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U.S. Supreme Court

CALIFORNIA v. CABAZON BAND OF MISSION INDIANS, 480 U.S. 202

480 U.S. 202

**CALIFORNIA ET AL. v. CABAZON BAND OF MISSION INDIANS ET AL.
APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH**

No. 85-1708.

**Argued December 9, 1986
Decided February 25, 1987**

Appellee Indian Tribes (the Cabazon and Morongo Bands of Mission Indians) occupy reservations in F Each Band, pursuant to its federally approved ordinance, conducts on its reservation bingo games that : The Cabazon Band also operates a card club for playing draw poker and other card games. The gambli the public and are played predominantly by non-Indians coming onto the reservations. California soug Tribes its statute governing the operation of bingo games. Riverside County also sought to apply its orc bingo, as well as its ordinance prohibiting the playing of draw poker and other card games. The Tribes for declaratory relief in Federal District Court, which entered summary judgment for the Tribes, holdin

State nor the county had any authority to enforce its gambling laws within the reservations. The Court

Held:

1. Although state laws may be applied to tribal Indians on their reservations if Congress has expressly authorized, Congress has not done so here either by Pub. L. 280 or by the Organized Crime Control Act of 1970, 21 U.S.C. §§ 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 and a 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 applicable to the reservation, or civil in nature and applicable only as it may be relevant to private activities within the reservation. There is a fair basis for the Court of Appeals' conclusion that California's statute, which prohibits gambling 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 a "civil/regulatory" statute not authorized by Pub. L. 280 to be enforced on Indian reservations. The regulatory law is enforceable (as here) by [480 U.S. 202, 203] criminal as well as civil means does not 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 state courts are to have any part in enforcing the federal laws or are authorized to make arrests on Indian reservations in the absence of OCCA they could not effect. California may not make arrests on reservations and thus cannot 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 the state law is pre-empted by the operation of federal law. State jurisdiction is pre-empted if it interferes with or is in conflict with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify an assertion of state authority. The federal interests in Indian self-government, including the goal of tribal self-sufficiency and economic development, are important, and federal agencies, acting under federal authority, have sought to implement them by promoting and overseeing tribal bingo and gambling enterprises. Such actions are of particular relevance in this case since the tribal games provide the sole source of revenue for the operation of the tribal governments and are the major sources of employment for tribal members. The State seeks to prevent all bingo games on tribal lands while permitting regulated off-reservation bingo. The asserted state interest in preventing the infiltration of the tribal games by organized crime is irrelevant. State and county laws are pre-empted. Even to the extent that the State and county seek to regulate such activities, their laws are pre-empted since the asserted state interest is not sufficient to escape the pre-emptive force of federal law. Pp. 214-222.

783 F.2d 900, 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, J., joined, post, p. 222.

Roderick E. Walston, Supervising Deputy Attorney General of California, argued the cause for appellants. Briefs were filed by John K. Van de Kamp, Attorney General, [480 U.S. 202, 204] Steve White, Chief Assistant Attorney General, Frederick R. Millar, Jr., Supervising Deputy Attorney General, Rudolph Corona, Jr., Deputy Attorney General,

Geerlings, Peter H. Lyons, and Glenn R. Salter.

Glenn M. Feldman argued the cause for appellees. With him on the brief were Barbara A. Karshmer an

[[Footnote *](#)] Briefs of amici curiae urging reversal were filed for the State of Arizona et al. by Robert General of Arizona, Anthony B. Ching, Solicitor General, Ian A. Macpherson, Brian McKay, Attorney and Paul Bardacke, Attorney General of New Mexico; and for the State of Washington et al. by Kenne Attorney General of Washington, Timothy R. Malone, Assistant Attorney General, Bronson C. La Foll General of Wisconsin, and John J. Kelly, Chief State's Attorney of Connecticut.

Briefs of amici curiae urging affirmance were filed for the Chehalis Indian Tribe et al. by Henry J. Soci V. Quesenberry; for the Jicarilla Apache Tribe et al. by Alan R. Taradash; for the Oneida Indian Nation William W. Taylor III and Christine Nicholson; for the Pueblo of Sandia et al. by L. Lamar Parrish, Th Michael D. Bustamante, and Scott E. Borg; for the San Manuel Band of Mission Indians by Jerome L. Lash; and for the Seminole Tribe of Florida et al. by Bruce S. Rogow.

Briefs of amici curiae were filed for the State of Minnesota by Hubert H. Humphrey III, Attorney Gene Schoessler, Assistant Attorney General; for the Pueblo of Laguna et al. by W. Richard West, Jr., Thom Rodney B. Lewis, Carol L. Barbero, John Bell, Rodney J. Edwards, and Art Bunce; and for the Tulalip Washington et al. by Allen H. Sanders.

JUSTICE WHITE delivered the opinion of the Court.

The Cabazon and Morongo Bands of Mission Indians, federally recognized Indian Tribes, occupy rese County, California. [1](#) Each Band, pursuant to an [\[480 U.S. 202, 205\]](#) ordinance approved by the Secretary conducts bingo games on its reservation. [2](#) The Cabazon Band has also opened a card club at which dra card games are played. The games are open to the public and are played predominantly by non-Indians reservations. The games are a major source of employment for tribal members, and the profits are the T income. The State of California seeks to apply to the two Tribes Cal. Penal Code Ann. 326.5 (West Sup statute does not entirely prohibit the playing of bingo but permits it when the games are operated and st designated charitable organizations who may not be paid for their services. Profits must be kept in spec used only for charitable purposes; prizes may not exceed \$250 per game. Asserting that the bingo game reservations violated each of these restrictions, California insisted that the Tribes comply with state law [U.S. 202, 206\]](#) County also sought to apply its local Ordinance No. 558, regulating bingo, as well as its (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 ha apply its ordinances inside the reservations and an injunction against their enforcement. The State inter stipulated, and the District Court granted the Tribes' motion for summary judgment, holding that neithe county had any authority to enforce its gambling laws within the reservations. The Court of Appeals fo affirmed, [783 F.2d 900 \(1986\)](#), the State and the county appealed, and we postponed jurisdiction to the merits. [476 U.S. 1168](#). [4](#) [\[480 U.S. 202, 207\]](#)

I

The Court has consistently recognized that Indian tribes retain "attributes of sovereignty over both their territory," *United States v. Mazurie*, [419 U.S. 544, 557](#) (1975), and that "tribal sovereignty is dependen to, only the Federal Government, not the States," *Washington v. Confederated Tribes of Colville Indian*

[U.S. 134, 154](#) (1980). It is clear, however, that state laws may be applied to tribal Indians on their reservation if Congress has expressly so provided. Here, the State insists that Congress has twice given its express consent; first in the Indian Civil Rights Act of 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 Indian 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 Indian country within the States and provided for the assumption of jurisdiction by other States. In *California v. Lara*, 445 U.S. 830 (1980), we held that the broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the States under Section 4's grant of civil jurisdiction was more limited. [7](#) [480 U.S. 202, 208] In *Bryan v. Itasca County*, 426 U.S. 375 (1976), we interpreted 4 to grant States jurisdiction over private civil litigation involving reservation Indians but not to grant general civil regulatory authority. *Id.*, at 385, 388-390. We held, therefore, that Minnesota's personal property tax within the reservation. Congress' primary concern in enacting Pub. L. 280 was lawlessness on reservations. *Id.*, at 379-380. The Act plainly was not intended to effect total assimilation of Indian reservations into mainstream American society. *Id.*, at 387. We recognized that a grant to States of general civil regulatory jurisdiction over Indian reservations would result in the destruction of tribal institutions and values. Accordingly, when a State enforces 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 to private civil litigation in state court.

The Minnesota personal property tax at issue in *Bryan* was unquestionably civil in nature. The California law at issue is not so easily categorized. California law permits bingo games to be conducted only by certain specified organizations, and then only by their members who may not receive any wage or profit and whose receipts 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 Indian reservations.

Following its earlier decision in *Barona Group of Capitán Grande Band of Mission Indians, San Diego v. United States*, 694 F.2d 1185 (1982), cert. denied, [461 U.S. 929](#) (1983), which also involved the applicability of California Penal Code to Indian reservations, the Court of Appeals rejected this submission. *783 F.2d, 1185* (1986), cert. denied, *480 U.S. 1020* (1987). In *Barona*, applying what it thought to be the civil/criminal dichotomy drawn in *Bryan v. Itasca County*, the court drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of the law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the law merely 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 a public policy. Inquiring into the nature of 326.5, the Court of Appeals held that it was regulatory rather than prohibitory. This was the analysis employed, with similar results, [480 U.S. 202, 210] by the Court of Appeals for the Ninth Circuit in *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (1981), cert. denied, [455 U.S. 1020](#) (1982), which we found persuasive. [9](#)

We are persuaded that the prohibitory/regulatory distinction is consistent with *Bryan's* construction of Pub. L. 280 as 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 statute under its holding in *Barona*, and we are reluctant to disagree with that court's view of the nature and intent of the statute here.

There is surely a fair basis for its conclusion. California does not prohibit all forms of gambling. California's state lottery, Cal. Govt. Code Ann. 8880 et seq. (West Supp. 1987), and daily encourages its citizens to participate in state-run gambling. California also permits pari-mutuel horse-race betting. Cal. Bus. & Prof. Code Ann. 1964 and Supp. 1987). Although certain enumerated gambling games are prohibited under Cal. Penal Code (Cal. Penal Code Supp. 1987), games not enumerated, including the card games played in the Cabazon card club, are permitted. We assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State

this fact. Brief for [480 U.S. 202, 211] Appellees 47-48. Also, as the Court of Appeals noted, bingo is leg many different organizations and is widely played in California. There is no effort to forbid the playing member of the public over the age of 18. Indeed, the permitted bingo games must be open to the gener any limit on the number of games which eligible organizations may operate, the receipts which they m games, the number of games which a participant may play, or the amount of money which a participant per game or in total. In light of the fact that California permits a substantial amount of gambling activit and actually promotes gambling through its state lottery, we must conclude that California regulates rat gambling in general and bingo in particular. [10](#)

California argues, however, that high stakes, unregulated bingo, the conduct which attracts organized c misdemeanor in California and may be prohibited on Indian reservations. But that an otherwise regulat enforceable by criminal as well as civil means does not necessarily convert it into a criminal law withir Pub. L. 280. Otherwise, the distinction between 2 and 4 of that law could easily be avoided and total as [480 U.S. 202, 212] This view, adopted here and by the Fifth Circuit in the Butterworth case, we find per: Accordingly, we conclude that Pub. L. 280 does not authorize California to enforce Cal. Penal Code A Supp. 1987) within the Cabazon and Morongo Reservations. [11](#)

California and Riverside County also argue that the Organized Crime Control Act (OCCA) authorizes i their gambling laws to the tribal bingo enterprises. The OCCA makes certain violations of state and loc violations of federal law. [12](#) The Court of Appeals rejected [480 U.S. 202, 213] appellants' argument, rely decisions in *United States v. Farris*, 624 F.2d 890 (CA9 1980), cert. denied, [449 U.S. 1111](#) (1981), and *Capitan Grande Band of Mission Indians, San Diego County, Cal. v. Duffy*, 694 F.2d 1185 (1982). 783 court explained that whether a tribal activity is "a violation of the law of a state" within the meaning of whether it violates the "public policy" of the State, the same test for application of state law under Pub. 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 18 the OCCA standard is simply whether the gambling business is being operated in "violation of the law no basis for the regulatory/prohibitory distinction that it agreed is suitable in construing and applying P at 188. And because enforcement of OCCA is an exercise of federal rather than state authority, there is encroachment on Indian tribal sovereignty. *Ibid.* This latter observation exposes the flaw in appellants' That enactment is indeed a federal law that, among other things, defines certain federal crimes over wh have exclusive jurisdiction. [15](#) There is nothing in OCCA indicating that the States [480 U.S. 202, 214] a enforcing federal criminal laws or are authorized to make arrests on Indian reservations that in the abse could not effect. We are not informed of any federal efforts to employ OCCA to prosecute the playing r reservations, although there are more than 100 such enterprises currently in operation, many of which l existence for several years, for the most part with the encouragement of the Federal Government. [16](#) W the Sixth Circuit is right and the Ninth Circuit wrong about the coverage of OCCA, a matter that we do no warrant for California to make arrests on reservations and thus, through OCCA, enforce its gamblin tribes.

II

Because the state and county laws at issue here are imposed directly on the Tribes that operate the gam expressly permitted by Congress, the Tribes argue that the judgment below should be affirmed without the statement in *McClanahan v. Arizona State Tax Comm'n*, [411 U.S. 164, 170](#)-171 (1973), that "[s]t not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided apply" (quoting *United States Dept. of the Interior, Federal Indian Law* 845 (1958)). Our cases, howev established an inflexible per se rule precluding [480 U.S. 202, 215] state jurisdiction over tribes and tribal absence of express congressional consent. [17](#) "[U]nder certain circumstances a State may validly assert

activities of nonmembers on a reservation, and . . . in exceptional circumstances a State may assert jurisdiction over reservation activities of tribal members." *New Mexico v. Mescalero Apache Tribe*, [462 U.S. 324, 331](#) - (footnotes omitted). Both *Moe v. Confederated Salish and Kootenai Tribes*, [425 U.S. 463](#) (1976), and *Washington v. Confederated Tribes of Colville Indian Reservation*, [447 U.S. 134](#) (1980), are illustrative. In those cases, in the absence of express congressional permission, a State could require tribal smokeshops on Indian reservations to pay a state sales tax from their non-Indian [\[480 U.S. 202, 216\]](#) customers. Both cases involved nonmembers entering the reservations to purchase tobacco products. The State's interest in assuring the collection of taxes from non-Indians enjoying the off-reservation services of the State was sufficient to warrant the minimal burden on tribal smokeshop operators. [18](#)

This case also involves a state burden on tribal Indians in the context of their dealings with non-Indians. The issue is whether the State may prevent the Tribes from making available high stakes bingo games to non-Indians outside the reservations. The decision in this case turns on whether state authority is pre-empted by the operation of federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *Washington v. Confederated Tribes of Colville Indian Reservation*, [447 U.S. 134](#), 334. The inquiry is to proceed in light of traditional notions of Indian sovereignty and the concept of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development. *Id.*, at 334-335. [19](#) See also, [\[480 U.S. 202, 217\]](#) *Iowa Mutual Insurance Co. v. LaPlante*, ante, p. 9; *Whitely v. Whitely*, [448 U.S. 136, 143](#) (1980).

These are important federal interests. They were reaffirmed by the President's 1983 Statement on Indian Policy. Specifically, the Department of the Interior, which has the primary responsibility for carrying out the Federal trust obligations to Indian tribes, has sought to implement these policies by promoting tribal bingo enterprises under the Indian Financing Act of 1974, [\[480 U.S. 202, 218\]](#) 25 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 *Id.*, at p. 5 (1986); *Mashantucket Pequot Tribe v. McGuigan*, 626 F. Supp. 245, 246 (Conn. 1986). The Department of the Interior and the Department of Health and Human Services have also provided financing to develop tribal gaming enterprises. See S. Rep. No. 99-493, supra, at 5. Here, the Secretary of the Interior has issued tribal ordinances establishing and regulating the gaming activities involved. See H. R. Rep. No. 99-488. The Secretary has also exercised his authority to review tribal bingo management contracts under 25 U.S.C. 1451 and detailed guidelines governing that review. [22](#) App. to Motion to Dismiss Appeal or Affirm Judgment 6

These policies and actions, which demonstrate the Government's approval and active promotion of tribal gaming, are of particular relevance in this case. The Cabazon and Morongo Reservations contain no natural resources that are exploited. The tribal games at present provide the sole source of revenues for the operation of the tribal enterprises [\[480 U.S. 202, 219\]](#) and the provision of tribal services. They are also the major sources of employment on the reservations. The determination and economic development are not within reach if the Tribes cannot raise revenues and if 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 have no right to market an exemption from state gambling laws. In *Washington v. Confederated Tribes of Colville Indian Reservation*, [447 U.S., at 155](#), we held that the State could tax cigarettes sold by tribal smokeshops to non-Indians, and that the State could eliminate their competitive advantage and substantially reduce revenues used to provide tribal services. *Id.* The Tribes had no right "to market an exemption from state taxation to persons who would normally do their business on the reservation." *Id.* stated that "[i]t is painfully apparent that the value marketed by the smokeshops to persons coming from outside the reservation is generated on the reservations by activities in which the Tribes have a significant interest." *Id.* Here, the Tribes are not merely importing a product onto the reservations for immediate resale to non-Indians. They have facilities which provide recreational opportunities and ancillary services to their patrons, who do not simply visit the reservations, make purchases and depart, but spend extended periods of time there enjoying the services. The Tribes have a strong incentive to provide comfortable, clean, and attractive facilities and well-run

increase attendance at the games. [23](#) The tribal bingo enterprises are [\[480 U.S. 202, 220\]](#) similar to the re- featuring hunting and fishing, that the Mescalero Apache Tribe operates on its reservation through the " sustained" management of reservation land and wildlife resources. *New Mexico v. Mescalero Apache Tribe*, [341](#). The Mescalero project generates funds for essential tribal services and provides employment for tribal members. There, the Tribe rejected the notion that the Tribe is merely marketing an exemption from state hunting and fishing. The Court concluded that New Mexico could not regulate on-reservation fishing and hunting by non-Indians. *Ibid*. The Cabazon and Morongo Bands are generating value on the reservations through activities in which they have a strong interest.

The State also relies on *Rice v. Rehner*, [463 U.S. 713](#) (1983), in which we held that California could not require a member and a federally licensed Indian trader operating a general store on a reservation to obtain a state license to sell liquor for off-premises consumption. But our decision there rested on the grounds that Congress has no direct sovereign tribal interest in regulating liquor traffic and that Congress, historically, had plainly anticipated that States would exercise concurrent authority to regulate the use and distribution of liquor on Indian reservations. Such a traditional federal view governing the outcome of this case, since, as we have explained, the current law seeks 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 games from being played on tribal lands while permitting regulated, off-reservation games, the law is irrelevant and the state and county laws are pre-empted. See *n. 3, supra*. Even to the extent that the State seeks to regulate short of prohibition, the laws are pre-empted. The State insists that the high stakes offered at tribal bingo are attractive to organized crime, whereas the controlled games authorized under California law are not. This is a legitimate concern, but we are unconvinced that it is sufficient to escape the pre-emptive force of federal law. It is apparent in this case. California does not allege any present criminal involvement in the Cabazon and Morongo Bands and the Ninth Circuit discerned none. *783 F.2d*, at 904. An official of the Department of Justice has expressed concern about tribal bingo operations, [24](#) but far from any action being taken evidencing this concern - the Federal Government has the authority to forbid Indian gambling enterprises - the prevailing federal policy is 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 enterprises [\[480 U.S. 202, 222\]](#) in light of the compelling federal interest in supporting them. State regulation would impermissibly infringe on tribal government, and this conclusion invalidates the county's attempted regulation of the Cabazon card club. We therefore affirm the judgment of the Court and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Footnotes

[\[Footnote 1 \]](#) The Cabazon Reservation was originally set apart for the "permanent use and occupancy of the 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 occupancy of the Cabazon and Morongo Bands. The United States holds the land in trust for the Tribes. [\[480 U.S. 202, 205\]](#) The governing bodies of both Tribes have been recognized by the Secretary of the Interior. The Cabazon Band has 250 members and the Morongo Band has approximately 730 enrolled members.

[\[Footnote 2 \]](#) The Cabazon ordinance authorizes the Band to sponsor bingo games within the reservation "to promote economic development of the Cabazon Indian Reservation and to generate tribal revenues" and provides that "revenues from the games shall be kept in a separate fund to be used "for the purpose of promoting the development of the reservation."

welfare and well being of the Cabazon Indian Reservation and for other tribal purposes." App. to Brief The ordinance further provides that no one other than the Band is authorized to sponsor a bingo game v reservation, and that the games shall be open to the public, except that no one under 18 years old may p ordinance similarly authorizes the establishment of a tribal bingo enterprise and dedicates revenues to p the health, education, and general welfare of tribal members. Id., at 1a-6a. It additionally provides that conducted at any time but must be conducted at least three days per week, that there shall be no prize li game or session, that no person under 18 years old shall be allowed to play, and that all employees shal

[[Footnote 3](#)] The Tribes admit that their games violate the provision governing staffing and the provis jackpots. They dispute the [480 U.S. 202, 206] State's assertion that they do not maintain separate funds f operations. At oral argument, counsel for the State asserted, contrary to the position taken in the merits the stipulated facts in this case, App. 65, 24, 82-83, 15, that the Tribes are among the charitable or authorized to sponsor bingo games under the statute. It is therefore unclear whether the State intends to enterprises out of business or only to impose on them the staffing, jackpot limit, and separate fund requ bingo enterprises are apparently consistent with other provisions of the statute: minors are not allowed games are conducted in buildings owned by the Tribes on tribal property, the games are open to the pul must be physically present to participate.

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

[[Footnote 5](#)] "Indian country," as defined at 18 U.S.C. 1151, includes "all land within the limits of any under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and of-way running through the reservation." This definition applies to questions of both criminal and civil DeCoteau v. District County Court, [420 U.S. 425, 427](#), n. 2 (1975). The Cabazon and Morongo Reserv Indian country.

[[Footnote 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 committ Indians in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdic committed elsewhere within the state . . . and the criminal [480 U.S. 202, 208] laws of such State same force and effect within such Indian country as they have elsewhere within the State . . . :

.....

"California All Indian country within the State."

[[Footnote 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 to which Indians are parties which arise in the areas of Indian country listed . . . to the same exte jurisdiction over other civil causes of action, and those civil laws of such State that are of genera private persons or private property shall have the same force and effect within such Indian count elsewhere within the State:

.....

"California All Indian country within the State."

[[Footnote 8](#)] The Court of Appeals questioned whether we indicated disapproval of the prohibitory/regulatory distinction in *Rice v. Rehner*, [463 U.S. 713](#) (1983). We did not. We rejected in that case an asserted distinction between "substantive" law and state "regulatory" law in the context of 18 U.S.C. 1161, which provides that certain provisions prohibiting the sale and possession of liquor within Indian country do not apply "provided such transaction is in conformity both with the laws of the State in which such act or transaction occurs and duly adopted by the tribe having jurisdiction over such area of Indian country" We noted that notwithstanding the legislative history of [\[480 U.S. 202, 210\]](#) 1161 supported the asserted distinction, and then contrasted that with *Itasca County*, [426 U.S. 373, 390](#) (1976) (grant of civil jurisdiction in 28 U.S.C. 1360 does not include jurisdiction to tax in light of tradition of immunity from taxation)." [463 U.S., at 734](#), n. 18.

[[Footnote 9](#)] *Seminole Tribe v. Butterworth* was an action by the Seminole Tribe for a declaratory judgment that Florida bingo statute did not apply to its operation of a bingo hall on its reservation. See also *Mashantucket Pequot Tribe v. Mashantucket Pequot Tribal Council*, 626 F. Supp. 245 (Conn. 1986); *Oneida Tribe of Indians of Wisconsin v. Wisconsin*, 518 F. Supp. 100 (Wis. 1981).

[[Footnote 10](#)] Nothing in this opinion suggests that cockfighting, tattoo parlors, nude dancing, and prostitution are impermissible on Indian reservations within California. See post, at 222. The applicable state laws governing these activities must be examined in detail before they can be characterized as regulatory or prohibitory. The lower courts have demonstrated an inability to identify prohibitory laws. For example, in *United States v. Marcyes*, 557 F.2d 1361, 1366 (CA9 1977), the Court of Appeals adopted and applied the prohibitory/regulatory distinction in determining whether the statute governing the possession of fire works was made applicable to Indian reservations by the Assimilative Statute, 18 U.S.C. 13. The court concluded that, despite limited exceptions to the statute's prohibition, the statute was prohibitory in nature. See also *United States v. Farris*, 624 F.2d 890 (CA9 1980), cert. denied, [449 U.S. 1091](#) (1981), discussed in n. 13, *infra*.

[[Footnote 11](#)] Nor does Pub. L. 280 authorize the county to apply its gambling ordinances to the reservation. Initially, it is doubtful that Pub. L. 280 authorizes the application of any local laws to Indian reservations. 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 Pub. L. 280 does make local criminal/prohibitory laws applicable on Indian reservations, the ordinance in question does 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 card games, including the games played in the Cabazon card club, the county does not prohibit municipalities from enacting municipal ordinances permitting these card games, and two municipalities have indicated that it is clear, therefore, that Ordinance No. 331 does not prohibit these card games for purposes of Pub. L. 280.

[[Footnote 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 than \$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 business; and

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

[[Footnote 13](#)] In *Farris*, in contrast, the court had concluded that a gambling business, featuring blackj operated by tribal members on the Puyallup Reservation violated the public policy of Washington; the therefore, could enforce OCCA against the Indians.

[[Footnote 14](#)] In *Dakota*, the United States sought a declaratory judgment that a gambling business, al playing of blackjack, poker, and dice, operated by two members of the Keweenaw Bay Indian Commu controlled by the community, and under a license issued by the community, violated OCCA. The Cour that the gambling business violated Michigan law and OCCA.

[[Footnote 15](#)] Title 18 U.S.C. 3231 provides: "The district courts of the United States shall have origi exclusive of the courts of the States, of all offenses against the laws of the United States."

[[Footnote 16](#)] See S. Rep. No. 99-493, p. 2 (1986). Federal law enforcement officers have the capabili violations of OCCA on Indian reservations, as is apparent from *Farris* and *Dakota*. This is not a situatic unavailability of a federal officer at a particular moment would likely result in nonenforcement. OCCA scale gambling enterprises. If state officers discover a gambling business unknown to federal authoritie their duties authorized by Pub. L. 280, there should be ample time for them to inform federal authoritie determine whether investigation or other enforcement action was appropriate. A federal police officer i Department of the Interior to patrol the Indian reservations in southern California. App. to Brief for Ap

[[Footnote 17](#)] In the special area of state taxation of Indian tribes and tribal members, we have adopte *Montana v. Blackfeet Tribe*, [471 U.S. 759](#) (1985), we held that Montana could not tax the Tribe's royal gas leases issued to non-Indian lessees under the Indian Mineral Leasing Act of 1938. We stated: "In k plenary authority over Indian affairs, Congress can authorize the imposition of state taxes on Indian tril Indians. It has not done so often, and the Court consistently has held that it will find the Indians' exemp lifted only when Congress has made its intention to do so unmistakably clear." *Id.*, at 765. We have rep the issue of state taxation of tribes and tribal members and the state, federal, and tribal interests which i have recognized that the federal tradition of Indian immunity from state taxation is very strong and that taxation is correspondingly weak. Accordingly, it is unnecessary to rebalance these interests in every c: *Apache Tribe v. Jones*, [411 U.S. 145, 148](#) (1973), we distinguished state taxation from other assertions We acknowledged that we had made repeated statements "to the effect that, even on reservations, state unless such application would interfere with reservation self-government or would impair a right grant federal law. . . . Even so, in the special area of state taxation, absent cession of jurisdiction or other fedd permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian inco carried on within the boundaries of the reservation, and *McClanahan v. Arizona State Tax Comm'n*, [[4 U.S. 202, 216](#)] (1973)], lays to rest any doubt in this respect by holding that such taxation is not permissi congressional consent." *Ibid.* (emphasis added).

[[Footnote 18](#)] JUSTICE STEVENS appears to embrace the opposite presumption - that state laws app reservations absent an express congressional statement to the contrary. But, as we stated in *White Mou v. Bracker*, [448 U.S. 136, 151](#) (1980), in the context of an assertion of state authority over the activities within a reservation, "[t]hat is simply not the law." It is even less correct when applied to the activities

members within reservations.

[[Footnote 19](#)] In *New Mexico v. Mescalero Apache Tribe*, [462 U.S., at 335](#), n. 17, we discussed a law Congress enacted to promote tribal self-government. The congressional declarations of policy in the Indian Self-Determination Act of 1974, as amended, 25 U.S.C. 1451 et seq. (1982 ed. and Supp. III), and in the Indian Self-Determination Assistance Act of 1975, as amended, 25 U.S.C. 450 et seq (1982 ed. and Supp. III), are particularly significant. "It is hereby declared to be the policy of Congress . . . to help develop and utilize Indian resources, both human, to a point where the Indians will fully exercise [\[480 U.S. 202, 217\]](#) responsibility for the utilization of their own resources and where they will enjoy a standard of living from their own productive efforts enjoyed by non-Indians in neighboring communities." 25 U.S.C. 1451. Similarly, "[t]he Congress declared its policy to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to Indian people through the establishment of a meaningful Indian self-determination policy which will permit a transition from Federal domination of programs for and services to Indians to effective and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services." 25 U.S.C. 450a(b).

[[Footnote 20](#)] "It is important to the concept of self-government that tribes reduce their dependence on the Federal Government and provide for providing a greater percentage of the cost of their self-government." 19 Weekly Comp. of Pres. Doc. 99-100.

[[Footnote 21](#)] The Court of Appeals relied on the following official declarations. 783 F.2d, at 904-905 issued by the Assistant Secretary of the Interior on March 2, 1983, stated that the Department would "support the 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 been successful in bingo and similar gambling operations on their reservations for the very purpose enunciated in the President's Statement. Given the often limited resources which tribes have for revenue-producing activities, it is believed that the possibility of such operations should be protected and enhanced." The court also relied on an affidavit submitted by the Bureau 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 achieve 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."

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

[[Footnote 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 left side of the table were a middle-aged latin couple, who were later joined by two young latin males. These men had been playing the game [\[202, 220\]](#) the game explained to them. The middle table was shared with a senior citizen couple, two elderly women, 1 in a wheelchair, and a middle-aged woman. . . . A goodly portion of the crowd consisted of senior citizens." App. 176. We are unwilling to assume that these patrons would be indifferent to the interests of the Tribes.

[[Footnote 24](#)] Hearings on H. R. 4566 before the House Committee on Interior and Insular Affairs, 98 15-39, 66-75 (1984); App 197-205.

[[Footnote 25](#)] JUSTICE STEVENS' assertion, post, at 226, that the State's interest in restricting the pr to itself, and the charities it favors, justifies the prohibition or regulation of tribal bingo games is indeed asserted no such discriminatory economic interest; and it is pure speculation that, in the absence of trib would-be patrons would purchase lottery tickets or would attend state-approved bingo games instead. I certainly California has no legitimate interest in allowing potential lottery dollars to be diverted to non-card clubs and horse tracks while denying Indian tribes the opportunity to profit from gambling activiti necessarily entitled to prefer the funding needs of state-approved charities over the funding needs of the dedicate bingo revenues to promoting the health, education, and general welfare of tribal members.

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 ; that a State may enforce its laws prohibiting high-stakes gambling on Indian reservations within its bor not pre-empted California's prohibition against high-stakes bingo games and the Secretary of the Interic authority to do so. While gambling provides needed employment and income for Indian tribes, these be opinion, justify tribal operation of currently unlawful commercial activities. Accepting the majority's re require exemptions for cockfighting, tattoo parlors, nude dancing, houses of prostitution, and other ille; enterprises. As the law now stands, I believe tribal entrepreneurs, like others who might derive profits f 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. Supp. III), authorizes California to enforce its prohibition against commercial gambling on Indian reser prohibits bingo games that are not operated by members of designated charitable organizations or whic excess of \$250 per game. Cal. Penal Code Ann. 326.5 (West Supp. 1987). In 2 of Pub. L. 280, Congres expressly provided that the criminal laws of the State of California "shall have the same force and effec country as they have elsewhere within the State." 18 U.S.C. 1162(a). Moreover, it provided in 4(a) that California "that are of general application to private persons or private property shall have the same for 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](#) (1976), we held that Pub. L. 280 did not confer c State to impose a personal property tax on a mobile home that was owned by a reservation Indian and I reservation. Moreover, the reasoning of that decision recognizes the importance of preserving the tradit tribal sovereignty over the relationships among reservation Indians. Our more recent cases have made i commercial transactions between Indians and non-Indians - even when conducted on a reservation - do blanket immunity from state regulation. In *Rice v. Rehner*, [463 U.S. 713](#) (1983), respondent, a federal; trader, was a tribal member operating a general store on an Indian reservation. We held that the State c to obtain a state license to sell liquor for off-premises consumption. The Court attempts to distinguish I resting on the absence of a sovereign tribal interest in the regulation of liquor traffic to the exclusion of necessary step on our way to deciding that the State could regulate all tribal liquor sales in Indian coun the State's authority over transactions, whether they be liquor sales or gambling, between Indians and n is any interest in tribal sovereignty implicated by imposition [[480 U.S. 202, 224](#)] of California's alcoholic it exists only insofar as the State attempts to regulate Rehner's sale of liquor to other members of the P; Reservation." *Id.*, at 721. Similarly, in *Washington v. Confederated Tribes of Colville Indian Reservati* (1980), we held that a State could impose its sales and cigarette taxes on non-Indian customers of smok reservations.

Today the Court seems prepared to acknowledge that an Indian tribe's commercial transactions with no

violate "the State's public policy." Ante, at 209. The Court reasons, however, that the operation of high does not run afoul of California's public policy because the State permits some forms of gambling and, forms of bingo. I find this approach to "public policy" curious, to say the least. The State's policy conce authorize certain specific gambling activities that comply with carefully defined regulation and that pro for the State itself or for certain charitable purposes, and to prohibit all unregulated commercial lotterie for private profit. 1 To argue that the tribal bingo games comply with the public policy of California be permits some other gambling is tantamount to arguing that driving over 60 miles an hour is consistent [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 if Congress had not done so, however, the State has the authority to assert jurisdiction over appellees' g We recognized this authority in *Washington v. Confederated Tribes*, supra; the Court's attempt to distir of our decision in that case is unpersuasive. In *Washington v. Confederated Tribes*, the Tribes contende no power to tax on-reservation sales of cigarettes to non-Indians. The argument that we rejected there h

"The Tribes contend that their involvement in the operation and taxation of cigarette marketing o ousts the State from any power to exact its sales and cigarette taxes from nonmembers purchasin smokeshops. The primary argument is economic. It is asserted that smokeshop cigarette sales gei revenues for the Tribes which they expend for essential governmental services, including prograi poverty and underdevelopment at the reservations. Most cigarette purchasers are outsiders attract reservations by the bargain prices the smokeshops charge by virtue of their claimed exemption fr the State is permitted to impose its taxes, the Tribes will no longer enjoy any competitive advant: businesses in surrounding areas." *Id.*, at 154.

"What the smokeshops offer these customers, and what is not available elsewhere, is solely an ex taxation." *Id.*, at 155.

In *Confederated Tribes*, the tribal smokeshops offered their customers the same products, services, and tobaccoists offered to their customers. Although [480 U.S. 202, 226] the smokeshops were more modest palaces involved in this case, presumably they were equally the product of tribal labor and tribal capita successful, however, was the value of the exemption that was offered to non-Indians "who would norm business elsewhere." *Id.*, at 155.

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

I am entirely unpersuaded by the Court's view that the State of California has no legitimate interest in r gambling business to comply with the same standards that the operators of other bingo games must obs interest is both economic and protective. Presumably the State has determined that its interest in genera public fisc and for certain charities out-weighs the benefits from a total prohibition against publicly spc chance. Whatever revenues the Tribes receive from their unregulated bingo games drain funds from the recipients of lottery revenues - just as the tax-free cigarette sales in the *Confederated Tribes* case dimin 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 unregula

bingo games may attract organized criminal infiltration. [480 U.S. 202, 227] Brief for Appellants 25-26, 1 Appellants 12. Comprehensive regulation of the commercial gambling ventures that a State elects to lic justified as a prophylactic measure even if there is presently no criminal activity associated with casino State. Indeed, California regulates charitable bingo, horseracing, and its own lottery. The State of Calif charitable bingo games may only be operated and staffed by members of designated charitable organiz; proceeds from the games may only be used for charitable purposes. Cal. Penal Code Ann. 326.5 (West requirements for staffing and for dispersal of profits provide bulwarks against criminal activity; neither bingo games on Indian reservations. 2 In my judgment, unless Congress authorizes and regulates these gambling ventures catering to non-Indians, the State has a legitimate law enforcement interest in prosci

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

I respectfully dissent.

[[Footnote 1](#)] The Court holds that Pub. L. 280 does not authorize California to enforce its prohibition gambling within the Cabazon and Morongo Reservations. Ante, at 212. The Court reaches this conclus that 4(a) of Pub. L. 280, 28 U.S.C. 1360(a), withholds from the States general civil regulatory authority and that the State's rules concerning gambling are regulatory rather than prohibitory. In its opinion, the State's argument that high-stakes, unregulated bingo is prohibited with the contention that an otherwise not become a prohibition simply because it "is enforceable by criminal as well as civil means." Ante, at questionable merit of this proposition, it does not even address the meaning of 2(a) of Pub. L. 280, 18 U ed., Supp. III), a provision which is sufficient to control the disposition of this case. See supra, at 222.

[[Footnote 2](#)] The Cabazon Band's bingo room was operated under a management agreement with an c 1986; the Morongo Band operates its bingo room under a similar management agreement. App. to Brie to C-3; Morongo Band of Mission Indians Tribal Bingo Enterprise Management Agreement, 4B, Ap 202, 228]

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