



The Cabazon Decision: Opening the Door to Indian Gaming - 20 Years Later

by Steven Andrew Light

Just over two decades ago, Indian gaming consisted of a few tribes' high-stakes bingo halls and card rooms in a handful of states. Today tribal gaming is the fastest growing segment of legalized gambling in the U.S., fed by Americans' seemingly insatiable appetite for high-stakes poker, slots, and even bingo.

How did tribal gaming become a \$25 billion industry fueled by over 350 tribal casinos in 28 states? The answer begins with a twenty-year-old U.S. Supreme Court decision: *California v. Cabazon Band of Mission Indians*.

For many tribes, *Cabazon's* anniversary merits recognition and even celebration, for on February 25, 1987, the Court's landmark judgment reaffirmed tribal sovereignty and opened the door for Indian gaming. At the time, though, no one quite knew how momentous it would be.

The Cabazon Band is a small tribe with reservation lands near Palm Springs. In the mid-1980s, like a number of tribes across the U.S., the Band ran a modest bingo parlor and a poker room on its reservation. When state officials threatened to close down the Band's games, the case made it all the way to the Supreme Court.

California argued that the Band's high-stakes bingo and poker games violated state law and wanted the Court to recognize its authority to regulate gambling on reservations. The Band argued that its status as a sovereign government prevented state interference in its affairs.

California's theory was that Congress had provided that state law applied to the tribes through Public Law 280, a 1953 federal statute that gave certain states jurisdiction over tribes within the state's borders. The law gave states a broad grant of criminal jurisdiction, but only a limited grant of civil jurisdiction. If, as California argued, its laws were criminal prohibitions against gambling, then the state would have authority to enforce them against the tribe under Public Law 280. But if California's gambling laws were civil regulatory laws, then the state would not have authority to enforce them against the tribe.

The Supreme Court held that because California permitted gambling - and even encouraged it through the state lottery - its laws regulated gambling, rather than prohibited it. Accordingly, the state could not enforce its gambling laws to regulate the tribe's gaming operations.

The arguments surrounding Public Law 280 were at the heart of the *Cabazon* case. This seemingly dry, legalistic distinction had great potential significance in the real world, as it would determine whether tribes' sovereign status

precluded state interference in their bingo operations - and thus, the case really was about the scope of tribal sovereignty itself. If the handful of states with some authority over tribes under that law could not regulate gambling on reservations, then no state could. Only in states where gambling violated state public policy would Indian gaming be in question. Since many states like California had relaxed their gambling laws in recent years to permit charitable gaming and state lotteries, very few states had public policies that would prevent tribes from operating gaming.

By recognizing the sovereign right of tribes to use a new tool for reservation economic development - gaming - with limited state interference, *Cabazon* kicked the door to Indian gaming wide open. But Congress acted quickly to shut it, at least a little, by passing the federal Indian Gaming Regulatory Act (IGRA) in 1988.

The Court's decision in *Cabazon* coincided with the modest but steady growth of the burgeoning tribal gaming industry in the '80s. Indian gaming was on Congress's radar screen, due to the contestation between states and tribes over its regulation. One of the states' main arguments was that they needed to prevent the infiltration of organized crime into Indian gaming, and that certainly got Congress's ear - as did the lobbyists for Las Vegas casino interests, who didn't want to see their market share eroded.

IGRA was a political compromise, and very much a product of post-*Cabazon* lobbying efforts. Because of *Cabazon*, Congress had to act quickly, and that meant reaching a swift compromise - a "casino compromise" between state and tribal interests. IGRA expanded the kinds of games tribes could operate to include casino-style games, but gave states more power to regulate those games. The heart of the compromise was IGRA's requirement that in order to conduct Class III or casino-style gaming, the tribe first must enter into a compact with the state. This compact requirement created a role for state regulation after *Cabazon*, as Congress gave back to the states some authority over Indian gaming.

Tribal sovereignty was hardly a new concept - tribes and tribal members live it every day - but the Supreme Court's affirmation of tribal sovereignty in *Cabazon* was, if not novel in theory, hugely influential in practice. *Cabazon's* political significance was that it led Congress to pass IGRA. Its legal significance since has been eclipsed by the courts' interpretations of IGRA. But its legacies extend beyond politics and law to the real world.

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Cabazon ushered in Indian gaming as we know it today and changed the fortunes of American Indians tribes throughout the U.S. For many tribes on isolated reservations that have faced crushing poverty and other social ills, gaming revenue translates into better reservation infrastructure and more effective and efficient provision of government services. Gaming has funded new schools, elder and day care centers, better housing, improved health services, language and cultural preservation programs, and - most importantly - jobs.

At the same time, the exponential growth of the industry has brought criticism and controversy over perceptions of newfound wealth, the efforts of tribal groups to gain federal recognition, so-called “reservation shopping,” the demands of state and local governments for a cut of gaming revenue, and the extent of tribal political clout off the reservation, particularly in light of the Jack Abramoff scandal. The

troubled politics of these issues, too, are *Cabazon's* legacy.

Today, the Cabazon Band's modest bingo parlor has morphed into the Fantasy Springs Resort Casino, featuring glamorous “Las Vegas action” and entertainment. Meat Loaf performed on February 25, two decades to the day after the Band won its landmark case before the Supreme Court, and a long way from the old smoky, fluorescent-lit bingo hall and card room. To paraphrase Meat Loaf, paradise by the slot machine lights, indeed. ♣

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