

Supreme Court Says Mich. Can't Block Indian Casino

Written by Administrator
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A divided Supreme Court ruled Tuesday that Michigan can't block the opening of an off-reservation American Indian casino because the state's legal challenge is barred by tribal sovereign immunity.

In a 5-4 decision, the high court said the state could not shutter the Bay Mills Indian Community's casino about 90 miles south of its Upper Peninsula reservation.

The ruling was a win for Indian tribes, which have increasingly looked to casinos as a source of revenue and have relied on immunity to shield them from government interference. But it's a disappointment for Michigan and more than a dozen others states that say the decision will interfere with their ability to crack down on unauthorized tribal casinos.

Michigan argued that the Bay Mills tribe opened the casino in 2010 without permission from the U.S. government and in violation of a state compact. The tribe had purchased land for the casino with earnings from a settlement with the federal government over allegations that it had not been adequately compensated for land ceded in 1800s treaties.

Writing for the majority, Justice Elena Kagan said that the federal Indian Gaming Regulatory Act only allows a state to bring lawsuits challenging casinos operating on Indian lands. But the Bay Mills casino was opened outside the tribe's reservation, Kagan said, placing it outside the law's coverage.

Since the casino does not fall under federal gaming laws, Kagan said it is subject to the ordinary tribal immunity that extends to off-reservation commercial activities. Kagan said it doesn't matter that the casino was authorized, licensed and operated from the tribe's reservation.

Kagan noted that Michigan officials have other options for dealing with the casino, such as bringing a lawsuit against individual tribal officials or even prosecuting tribal members under criminal laws. She was joined in her opinion by Chief Justice John Roberts and Justices Anthony Kennedy, Stephen Breyer and Sonia Sotomayor.

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The casino has been closed since 2011, when a federal judge sided with Michigan and issued an injunction barring it from operating. The 6th Circuit U.S. Circuit Court of Appeals threw the injunction out after ruling that the court lacked jurisdiction over some claims and that the tribe also has sovereign immunity.

In a statement, the Bay Mills tribe said the decision "affords proper deference to Congress' judgment and it will ensure that tribes like Bay Mills can continue to fund tribal education and perform other sovereign functions."

Michigan Attorney General Bill Schuette said he would follow the court's advice and target individual tribal members for civil and criminal penalties.

Sixteen other states had submitted a brief in the case urging the court to side with Michigan. They argued that criminal prosecutions are less effective and more burdensome on the state in policing unauthorized casinos.

In dissent, Justice Clarence Thomas said he disagreed with the court's 1998 case extending tribal sovereign immunity to bar lawsuits arising from an Indian tribe's commercial activities outside its territory. In the 16 years since that decision, "tribal commerce has proliferated and the inequities engendered by unwarranted tribal immunity have multiplied," Thomas wrote.

Thomas was joined in dissent by Justices Antonin Scalia, Ruth Bader Ginsburg and Samuel Alito.

Scalia also wrote a separate dissent to say that he had agreed with the court's 1998 decision, but is now convinced that it was wrongly decided. Scalia said he would overrule that case "rather than insist that Congress clean up a mess that I helped make."

The case is Michigan v. Bay Mills Indian Community, 12-515.

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Associated Press writer John Flesher in Traverse City, Michigan, contributed to this report.

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