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Indian Gaming In California

by Richard Wilson

Introduction

This paper offers an overview of the legal development of tribal gambling operations in California. First this paper explains the general contours of tribal sovereignty, then it discusses the development of the Indian Gaming Regulatory Act, the present of the legal basis of tribal gaming. Finally, this paper discusses the options the State may have to enforce any type of gaming regulations on tribal lands.

Historical Background of Indian Sovereignty

Throughout the course of early United States history, settlers and the federal government squeezed Indians from large tribal ranges. Eventually the federal government formalized the boundaries of Indian lands through treaties with the individual tribes. Initially the legal status of the tribes under the new treaties was not entirely clear: Clearly tribal rights had been severely limited, but did they retain some sovereignty or had it been extinguished entirely by treaty?

The first U.S. Supreme Court case on the subject was Johnson v. McIntosh. [1] In Johnson two non-Indian parties were contesting title to a piece of property. One could trace title to a sale by an Indian tribe, the other to a sale by the federal government. The Court upheld the latter title, however it also found that while Indian sovereignty had been diminished, it had not been extinguished. The Court argued that under traditional European concepts of international law, conquered peoples did not lose all of their legal rights, rather they were normally made a subject people and eventually assimilated by the victors. The Indians, in contrast, could not be assimilated because of the perceived difference in level of culture. Chief Justice Marshall wrote:

[T]he tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were brave and high spirited as they were fierce, and were ready to repel by arms every attempt on their independence. Johnson at 590.

The result Marshall said was for the federal government to enforce its claims to Indian lands "by the sword," and to segregate the otherwise inassimilable tribes. This case laid the legal foundation for the modern concept of Indian sovereignty.

The next Supreme Court case was Cherokee Nation v. Georgia. [2] In this case the Cherokee Nation brought an action to enjoin a series of restrictive laws by the state of

Georgia. The Indians brought the suit to the Supreme Court on the claim that it fell within the Court's original jurisdiction to hear matters in which a state and a foreign nation were parties. Here the tribe claimed to be a foreign sovereign. [3] Chief Justice Marshall again wrote for the Court in rejecting the Indian claim. He found that while a tribe is "a distinct political society, separated from others, capable of managing its own affairs and governing itself," the tribes were not full, independent sovereigns. The terms Marshall used for Indians tribes was "domestic dependant nations," and that they "occupy a territory to which we [the United States] assert a title independent of their will." Clearly, Cherokee Nation limits Indians sovereignty sharply. However, a year later Marshall and the Supreme Court mitigated the apparent harshness of Cherokee Nation, and lay the doctrinal foundation of Indian Sovereignty.

The final case in the Indian-law triumvirate is Worcester v. Georgia. [4] Worcester was a non-Indian missionary who had been jailed under Georgia law for failing to get permission from the state before entering Indian lands. Worcester held that the Georgia law was preempted by virtue of the sovereign-to-sovereign relation between the federal government and the tribes. In order to reach this result, Marshall had to deal with problematic language in the treaty between the Cherokee Nation and the federal government. The Treaty of Hopewell of 1785 arguably abrogated all Indian sovereignty. However, Marshall carefully constructed an analytical framework that assumed the Indians were negotiating as defeated nations still in possession of inherent sovereign rights. The result was that Marshall would not assume a surrender of rights not made explicit under a treaty, and he assumed that the spirit of the treaty was to preserve some tribal sovereignty. Furthermore, because the treaty was written in the conquer's language, Marshall was extremely deferential to interpretations favoring the Indians. [5]

These three cases, Johnson, Cherokee Nation, and Worcester, taken together begin modern Indian law. The basic tenets are that the federal government recognizes that tribes are distinct political entities both protected by and subject to the laws and policies of the national government. Under this view the federal government assumes a guardian or trustee role over the tribes, and that guardianship role is administered by the Bureau of Indian Affairs (BIA) of the Department of the Interior.

Pre-IGRA Development of Indian Gaming

For this discussion, the key case for the modern proliferation of tribal gaming is California v. Cabazon Band of Mission Indians. [6] Cabazon preceded the Indian Gaming Regulatory Act, and was the impetus for the legislation.

In Cabazon, the state of California and the county of Riverside both attempted to apply state and local regulations to gambling activities taking place on the Cabazon and Morongo Bands in Southern California. These bands both operated high-stake bingo parlors on their reservations. The Cabazon Band additionally offered certain card games. Both bands operated pursuant to tribal ordinances that had been approved by the BIA. The bands sued to enjoin state and local enforcement. The state countered by arguing that state and local law applied to the bands because it had been authorized or incorporated by two federal statutes: Public Law 280 (67 Stat. 588, 1953 as amended) and the Organized Crime Control Act of 1970 (18 USC 1955).

Public Law 280 had explicitly allowed certain states to take criminal jurisdiction over some tribes within their boundaries. The law also granted state courts some civil

jurisdiction. The Court found in Cabazon that Public Law 280 was intended to address the fact that some tribes did not have sufficient legal and court systems for self government. The court went on to distinguish the grant of criminal and civil authority. The states enumerated in Public Law 280 and its amendments could enforce "prohibitory" laws where the issue was conduct clearly against state public policy. This was the criminal jurisdiction. The enumerated states, however, could not enforce "regulatory" laws that addressed how actions, otherwise permitted, were to be conducted. The civil jurisdiction was a grant of jurisdiction to the courts to hear matters, not an application of all state laws to the tribes. The rationale was that in drafting Public Law 280, the Congress had made a clear statement regarding the application of state criminal laws, but it had not explicitly made a statement that it intended to abrogate tribal legal sovereignty. Had all state laws applied to reservation land, the Court argued, it would have effectively ended tribal autonomy.

The "regulatory" versus "prohibitory" distinction was developed in a series of cases addressing attempts by states to impose taxes under authority of the civil jurisdiction they presumed under Public Law 280. An example is Bryan v. Itasca County, Minnesota. [7] In Bryan, the county tried to tax a mobile home owned by an Indian that was parked on reservation property. The Court rejected the tax, adopting in the process the regulatory/prohibitory distinction.

A limit on the deference to Indian sovereignty was established in a number of cases involving tobacco and liquor taxes. For example in Washington v. Colville Indian Reservation [8] , several tribes operated or licensed tobacco shops on reservation property. These shops charged little or no sales tax, and as a result developed large, predominately non-Indian clientele. The Court allowed Washington state to require the tribal shops to purchase tax stamps for sales to non-Indians and to require them to keep records to verify sales. The Court said that tribes have no right to "market an exemption" to state laws. The Court further rejected an argument by the tribes that they should be able to apply as credit the amount of tribal sales tax imposed. The net effect was to put the tribes at a competitive disadvantage.

California argued in Cabazon that high-stakes bingo was prohibited in the state. Rather the state had allowed games subject to carefully circumscribed limits to promote the ability of nonprofit organizations to raise revenue, while at the same time avoiding the kind of large-scale cash industry that might attract organized crime. Therefore, the argument continued, the tribes were in fact engaging in conduct that was against public policy (criminal) and they were marketing and exemption to state law. The Court rejected this argument. Since California allowed bingo, card clubs, and the state lottery, it had clearly indicated there was no *per se* public policy against gambling and the state simply regulated gaming. The Court implied that once a state permitted any games in a class of gambling, the conduct was regulated and Indian tribes could offer those games free of state interference.

Cabazon left the tribes free to establish gaming operations in many states, however there was no national guidelines or policies to regulate the new industry.

The Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act [9] was promulgated in 1988 to respond to Cabazon and provide policy and guidance for the emerging Indian gaming industry. IGRA created

the National Indian Gaming Commission (NIGC) and authorized it to promulgate regulations to implement IGRA and oversee some aspects of Indian gaming. The regulatory scheme for Indian gaming is divided into three classes of gaming [10] :

Class I games are "social games played 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."

Class II games include bingo and card games which are either permitted by the state or not explicitly prohibited, excluding banked [11] card games such as baccarat, chemin de fer, or blackjack. Generally, the common thread for Class II games is that the players are playing against one another for a common pot.

Class III games are those that are not Class I or II, and include "electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." Class III included "banking" games where the players play against the casino.

Each of the three classes are regulated differently. Section 2710 [12] sets forth the IGRA scheme for regulating gaming operations: Class I is regulated solely by the tribes; Class II gaming is tied to state law as to the question of whether it is allowed, but once allowed is regulated by the tribes and NIGC; Class III is also tied to state law relating to whether it is allowed, but is intended to be regulated pursuant to joint tribal/state compacts.

Class II Gaming

Under subpart (b) of 2710, Tribes are allowed to operate Class II games if the state in which they are located "permits such gaming for any purpose by any person, organization or entity." This essentially codifies Cabazon: Once a state permits some to operate class II games, it is regulated conduct that tribes may then engage in.

Once tribal gaming is allowable in a state, the tribes produce regulations subject to standards imposed by IGRA and the regulations promulgated by the NIGC, and the tribal regulations must be approved by the NIGC. Each tribe is subject to NIGC oversight for a three-year probationary period, after which a tribe may petition to become self-regulating if it has shown good behavior in its operations.

Class III Gaming

Class III, controlled by subpart (d) of 2710, is the most controversial and problematic type of tribal gambling. Class III gaming includes many of the traditional "Las Vegas-style" games, including roulette, slot machines and craps. These games are both high-stakes, and susceptible to money laundering and skimming. Because of its controversial nature, Congress intended this area to be regulated cooperatively through compacts entered into between states and tribes. These compacts were intended to establish a basis for effective regulation of gaming without the need for central, detailed federal oversight. Also, through IGRA's compact process, Congress hoped that the interested parties would negotiate to balance and protects their own interests, to the benefit of each.

Like Class II gaming, tribes are permitted to operate class III games if the state in which they are located "permits such gaming for any purpose by any person, organization or entity." If this threshold requirement is met, each tribe desiring to operate class III games must begin negotiating a compact with the state. If negotiations are successful, gaming

may begin subject to the agreed terms. If negotiations are unsuccessful, or a state refuses to negotiate, the results are less clear.

The discussion below lays out the intended IGRA scheme for creating compacts in the absence of complete state cooperation. This has been modified by case law which is discussed afterward.

If negotiations are begun, but are unsuccessful, IGRA requires the parties to submit their best proposals to a court-appointed mediator who then chooses the best of the two, as measured by the terms and policies of IGRA and any other relevant federal law or court findings. A state then has 60 days in which to acquiesce to the mediator's decision or the matter is referred to the Secretary of the Department of the Interior. If the state does not acquiesce, the Secretary, in consultation with the tribe, prescribes regulations under which the tribes may operate.

The judicially-forced negotiation scheme of IGRA has been found unconstitutional on 11th Amendment grounds by the U.S. Supreme Court in the case of Seminole Tribe of Florida v. Florida. [13] Leading up to Seminole, a majority of federal circuits allowed tribes to sue states to force them into negotiations, but held that the states could not be forced to actually enter compacts involuntarily because of limits on federal power created by the 10th Amendment. A key issue in the IGRA regulatory scheme is whether or not states can be forced to participate in regulating tribal gaming within their jurisdiction without their consent. The U.S. Supreme Court held in US v. NY [14] that the Tenth Amendment of the Constitution does not permit Congress to "commandee[r] the legislative process of the states" directly to implement federal regulatory schemes. States might very well be "coerced" if they were subjected to compacts containing final terms with which they did not agree. In the Tenth circuit case, Ponce Tribe of OK v. OK, [15] IGRA was interpreted to avoid this problem. The court said "IGRA reflects Congress' attempt to encourage, but not mandate, cooperative rule making between the Indian tribes and the states."

As note above, most federal courts that have addressed the issue of subpart (d) suits felt that the deciding issue was the 10th amendment infringement. The issue in Seminole, however was whether the IGRA class III scheme comported with the 11th Amendment which reads:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. [16]

This has been interpreted to confer upon states sovereign immunity from a variety of suits. Traditionally, Congress could abrogate 11th Amendment immunity by making a clear statement of intent to do so long as the federal law in question related to either the 14th Amendment (relating to civil rights) or the Commerce Clause (Article I 8(3) delegating power over foreign, interstate and Indian commerce to the federal government).

The district court in Seminole, found that Congress, acting pursuant to the "Indian Commerce Clause" (that part of Article I 8(3) dealing with regulation of commerce with Indian tribes), had made a clear statement that they intended to abrogate 11th Amendment protections against tribal suits to create compacts. [17] However, the district court held that the Indian Commerce Clause did not grant Congress the authority to override the protections of the 11th Amendment. [18] When the U.S. Supreme Court

addressed the issue, they overruled prior precedent and held that no part of the Commerce Clause was sufficient authority to override the 11th Amendment. [19] The result being that tribes can no longer even force states to negotiate.

Traditionally, federal courts have allowed a loophole to 11th Amendment immunity in the form of lawsuits against state officials in their individual capacity. This doctrine is named after the seminal case of Ex parte Young, [20] and it allows suits against individual state officials in instances where they are failing to comply with federal law. This creates a legal fiction that there is a substantive difference between decisions of a state and its high-level officials.

The Seminole court declined to apply Ex parte Young to tribal suits under IGRA for several reasons including the fact that individual officers may not have authority to bind a state in negotiations [21] and Congress had created a remedy for tribes that was left intact by the Court's decision. [22] The remaining remedy when states decline to enter into compacts is for tribes to have the Department of the Interior create operating regulations.

The net result of Seminole has negligible effect on tribal gaming, and may in fact allow some tribes to begin operations more quickly. Prior to Seminole, tribes dealing with recalcitrant states in most circuits would request a state to enter negotiations, sue to force negotiations, and then be forced to the Department of the Interior for final operating regulations. Now the litigation step can be avoided completely, and the tribes can save that time and expense.

States should, however, consider the repercussions of not negotiating carefully. The result of declining to negotiate is twofold: the state does not assume responsibility for regulation, but it also looses any opportunity to gain oversight or taxing powers.

Issues Relating to Enforcement of Class III Gaming Rules

Class III gaming has presented several problems in definition and enforcement, some of which have yet to be solved. First, there are some definitional issues concerning which games are and are not Class III. Second, the ninth circuit has interpreted the Class III and Class II provisions of IGRA differently when determining what games a state "permits." Finally, there are issues relating to the status of otherwise legal games operating without a state/tribe compact, and who may enforce.

Problems Defining Class III Games

California tribes may be operating 8,000 or more gaming machines, [23] but there are difficulties determining precisely which gaming machines currently operated at tribal casinos are clearly class III and determining if any class II games are permitted because of other games allowed by the state. Many games can be easily identified as class III and not permitted. For example traditional "one-armed-bandit" slots as well as video poker and blackjack are class III games not permitted by the state. The two games that have been more difficult to address are video pull-tabs and video keno.

Pull-tabs are preprinted tickets dispensed from a machine which is loaded with a set number of tickets that give a predetermined number of winners and amount of winnings. This is very similar to bingo where the players "race" to win first. Because of similarity to

bingo, traditional pull-tabs are considered class II games. However, while IGRA does allow technical "aids" to bingo to allow greater numbers of people to play, electronic "facsimiles" of class II games are class III. Using this "aid" versus "facsimile" distinction, the Ninth Circuit Court of Appeals found in Sycuan Band v. Roache [24] that video pull-tabs are facsimiles and hence class III games.

Another game offered by tribes is video keno. Keno, like bingo, is a class II game, but video keno is a facsimile falling into class III. However, the California lottery operates "Quick Pick Keno," which may permit the tribal casinos to offer a similar game. Rumsey left open the question of whether the state keno game constitutes a form of class III gaming that the tribes would be permitted to also offer, and remanded the issue to the trial court in Sacramento. [25] If some forms of electronic gaming machines are essentially the same as California's video keno, then tribes will be able to operate those games pursuant to a state/tribe compact or its equivalent . The issue was decided by the California Supreme Court in Western Telcon v. California State Lottery. [26] In Western Telcon, challengers to the California State Lottery (CSL) Keno game argued that it was illegal because it was 1) played via slot machines and 2) it was a banked game. The court agreed with the second argument, holding that the CSL was permitted by law to operate various forms of "lotteries," and that the term had been defined by previous case law to exclude house banked games. [27] In Keno, the court reasoned, there is no set number of winners or amount of winning. While the game was designed to have a set rate of payout over time, players were really playing against the CSL, and the CSL had a stake in every play.

The court' analysis focussed on banked games versus lotteries. The CSL can offer games that operate on the basic principals of a lottery, i.e. the CSL pays outs a set percentage of the ticket sales, and by the time the game ends all winnings are paid out. The key to lotteries versus banked games, is that the lottery operator does not gain or lose money based on the failure or success of individual wagers. Games such as "Scratchers" are allowed under the definition of lotteries, because each card is winning or losing when it is purchased, and there is no element of "play" where the CSL has a stake in individual bettor's outcomes. Left open is the question of whether the method of vending tickets or scratcher cards has legal implications.

Tribes have argued that the automated vending system and central computer that generated Keno numbers were substantially similar to slot machines, and formed the basis for a wide range of legal tribal gaming. Because Western Telcon was decided on the basis of "banked games" versus "lotteries," the court did not address whether CSL Keno or any form of ticket vending machine would constitute illegal slot machines under California law. [28] Attorney General, Daniel Lungren responded to Western Telcon by issuing an opinion to the CSL that automated ticket vending machines are illegal slots machines, and ordered that the machines be removed from use. [29] The counter argument is that the act that permitted the lottery is broad enough to permit technical aids to lottery games, if the underlying game is permissible. This argument is similar to the "aid" versus "facsimile" distinction in IGRA discussed above.

Interpretation of Permissible Games More Narrow For Class III than Class II

The ninth circuit has narrowed the scope of permissible class III games permitted on tribal lands. In the case of Rumsey Indian Rancheria of Wintun Indians v. Wilson, [30] the

appellate court interpreted the phrase "permits such gaming," as applied to class III games to refer to specific games or types of games. For example, while the California may "permit" video keno through its lottery, it does not "permit" banked card games (Blackjack, etc.). The court distinguished the categorical approach of Cabazon, and limited it to class II games despite identical language in both the class II and III subparts of section 2710.

Lack of Compact or Equivalent Makes Class III Operations Illegal

Even if a state permits class III games, tribes still must enter into compacts or the equivalent to operate legally. The Ninth Circuit has recently addressed the issue of class III operations in the absence of a compact or its equivalent in the case of U.S. v. E.C. Investments. [31] The issue in this case was whether operating slots in California tribal casinos could be a predicate offense for federal illegal gambling charges. E.C. Investments held that, regardless of the ultimate legality of slots in California, operation without a compact is illegal.

There are many implications from this case. For example, Nevada gaming law makes it illegal for anyone holding a Nevada gaming license to commit illegal acts in other jurisdictions, and some tribes have entered into management agreements with Nevada corporations. The opinion may form a strong basis for federal-court injunctions against operations, or may increase the likelihood of U.S. Attorney actions.

On the other hand, there are some indications that there is tacit approval of some tribal Class III operations pending final resolution of the legality of slots. [32] This might well create sufficient defense to any speedy legal action to stop Class III gaming before final resolution of the slots issue.

No Direct State Enforcement Permitted

Absent a grant of enforcement power under a compact, states may enforce neither their own laws nor IGRA itself against tribes. The seminal case is Sycuan Band v. Roache [33] that also dealt with the status of video pull-tabs. In Sycuan, the San Diego County Sheriff executed county court warrants on several tribal gaming operations and seized slot machines. The court held that while the slots were being operated illegally, the county and state could not enforce local law, or IGRA, in state courts. The court found that both IGRA and the Johnson Act (title 18 USC chapter 25) granted exclusive federal jurisdiction. The federal court furthermore enjoined the state from further actions in state court. If the state cannot act on its own behalf in state court, what options has it?

There are a few options available for California to combat illegal tribal gambling: The state can solicit federal agencies to act within their jurisdiction, or it may be able to bring an action on its own behalf in federal court.

California can request that the U.S. Attorney's office take action against illegal operations, as they have done in Washington and other states. The U.S. Attorney has expressed some reluctance to actively pursue injunctions, however, because of a number of perceived problems. First, in response to the States asserting their Constitutional rights, the U.S. Department of Justice (DOJ), pursuant to a March, 25, 1994 memo by Janet Reno, has factored into its decisions whether to enjoin tribal gaming operations a determination whether or not the host-state avoided compact negotiations. The memo

says: "[o]ur reluctance [to bring an action against a tribe] is all the greater when states have avoided judicial dispute resolution mechanism[s] crafted by the Congress by invoking their 10th and 11th Amendment immunities." Second, there is an inherent conflict of interest arising from the fact that DOJ deals with the tribes in a number of non-adversarial matters. Department of Justice representatives said in Congressional hearings in 1994 that for the above reasons it was their policy to pursue only "serious and flagrant" violations. However in a August 17, 1995 article in the LA Times, the U.S. Attorney for Northern California was quoted as saying, "We're going to act [against slot machines]. It's just a matter of how soon." As of this report it is not clear what actions have been taken.

The question of "how soon" the U.S. Attorney might act will be affected by the open legal questions of whether some games currently being operated will eventually be found to be legal in California. On the other hand, even if the games are found to be legal later, the tribe are not currently operating under compacts or the equivalent. That is clearly in violation of IGRA, and may be enjoined. However, The U.S. Attorney has gone on record in an October 23, 1995 San Francisco Chronicle article saying his office will act "when the courts clear up the confusion." An expert on tribal gaming at the Sacramento office of the Bureau of Indian Affairs echoed this sentiment.

IGRA contemplates that the states' role in tribal gambling regulation would be cooperative, so it does not provide explicitly for state lawsuits. At this point, California could seek injunctions against tribal violations of IGRA. My research has found no example of a state attempting to do this, and it is not clear that a federal court would recognize the state's standing to bring the action. California would have a strong argument that the federal agencies have proven recalcitrant. This would be offset by the facts that 1) California declined to enter into compacts in some cases, 2) the Department of Justice has stated that it will act, and most importantly, 3) key areas of the law are unresolved.

Conclusion

The status of tribal gaming in California is currently in a "holding pattern" pending the resolution of key legal questions. Clearly some tribal gaming is illegal. The question is whether ultimately the activities will be found to be otherwise legal operations simply acting without compacts, or whether the activities will be entirely prohibited.

The state has several options. First, it can to bring injunctive actions against tribes operating class III games without authorization. Federal courts may decline to accept these cases because some of the legal issues are not ripe. The courts may decide to wait until it is determined in existing litigation what games are "permitted" by the state. Second, the state can lobby the U.S. Attorney to bring actions. The U.S. Attorney has expressed some sympathy to California's situation, but has not yet moved and may not soon for the same reasons as the federal courts. Third, the state can lobby Congress for clarification of IGRA. There have been ongoing discussions about modifying IGRA, and several pieces of legislation have been offered. [34] Finally, the state can wait for the legal issues to resolve themselves in the existing litigation. However, at this time the trial court in Rumsey has had the issue under advisement for over two years without any indication that it will act soon.

IGRA contemplated that the states' role in tribal gambling regulation would be

cooperative, so it does not provide explicitly for state lawsuits. However, on April 19, 1996, California Attorney General Daniel Lungren file suit in federal court to enjoin tribal slots operations. California has a strong argument that the federal agencies have proven recalcitrant, and the suit is supported by the opinion in U.S. v. E.C. Investments discussed above. This is offset by the facts that 1) California declined to enter into compacts in some cases, 2) the Department of Justice has stated that it will act, and most importantly, 3) key areas of the law are unresolved and there may be tacit approval of the interim operations.

Notes

[1] 21 U.S. (8 Wheat.) 543 (1823). (return to text)

[2] 21 30 U.S. (5 Pet.) 1 (1831). (return to text)

[3] "Original" jurisdiction refers to those matters where a court hears the suit from the beginning as a trial court. This is distinguished from "appellate" jurisdiction, where the court reviews the legal decisions made by lower a court. Almost all Supreme Court cases historically have been heard pursuant to the Court's appellate jurisdiction. (return to text)

[4] 31 U.S. (6. Pet.) 515 (1832). (return to text)

[5] This is similar to the rules for interpreting "adhesion contracts" made in situations where one party has a great advantage in bargaining power and offers a "take or leave it" bargain. The idea is that statutes, contract, etc. should be interpreted by the common meaning of words and phrases unless there is good reason to do otherwise, as was perceived in Worcester. (return to text)

[6] 480 U.S. 202, 107 S. Ct. 1083 (1987). (return to text)

[7] 426 U.S. 373, 96 S.Ct. 2102 (1976). (return to text)

[8] 447 U.S. 134, 100 S.Ct. 2096 (1979). (return to text)

[9] IGRA 25 USC 2701-2721 (West Supp. 1996). (return to text)

[10] 25 USC 2703(6-8) (Definitions) (West Supp. 1996). (return to text)

[11] "Banking" games are those where players play against the house or "bank," and each can in theory win. In non-bank games players play against one another or for a set prize (as in bingo). (return to text)

[12] 25 USC 2710 (Tribal Gaming Ordinances) (West Supp. 1996). (return to text)

[13] __ U.S. __, 116 S.Ct. 1114 (March 27, 1996). (return to text)

[14] 505 U.S. 144, 112 S.Ct. 2408 (1992). (return to text)

[15] 37 F3d 1422 (Tenth Cir., 1994). (return to text)

[16] U.S. Const. amend. XI. (return to text)

[17] Seminole , 11 F3d 1016 (Eleventh Cir., 1994). (return to text)

[18] Id. at 1026. (return to text)

[19] Seminole, 116 S.Ct at 1128. The Court overruled Pennsylvania v. Union Gas Co., 491 U.S. 1, S.Ct. 2273 (1989) which was a plurality opinion allowing lawsuits brought under CERCLA to proceed against states. (return to text)

[20] 209 U.S. 123, 28 S.Ct. 441 (1908). (return to text)

[21] Seminole, 116 S Ct. at 1133. (return to text)

[22] Id., at 1132-3. (return to text)

[23] Max Vanzi, Lungren Praises U.S. Pledge to Crack Down on Tribal Casinos, L.A. Times, Aug. 17 1995 at A13. (return to text)

[24] 54 F3d 535 (Ninth Cir., 1994). (return to text)

[25] 64 F3d at <<>>. The district court had not issued an opinion by the time this report was written. (return to text)

[26] __ Cal Rptr. __, 1996 WL 342859 (June 24, 1996). (return to text)

[27] Id., at 10. (return to text)

[28] Id. (return to text)

[29] Benson, Mitchel, Lungren Bans Machine Sales of Scratchers, Sale By Bendors Still Permitted, S.J. Mercury News, Jul.4, 1996 at 3B. (return to text)

[30] 64 F3d 1250 (Ninth Cir., 1994). (return to text)

[31] 77 F3d 327 (Ninth Cir., February 27, 1996). (return to text)

[32] This was implied in a telephone interview with the Sacramento office of the Bureau of Indian Affairs, although the implication is contradicted by the public statements of the U.S. Attorney, Michael Yamaguchi, as noted below. (return to text)

[33] 54 F3d 535 (Ninth Cir., 1995). (return to text)

[34] E.g., The following is a partial list of the bills introduced in the 104th Congress: H.B. 3289 (modifies state jurisdiction over tribal gambling), S.B. 952 (limits creating new trust lands for gambling operations for self-sufficient tribes), and H.B. 1364 (requires community approval for new class III tribal gaming operations). (return to text)