

In The
Supreme Court of the United States

COYOTE VALLEY BAND OF POMO INDIANS,
Petitioner,

v.

THE STATE OF CALIFORNIA,
Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether by permitting only lottery and parimutuel wagering while categorically forbidding all other forms of class III gaming, the State of California was nevertheless obligated by the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (IGRA), to negotiate with petitioner for the conduct of all forms of class III gaming.
2. Whether by seeking concessions in compact negotiations with petitioner, the State violated IGRA.

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STATEMENT OF THE CASE¹

In 1999, the State of California entered into sixty-one² Tribal-State class III³ gaming compacts with Indian tribes located within the State, pursuant to provisions of the Indian Gaming Regulatory Act of 1988 (“IGRA”), 25 U.S.C. §§ 2701 *et seq.* Each of these compacts, like the one offered to the Petitioner Coyote Valley Band of Pomo Indians

¹ The Ninth Circuit’s decision includes an excellent discussion of the lengthy history of Indian gaming in California, including the course of compact negotiations between the parties, and the State adopts it by reference here. Pet. App. 2a-23a. The State provides a statement of the case to underscore its most salient points and to meet its obligation, under Supreme Court Rule 15.2, to identify misstatements presented in the petition.

² 65 Fed. Reg. 31189-01 (May 16, 2000); 65 Fed. Reg. 877951 (July 6, 2000); 65 Fed. Reg. 62749-02 (Oct. 19, 2000).

³ IGRA divides gaming into three classifications: class I, class II, and class III. 25 U.S.C. § 2710. Class III gaming is defined by IGRA to include “all forms of gaming that are not class I gaming or class II gaming,” 25 U.S.C. § 2703(8), and includes the most profitable forms of gaming, including slot machines, and banked and percentage card games. These are also the forms of gaming most readily subject to corruption and about which states are “likely to have more serious and more legitimate public policy concerns.” Kevin K. Washburn, *Recurring Problems in Indian Gaming*, 1 WYO. L. REV. 427, 429 (2001). Accordingly, it is only class III gaming that Congress made subject to the compact requirement—the mechanism through which states may assert civil-regulatory jurisdiction over tribal gaming operations. 25 U.S.C. § 2710(d); Pet. App. 4a-6a. IGRA makes class III gaming lawful on Indian lands only if such activities are: (1) authorized by an ordinance or resolution adopted by the governing body of the Indian tribe and the Chairman of the National Indian Gaming Commission; (2) located in a State that permits such gaming for any purpose by any person, organization, or entity; and (3) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State and approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1).

("Coyote Valley"), contained substantially identical provisions. Pet. App. 18a-19a; Cal. Gov't Code §12012.25, Resp. App. 2-9. The 1999 compacts immediately resulted in an explosion of tribal gaming in California, which is now estimated to be at least a \$5 billion-a-year industry, supporting tribal self-government and providing economic development opportunities throughout the State for gaming and non-gaming⁴ tribes alike.

This case is brought by a single tribe for which the terms of the 1999 compacts were apparently not favorable enough. After walking away from negotiations with the State in 1999, the Tribe alleged that when the State sought negotiations regarding the sharing of gaming revenues, and the protection of casino employees, the State failed to meet its obligation to engage the Tribe in good faith negotiations under IGRA. Pet. App. 16a-23a, 59a. This claim has been appropriately rejected at every turn. Pet. App. 41a, 59a-60a. In the meantime, the Tribe has continuously operated the illegal class III casino it opened in 1994 and, during the pendency of this litigation, the National Indian Gaming Commission has abstained from exercising its regulatory authority to close the casino. Pet. App. 9a, note 6.⁵ As a result, for almost a decade the Tribe has evaded the requirements of IGRA, but has reaped the rewards of a class III casino while undertaking

⁴ The 1999 compacts provide up to \$1.1 million annually to "non-compact" California tribes. Resp. App. 19.

⁵ The Ninth Circuit Court of Appeals has ruled that the State has no jurisdiction to enforce IGRA's prohibition against the operation of a class III gaming facility in the absence of a Tribal-State compact. *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 543-44 (9th Cir. 1995).

none of the responsibilities attending a compact with the State.

The factual record demonstrates that the State acted in good faith at all times, and that the failure to conclude a compact with Coyote Valley is attributable to the Tribe which, enriched and emboldened by its illegal casino operations, has consistently expected unreasonable concessions from the State. Pet. App. 59a.⁶ And because "the proof of the pudding is in the eating," the 1999 compact offer accepted by 61 other tribes, is perhaps the best demonstration of the State's good faith. Resp. App. 10-69. Among the extraordinary concessions made by the State to tribes (including petitioner) in the 1999 compact offer are the following: the State (through its Legislature and electors) agreed to amend the California Constitution to accommodate the tribes' class III gaming ambitions, Pet. App. 16a;⁷ Cal. Const. Art. IV, § 19(f), Resp. App. 1; the State agreed that tribes would remain the primary regulator of

⁶ The State acknowledges that for purposes of the appeal, the Ninth Circuit accepted Coyote Valley's version of the facts, to the extent there was a material difference between the parties. Pet. App. 24a.

⁷ Proposition 1A was ratified by California voters on March 7, 2000, adding the following language to Section 19 of Article IV of the California Constitution:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

their own gaming activities, Resp. App. 25-41; the State agreed to all forms of class III gaming permitted by the amended state Constitution, and placed quantitative limitations only upon the operation of slot machines, Resp. App. 20; the State agreed to allow each tribe to operate up to 2,000 slot machines, and up to two gaming facilities, Resp. App. 18, 20; and, in return, the State sought virtually nothing for itself, other than relatively rudimentary protections for the environment, the labor force, and minimal funds to mitigate the regulatory, social, and other costs of casino-style gaming. Resp. App. 10-69. In response, the Tribe insisted on special treatment demanded by no other Tribe, refused to assent to any of the State's requests, and offered nothing else in return. Pet. App. 22a-23a, 28a-29a. Ultimately, the Tribe walked away from the State, which remained willing to continue negotiations. Pet. App. 22a-23a, 28a-29a.

The petition contains numerous misstatements that, when viewed together, present a highly distorted picture of the 1999 negotiations and suggest that the State's significant concessions were insufficient. For example, contrary to petitioner's assertion, Pet. 5, the 1999 round of compact negotiations was not the result of any State concern that it had violated IGRA's compacting provisions. To the contrary, the election of Governor Davis brought a change in policy under which the State engaged in negotiations "despite the absence of any legal obligation to do so." Pet. App. 28a. Petitioner also attributes the amendment of the California Constitution to permit tribal casino-style gaming to "the tribes." Pet. 6. In fact, the California Senate proposed Proposition 1A, at the request of the Davis Administration, as an integral part of the 1999 Compact negotiations. Pet. App. 16a, 23a; Resp. App. 1.

Petitioner also misstates the financial implications of the 1999 compact proposal it rejected. Pet. App. 29a, note 16; Resp. App. 17-24. Contrary to petitioner's assertion, Pet. 5, the State never conditioned the conclusion of a compact on securing a "very large revenue stream" for itself.⁸ In fact, the record demonstrates that in 1999 the State anticipated less than \$100 million in revenue from gaming tribes, or approximately 3.6 percent of what was then believed (conservatively) would be the industry's "net win" – all of which was intended to mitigate the regulatory, social, and economic costs of the industry. Pet. App. 36a-38a; Resp. App. 23. The State receives nothing for its general fund from any of the compacts negotiated in 1999. Pet. App. 34a-35a; Resp. App. 17-24. Petitioner's claim that the State would receive 33.9% of the Tribe's "gross gaming revenue" is grossly overstated, and was apparently found unpersuasive by both the district court and the Court of Appeals in light of evidence submitted by the State demonstrating that the revenue share proposed by the State would be insignificant. Pet. App. 29a, note 16. And petitioner's assertion that the revenue-sharing requested by the State would "severely hamper" or "eliminate services" is utterly unsupported by the record.

In reality, the State was, in 1999, an engaged negotiating partner that offered a generous gaming compact to the Coyote Valley Band and 61 other tribes, all of which

⁸ Even if the State had sought a substantial share of tribal gaming revenue for itself, this would not be a violation of IGRA—particularly given the extraordinary value of the concessions the State granted to the tribes.

accepted the Compact and have all since shared in the success of Indian gaming in California.

◆

ARGUMENT

**THE PETITION FOR WRIT OF CERTIORARI
SHOULD BE DENIED**

The petition should be denied. First, the only issue in this case is whether the State acted in good faith, as required by IGRA. Pet. App. 1a-2a. The resolution of this issue requires a factual inquiry addressed to the unique circumstances attending the negotiation between the Tribe and the State. Pet. App. 34a. Accordingly, this case is not an appropriate subject of review by this Court, which generally concerns itself with issues of national import. Moreover, the record demonstrates that the State has at all times acted in the utmost good faith, and the decisions of the district court and the Ninth Circuit Court of Appeals are sound. Even assuming that this case in any way implicates the question, under 25 U.S.C. § 2710(d)(1)(B), whether a state must engage in compact negotiations regarding forms of class III gaming that are categorically prohibited under state law, there is no disagreement among the circuit courts of appeals regarding this provision of IGRA.⁹ And because the compact negotiation at issue here was conducted within the framework of IGRA, the State's participation does not implicate an unlawful

⁹ Also militating against a grant of certiorari is the fact that this statutory interpretation question has never previously been raised in this case.

intrusion upon tribal sovereignty. In short, the petitioner's stated reasons for granting the petition are without merit, and it should be denied.

A. The Alleged Circuit Split is an Illusory Basis for an Exercise of This Court's Jurisdiction.

The principle reason proposed by the Tribe for granting the petition is that there is a purported conflict between the Ninth Circuit's decision in *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 (9th Cir. 1994), as amended by 99 F.3d 321 (9th Cir. 1996), cert. denied sub nom. *Sycuan Band of Mission Indians v. Wilson*, 521 U.S. 1118 (1997) (*Rumsey*) and the Second Circuit's decision in *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2d Cir. 1990) (*Mashantucket Pequot*) regarding the scope of permissible class III gaming on Indian lands under 25 U.S.C. § 2710(d)(1)(B)¹⁰ and the consequent duty of a state to negotiate about the scope of permissible gaming.

The significance of the alleged conflict, according to petitioner, relates to the effect to be given California's Proposition 1A,¹¹ which allowed casino gambling to be conducted exclusively on Indian lands, while preserving an absolute state-law prohibition against such gaming elsewhere in the State. See Cal. Const., art. IV, § 19(f), Resp.

¹⁰ Briefly, 25 U.S.C. § 2710(d)(1)(B) makes it lawful for Tribes to conduct on their lands those class III gaming activities that are "located in a State that permits such gaming for any purpose by any person, organization, or entity."

¹¹ See note 7, ante.

App. 1. In its decision below, the Ninth Circuit treated adoption of Proposition 1A as a substantive concession on the part of the State, in view of the fact that, under the law of the Circuit as previously laid down in *Rumsey*, California had no obligation whatsoever to negotiate about casino-style gaming because such forms of gaming were not permissible on Indian lands in California pursuant to 25 U.S.C. § 2710(d)(1)(B). Pet. App. 33a.

In essence, petitioner argues that Proposition 1A should not have been treated as a concession because, in petitioner's view, *Rumsey* wrongly construed 25 U.S.C. § 2710(d)(1)(B), and that under the "correct" view of *Mashantucket Pequot*, the State would have been obligated to negotiate about casino-style gambling notwithstanding that such activities were forbidden everywhere in the State. Pet. 14-15. As petitioner sees it, the negation of Proposition 1A as having any significance to compact negotiations would reveal that California's negotiations were not conducted in good faith.

Petitioner's asserted circuit conflict is a "red herring" for purposes of these proceedings. Moreover, there is no circuit conflict.

1. The alleged conflict between *Rumsey* and *Mashantucket Pequot* is largely irrelevant in these proceedings.

Even if the holding of the Second Circuit in *Mashantucket Pequot* were substantively different from the holding of the Ninth Circuit in *Rumsey*, it would not make a difference for purposes of the Ninth Circuit's treatment of Proposition 1A, because *Rumsey* was the controlling law of

the Ninth Circuit at the time, and Proposition 1A was enacted in response to *Rumsey*.

In *Rumsey*, a number of federally-recognized Indian tribes wished to conduct various casino-style class III gaming activities on tribal lands in California and so requested compact negotiations with the State. *Rumsey*, 64 F.3d at 1255. Conceding that the state law permits two forms of class III gaming, *viz.*, the operation of a state lottery and the conduct of parimutuel wagering on horse racing, the State refused to negotiate with the Tribes concerning the desired casino-style gaming activities, because those activities were categorically illegal under California law.¹² The Ninth Circuit Court of Appeals rejected the Tribes' broad interpretation of 25 U.S.C. § 2710(d)(1)(B), and concluded that:

IGRA does not require a state to negotiate over one form of Class III gaming activity simply because it has legalized another, albeit similar form of gaming. . . . In other words, a state need only allow Indian tribes to operate games that others can operate, but need not give tribes what others cannot have.

Rumsey, 64 F.3d at 1258.

¹² Prior to 2000, the California Constitution prohibited the State from entering into a compact for casino-style gaming. See *Hotel Employees and Restaurant Employees Int'l Union v. Davis*, 21 Cal.4th 585, 612, 981 P.2d 990, 1009 (Cal. 1999) (holding that entry into a tribal-state compact for casino gaming was beyond the legislative authority of the State of California prior to the passage of Proposition 1A); see also *United States v. E.C. Investments*, 77 F.3d 327 (9th Cir. 1996) (IGRA makes state gambling laws applicable on Indian lands, which then become a proper predicate for the federal prosecution of tribal casino managers for the unlawful operation of slot machines).

As noted above, this Court declined to review the *Rumsey* decision. *Sycuan Band of Mission Indians v. Wilson*, 521 U.S. 1118 (1997). The Ninth Circuit's ruling, therefore, governed the scope of California's negotiation obligations at the time the voters enacted Proposition 1A. In view of the fact that the constitutional amendment was prompted by the *Rumsey* decision, it is unreasonable to suggest that Proposition 1A did not amount to a significant concession to the Tribes.

Petitioner's alleged circuit conflict is, therefore, a "red herring."¹³ A more appropriate vehicle for resolving any concern about the scope of permissible gaming on Indian lands under 25 U.S.C. § 2710(d)(1)(B) might be a petition from a ruling that a state unlawfully refused to negotiate in good faith about games that are permissible on Indian lands pursuant to 25 U.S.C. § 2710(d)(1)(B). That, of course, is not this case.

2. In any event, the Second Circuit and the Ninth Circuit are not in conflict about the meaning of 25 U.S.C. § 2710(d)(1)(B).

Section 2710(d)(1)(B) is uniformly understood to require States to negotiate only over those forms of class III gaming that are permitted within the state. See *Coeur D'Alene Tribe v. Idaho*, 51 F.3d 876 (9th Cir. 1995) ("where a state does not permit gaming activities sought by a tribe,

¹³ Indeed, petitioner did not assert its disagreement with the *Rumsey* decision in the proceedings below.

'the tribe has no right to engage in those activities, and the state . . . has no duty to negotiate with respect to them'"); *Rumsey*, 64 F.3d at 1258 (holding that § 2710(d)(1)(B) is "unambiguous" and "does not require a state to negotiate over one form of Class III gaming activity simply because it has legalized another, albeit similar form of gaming"); *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273, 279 (8th Cir. 1993) ("The 'such gaming' language of 25 U.S.C. § 2710(d)(1)(B) does not require the state to negotiate with respect to forms of gaming it does not presently permit"); *Mashantucket Pequot*, 913 F.2d 1024 (ruling that under 25 U.S.C. § 2710(d)(1)(B) the state was required to negotiate with the tribe regarding the conduct of casino-type gaming because the state permitted other organizations and entities to engage in casino-type gaming); *United States v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358, 365 (8th Cir. 1990) ("[W]e believe that the legislative history reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state merely regulated, as opposed to completely barred, that particular gaming activity.").

In *Mashantucket Pequot*, the tribe sought to conduct casino-type gaming activities on its reservation and Connecticut refused the tribe's request to negotiate a compact regarding such activities. *Mashantucket Pequot*, 913 F.2d at 1025-26. The court noted that state law allowed non-profit charitable organizations to conduct casino gaming on so-called "Las Vegas Nights" for charitable purposes. Construing 25 U.S.C. § 2710(d)(1)(B) in light of these state law allowances, the court ruled that the state was required to negotiate with the tribe regarding the

conduct of casino-type games of chance. *Id.* at 1032; see also *Mashantucket Pequot Tribe v. State of Connecticut*, 737 F.Supp. 169, 176 (D. Conn. 1990) (“Games of chance are not prohibited in Connecticut. They are permitted but subject to extensive regulation and limitation. . . . The type of gaming permitted is identified by the type of play permitted, not by bet, frequency, and prize limits.”)

There is no conflict between the Second Circuit’s *Mashantucket Pequot* decision and the Ninth Circuit’s *Rumsey* decision. In *Mashantucket Pequot*, the court concluded that Connecticut was required to negotiate about casino-type games because the state permitted those same casino-type games, albeit only by non-profit charities and under specified conditions; in *Rumsey*, the court concluded that California need not negotiate about casino-style games, because casino-style games were categorically prohibited to all persons under state law.

B. Petitioner’s Objections to Having to Compromise on Tribal Sovereignty During Compact Negotiations are More Properly Directed to Congress.

Petitioner also contends its petition should be granted because the Ninth Circuit’s decision “disregards the fundamental nature of tribal sovereignty” (Pet. 16), principally because tribes should not be faced with the choice of either reaching a compromise through the compact process, or foregoing class III gaming. Pet. 18-19. However, Congress specifically intended that tribal-state gaming compacts negotiated pursuant to IGRA would reflect the parties’ own determination of the appropriate jurisdictional arrangements that would govern a tribe’s gaming operations. In effect, petitioner seeks to have this

Court impose limits on State sovereignty that Congress has not seen fit to impose.

Congress enacted IGRA in response to this Court’s decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (“*Cabazon*”), which established that California could not regulate high-stakes bingo in Indian country, and which cast doubt upon whether States could regulate other forms of tribal gaming. Select Committee Report, S. Rep. No. 100-446 at 2-4, reprinted in 1988 U.S.C.C.A.N. 3071, 3072. IGRA was intended 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” and to provide a basis for state involvement in regulating Indian gaming to shield it from organized crime and corruption, to prevent exploitation for non-Indian profit, and to ensure fair and honest gaming. 25 U.S.C. § 2702(1), (2). As the court below understood, “IGRA is an example of “cooperative federalism” in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme.” Pet. App. 4a (quoting *Artichoke Joe’s v. Norton*, 216 F. Supp.2d 1084, 1092 (E.D. Cal. 2002)). The compact mechanism is the means by which the concept of cooperative federalism is given effect in IGRA.

Petitioner’s complaint that it should not have to choose between compromising on matters touching upon tribal sovereignty on the one hand, and foregoing class III gaming on the other, has already been answered by Congress:

Under this act, Indian tribes will be required to give up any legal right they may now have to engage in class III gaming if: (1) they choose to

forego gaming rather than to opt for a compact that may involve State jurisdiction; or (2) they opt for a compact and, for whatever reason, a compact is not successfully negotiated.

Select Committee Report, S. Rep. 100-446, at 14, 1988 U.S.C.C.A.N. at 3084. Another panel of the Ninth Circuit Court of Appeals also recently gave effect to this concept in upholding Proposition 1A against a challenge under the Equal Protection Clause: "The very nature of a Tribal-State compact is political; it is an agreement between an Indian tribe, as one sovereign, and a state, as another. The statute contemplates that the tribes must exercise their sovereign will in deciding whether to participate in class III gaming." *Artichoke Joe's California Grand Casino v. Norton*, ___ F3d ___, 2003 WL 22998116, *21 (9th Cir. 2003) (holding that Proposition 1A violates neither IGRA nor the Equal Protection Clause).

Pressure to yield sovereign prerogatives in compromise is the stuff of political negotiation—whether the pressure comes from the State or from the Tribe. It was Congress's deliberate choice to make the conduct of casino gambling by tribes a matter of negotiation between tribes and states; the same is not true for the conduct of class I or class II gaming. See 25 U.S.C. § 2710(d). Petitioner's complaint is more properly directed to Congress than to this Court.

In any event, the negotiation topics that the Tribe claims to be so offensive are specifically authorized by the plain text of IGRA. Two provisions are relevant here. The first identifies a nonexclusive list of subject areas and includes a

catchall provision authorizing negotiations with respect to "any other subjects that are directly related to the operation of gaming activities." 25 U.S.C. § 2710(d)(3)(C)(vii).¹⁴ IGRA also provides that when a court considers whether a state has negotiated in good faith, it may take account of "the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities." 25 U.S.C. § 2710(d)(7)(B)(iii)(I). However, "any demand by the State for direct taxation of the Indian tribe or of any Indian lands" may be considered "as evidence that the State has not negotiated in good faith." 25 U.S.C. § 2710(d)(7)(B)(iii)(II).¹⁵

¹⁴ IGRA provides that any tribal-state compact 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. 25 U.S.C. § 2710(d)(3)(C)(vii).

¹⁵ The Ninth Circuit Court of Appeals declined to decide whether the State's efforts to negotiate for revenue sharing constituted a "demand by the State for direct taxation of the Indian tribe," under 25 U.S.C. § 2710(d)(7)(B)(iii)(II). Pet. App. 30a. Nevertheless, the Court of Appeals ruled that, even assuming the State had demanded direct taxation, it had "successfully rebutted any inference of bad faith" under the facts of this case, and that the revenue-sharing provisions fell within the permissible scope of compact negotiations under IGRA. Pet. App. 30a-38a. In the State's view, an effort to obtain revenue sharing provisions within the context of Tribal-State gaming compact

Although IGRA's text is unambiguous, the Act's legislative history provides valuable insight into the permissible subjects of the compact process. The following example, quoted more extensively in the Ninth Circuit's decision, *Pet. App. 26a-27a*, establishes that the phrase "subjects that are directly related to the operation of gaming activities" must be interpreted broadly.

In the Committee's view, both State and tribal governments have significant governmental interests in the conduct of class III gaming. States and tribes are encouraged to conduct negotiations within the context of the mutual benefits that can flow to and from tribe and States [sic]. This is a strong and serious presumption that must provide the framework for negotiations. . . . A State's governmental interests with respect to class III gaming on Indian lands include the interplay of such gaming with the State's public policy, safety, law and other interests, as well as impacts on the State's regulatory system, including its economic interest in raising revenue for its citizens.

* * *

The terms of each compact may vary extensively depending on the type of gaming, the location, the previous relationship of the tribe and State, etc. Section 2710(d)(3)(C) describes the issues that may be the subject of negotiations between a tribe and a State in reaching a compact. The Committee recognizes that subparts of each of

negotiations does not constitute a demand for direct taxation within the meaning of IGRA.

the broad areas may be more inclusive. For example, licensing issues under clause vi may include agreements on days and hours of operation, wage and pot limits, types of wagers, and size and capacity of the proposed facility. A compact may allocate most or all of the jurisdictional responsibility to the tribe, to the State or to any variation in between.

Select Committee Report, S. Rep. 100-446, at 13-14, 1988 U.S.C.C.A.N. at 3083-84. The sharing of gaming revenues, and the protection of thousands of casino employees – the vast majority of whom are not tribal members – are subjects that fall squarely within the permissible subject matter of the compact process. *Resp. App. 17-24, 56-64.*



CONCLUSION

For the reasons stated, the Court is requested to deny the petition for writ of certiorari.

DATED: January 23, 2004

Respectfully submitted,

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