a) Subject to section 18, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 18(a).

(b) Notwithstanding section 18, there are authorized to be appropriated to fund the operation of the Commission, \$ 2,000,000 for fiscal year 1998, and \$ 2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a).

Sec. 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary. Except as provided in subsection (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act [enacted Oct. 17, 1988] unless--

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act [enacted Oct. 17, 1988]; or

(2) the Indian tribe has no reservation on the date of enactment of this Act [enacted Oct. 17, 1988] and--

(A) such lands are located in Oklahoma and--

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions.

(1) Subsection (a) will not apply when--

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the

surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of--

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) shall not apply to--

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465, 467), subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected. Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Internal Revenue Code. (1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 60501, and chapter 35 of such Code [26 USCS §§ 1441, 3402(q), 6041, and 60501, and

4401 et seq.]) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a Tribal-State compact entered into under section 11(d)(3) [[25 USCS § 2710\(d\)\(3\)](#)] that is in effect, in the same manner as such provisions apply to State gaming and wagering operations. (2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after the date of enactment of this Act [enacted Oct. 17, 1988] unless such other provision of law specifically cites this subsection.

Sec. 2720. Dissemination of Information

Consistent with the requirements of this Act, sections 1301, 1302, 1303 and 1304 of title 18, United States Code, shall not apply to any gaming conducted by an Indian tribe pursuant to this Act.

Sec. 2721. Severability

In the event that any section or provision of this Act, or amendment made by this Act, is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and amendments made by this Act, shall continue in full force and effect.