

Recent Supreme Court Decision Bars State from Suing Tribe Seeking to Operate an Illegal Off-Reservation Casino
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Article

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On May 27, 2014, the Supreme Court ruled that under the Indian Gaming Regulatory Act (IGRA), states may only sue to enjoin a tribe from conducting class III gaming “on Indian lands.” *Michigan v. Bay Mills Indian Cmty.*, 2014 WL 2178337 (U.S. May 27, 2014). As a result, the Court ruled that the State of Michigan’s suit to enjoin the Bay Mills Indian Community from operating an illegal casino off its reservation was barred because the casino at issue was not located “on Indian lands” and no other tribal waiver of sovereign immunity applied. This ruling represents a major setback in the ability of states to stop tribes from illegally operating off-reservation casinos. On this point, Justice Thomas warned that the practical import of this decision “will continue to invite problems, including de facto regulation of highly regulated activities; unfairness to tort victims; and increasingly fractious relations with States and individuals alike.” *Id.* at *25 (Thomas, J., dissenting).

The dispute between the State of Michigan and the Bay Mills Indian Community (BMIC) arose after Bay Mills opened a casino on land purchased through a congressionally established land trust, claiming it could operate a casino there because the property qualified as Indian land. *Id.* at *3. Michigan disagreed, and sued Bay Mills under 25 USC § 2710(d)(7)(A)(ii), which allows a state to enjoin “class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact.” *Id.* The compact in question, pursuant to IGRA, authorizes Bay Mills to conduct class III gaming activities on Indian lands within the state’s borders, but prohibits it from doing so outside the territory.

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