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# Ysleta Del Sur Pueblo v. Texas

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# *Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929 (2022)

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The United States Supreme Court ruled in favor of the Ysleta Del Sur Pueblo and Alabama and Coushatta Indian Tribes. The Court's decision settles a conflict around bingo stemming from a long series of conflicts between Ysleta del Sur Pueblo and Texas gaming officials dating back to the 1980s. The court held the Texas Restoration Act bans only gaming on tribal lands that is also banned in Texas. This decision upholds previous caselaw that states cannot bar tribes from gaming that is not categorically banned in the state.

## I. INTRODUCTION

In *Ysleta Del Sur Pueblo v. Texas*,[1] the United States Supreme Court, interpreting the Ysleta del Sur and Alabama and Coushatta Indian Tribes of Texas Restoration Act[2] ("Texas Restoration Act"), held Texas does not have authority to regulate gaming on the Ysleta del Sur Pueblo Reservation.[3] The State of Texas sued to shut down the Tribe's bingo operations, claiming the Tribe's gambling must comply with Texas law.[4] The court held the Texas Restoration Act, as a matter of federal law, only bans gaming activities that are also prohibited in Texas.[5] Because bingo is allowed under Texas law, Texas lacked the authority to regulate bingo on the Ysleta del Sur Pueblo Reservation.[6] This ruling allows the Ysleta del Sur Pueblo Tribe ("Tribe") to continue its current on-reservation electronic bingo operations without interference from Texas.[7]

## II. FACTUAL AND PROCEDURAL BACKGROUND

The Tribe offered electronic bingo on its reservation and Texas sued to stop the Tribe.[8] The Tribe's historical relationship with Texas, its trust status, and the Indian Gaming Regulatory Act[9] ("IGRA") are integral to understanding the case.

The conflict between Texas and the Tribe dates back many years.[10] The Ysleta Del Sur Pueblo Tribe is a federally recognized Native

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1. 142 S. Ct. 1929 (2022).
2. 101 Stat. 666 (codified as 25 U.S.C. §§ 731–37 (1987)).
3. *Ysleta*, 142 S. Ct at 1934.
4. *Id.* at 1937.
5. *Id.* at 1934.
6. *Id.* at 1941.
7. *Id.* at 1936–37.
8. *Id.*
9. 25 U.S.C. §§ 2701–21.
10. *Ysleta*, 142 S. Ct at 1934.

American Tribe with a reservation located in Texas, near El Paso.[11] In 1967, Texas recognized the Tribe, and in 1968, Congress granted the Tribe federal recognition and assigned federal trust responsibilities to the State of Texas.[12] In 1983, Texas relinquished its trust responsibility to the Tribe, citing inconsistency with the Texas Constitution.[13] In 1987, Congress restored the Tribe's federal trust status via the Texas Restoration Act.[14]

A year later, Congress passed IGRA.[15] Congress passed IGRA to create a framework to regulate Indian gaming and mitigate conflicts between states and tribes.[16] IGRA created three classes of gaming to be regulated differently: class I, class II, and class III.[17] Class I games are not relevant to this case.[18] Class II games are within the jurisdiction of a tribe if allowed for any purpose within the state where a tribe is located.[19] Bingo is an example of a class II game.[20] Class III games are high stake games.[21] Poker is an example of a class III game.[22] Class III gaming requires a tribe to negotiate a compact with the state.[23]

The Tribe sought to offer class III gaming and attempted to negotiate a compact with Texas, but Texas refused to negotiate.[24] Texas argued the Texas Restoration Act superseded IGRA, requiring the Tribe to follow Texas's gaming laws.[25] Section 107 of the Texas Restoration Act "addressed gaming on the Tribe's lands" and was "enacted in accordance with the tribe's request in Tribal Resolution No. T.C.–02–86."[26] This issue was litigated, and the Fifth Circuit, reversing the District Court's decision, held the Texas Restoration Act allowed Texas gaming laws to control what games the Tribe could allow on the Ysleta del Sur Pueblo Reservation.[27]

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11. *Id.*
12. *Id.*
13. *Id.* at 1934–35.
14. *Id.* at 1935.
15. *Id.* at 1936.
16. U.S. Congressional Research Service, *Indian Gaming: Legal Background and the Indian Gaming Regulatory Act (IGRA)*, No. R42471, at 9–10 (2012).
17. *Ysleta*, 142 S. Ct at 1936.
18. *Id.*; (Class I games are games traditionally played at ceremonies or social games with small to minimal prizes).
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at 1937–38 (The relevant part of Tribal Resolution No. T.C.–02–86 to this case reads, "the Ysleta del Sur Pueblo has no interest in conducting high stakes bingo or other gambling operations on its reservation, regardless of whether such activities would be governed by tribal law, state law or federal law").
27. *Id.* at 1936; *see generally* Ysleta del Sur Pueblo v. Texas, 36 F.3d 1325 (5th Cir. 1994) [hereinafter "Ysleta I"].

In 2016, the Tribe started offering electronic bingo.[28] IGRA treats bingo as class II gaming, so the Tribe did not seek Texas's permission.[29] Texas sued to shut down the Tribe's bingo operations because Texas regulates bingo through specific restrictions as to time, place, and manner, which the Tribe's bingo operations did not abide by.[30] The District Court, relying on the precedent set in *Ysleta I*, ruled for Texas.[31] The Fifth Circuit affirmed.[32] The Tribe appealed the decision to the Supreme Court and was granted certiorari.[33]

## III. ANALYSIS

First, the Court held that the Texas Restoration Act did not prohibit the Tribe from offering bingo on its reservation by looking at the plain language of the Texas Restoration Act, the Congressional intent, and context with which the Act was passed. Second, the Court ruled that Texas's statutory interpretation and public policy arguments were ineffective.

### *A. The Texas Restoration Act Bans Gaming Activities on Tribal Lands that are also Banned in Texas*

The Court held the Texas Restoration Act did not grant Texas the authority to regulate gaming on the Ysleta del Sur Pueblo Reservation when the gaming was not categorically banned in Texas. The Court analyzed the language of the Texas Restoration Act and Congress's actions to reach this holding.

#### *1. Section 107 of the Texas Restoration Act Addressed the Issue of Gaming on the Tribe's Reservation*

The Court held Texas's interpretation of the Texas Restoration Act was incorrect.[34] In interpreting a statute, courts look first to words of the statute, then the statute as a whole to determine the meaning of the statute.[35] Courts interpret statutes to give the entire statute meaning.[36] If a statute is unclear, courts will look to the legislative intent for clarity or confirmation.[37] Here, the Court interpreted the Texas Restoration Act to allow Texas to regulate on-reservation gaming only in the narrow instance

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28. *Ysleta*, 142 S. Ct at 1936.
29. *Id.* at 1936–37.
30. *Id.* at 1930.
31. *Id.* at 1937.
32. *Id.*
33. *Id.*
34. *Id.* at 1937–41.
35. *Id.* at 1937–38.
36. *Id.* at 1939 (quoting Corley v. United States, 556 U.S. 303, 314 (2009)).
37. *Id.* at 1940–41.

where Texas has prohibited the category of gaming by its own laws.[38] The Court held only gaming activities prohibited by Texas law are prohibited on the Tribe's lands, and Texas has no regulatory authority on the Tribe's lands over games that are not prohibited, but merely regulated, by Texas law. [39]

The Court analyzed § 107(a)–(c) of the Texas Restoration Act and found that when the subsections were read together they could not mean Texas had full regulatory authority over gaming on the reservation.[40] Section 107(a) states, "gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservations and on the lands of the tribe."[41] Section 107(b) prohibits the extension of "civil or criminal regulatory jurisdiction to the State of Texas" over on-reservation gaming.[42] Section 107(c) grants federal courts "exclusive jurisdiction over any offense in violation of subsection (a) that is committed by the tribe."[43] The Court analyzed how the use of "prohibit" and "regulate" created a dichotomy which presented a problem for Texas.[44]

The Court ruled Texas's interpretation of the Texas Restoration Act created duplicative terms or entire sections without meaning.[45] Texas interpreted the Texas Restoration Act to prohibit any bingo not regulated under its time, place, and manner restrictions.[46] Statutes are interpreted "so that effect is given to all provisions, so that no part will be inoperative or superfluous, void or insignificant."[47] The Court rejected Texas's interpretation of "prohibit" in § 107(a), because § 107(b) "would be left with no work" because Texas would be granted regulatory jurisdiction over on-reservation gaming, which is in direct contradiction of § 107(b).[48] The Court reached its ruling by "stepping back" and taking a "full look at the statute's structure."[49] In § 107(a), Congress "federalized and applied to tribal lands . . . state laws" that categorically ban gaming.[50] In § 107(b) Congress "was *not* authorizing the application of Texas's gaming regulations on tribal lands."[51] Finally, in § 107(c), Congress "granted federal courts jurisdiction to entertain claims by Texas" when Texas claimed the Tribe had "violated" § 107(a). Therefore, the Court held Texas law that regulates gaming, but does not prohibit certain categories of gaming, may

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38. *Id.* at 1937–40.
39. *Id.* at 1941.
40. *Id.* at 1937–38.
41. *Id.* at 1938.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.* at 1939–40.
46. *Id.* at 1938–39.
47. *Id.* at 1939 (quoting Corley v. United States, 556 U.S. 303, 314 (2009)).
48. *Id.* at 1939.
49. *Id.*
50. *Id.*
51. *Id.*

not be used to regulate or prohibit gaming on the Tribe's land because otherwise, "whole provisions" of the statute would be left "without work to perform."[52]

### *2. Congress's Actions Provided Further Clarity to the Texas Restoration Act*

The Court looked to Congress's actions and the context of those actions to confirm its holding.[53] In passing the Texas Restoration Act, Congress was aware of the Court's decision in *California v. Cabazon Band of Mission Indians*[54] six months prior and used specific language incorporating *Cabazon*.[55] The Court "generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents."[56] Additionally, "[w]hen the words of the Court are used in a later statute governing the same subject matter, it is respectful of Congress and of the Court's own processes to give the words the same meaning in the absence of specific direction to the contrary."[57]

Here, the Court ruled when Congress passed the Texas Restoration Act, *Cabazon* was the leading precedent regarding Indian gaming because the *Cabazon* ruling came six months prior to the passage of the Texas Restoration Act.[58] In *Cabazon*, the Court "drew a sharp line between the terms prohibitory and regulatory" on facts very similar to this case.[59] In its analysis, the Court ruled that Congress deliberately used the language of *Cabazon* in drafting the Texas Restoration Act because Congress "passed three statutes closely related in time and subject matter."[60] Looking at those three statutes, the Court ruled Congress specifically applied state regulations of gaming as a matter of federal law in two instances

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52. *Id.* at 1940–41.
53. *Id.*
54. 480 U.S. 202 (1987) (in *Cabazon*, "the Court interpreted Public Law 280—a statute Congress had adopted in 1953 to allow a handful of States to enforce some of their criminal laws on certain tribal lands—to mean that only "prohibitory" state gaming laws could be applied on the Indian lands in question, not state "regulatory" gaming laws. The *Cabazon* Court held that California's bingo laws—materially identical to Texas's laws here—fell on the regulatory side of the ledger." *Ysleta*, 142 S. Ct. at 1932–33).
55. *Ysleta*, 142 S. Ct. at 1940–41
56. *Id.* at 1940 (citing Ryan v. Valencia Gonzales, 568 U.S. 57, 66 (2013)).
57. *Id.* (quoting Williams v. Taylor, 529 U.S. 420, 434 (2000)).
58. *Id.* at 1940.
59. *Id.*
60. *Id.* at 1941.

regarding the Wampanoag Tribe and Catawba Tribe.[61] Congress chose not to in the Texas Restoration Act.[62]

### *B. Texas's Additional Arguments Failed*

The Court ruled Texas's additional arguments were uncompelling. First, Section 107(a) of the Texas Restoration Act did not incorporate the Tribal Resolution referenced in Section 107(a).[63] Second, the Court ruled the unworkability of distinguishing between prohibition and regulation is not for the Court to decide, but Congress.[64]

#### *1. Section 107(a) did not Incorporate the Tribe's Resolution*

The Court ruled that Congress's incorporation of the Tribal Resolution did not apply Texas's gaming laws to the Tribe.[65] When Congress intends to incorporate a tribal law or resolution into federal law, it does so clearly.[66] The Resolution, adopted in 1986 in attempts to renew federal trust status, prohibited gaming on the Tribe's reservation and accepted federal prohibition of gaming on the Tribe's land as an alternative to state law.[67] The reference of the Tribal Resolution, Texas contended, meant the Texas Restoration Act "should be read 'broadly' to allow Texas to apply its gaming regulations on tribal lands."[68] Conversely, the Tribe contended Texas's reading "would represent 'a substantial infringement upon the Tribe['s] power of self-government…[i]nconsistent with the central purposes of restoration of the federal trust relationship."[69] The Court sided with the Tribe and ruled the terms "enacted in accordance with" did not incorporate the Resolution because Congress knows how to adopt resolutions into federal law and does so clearly.[70]

#### *2. The Court does not Determine Policy*

The Court ruled the unworkability in distinguishing between prohibition and regulation is irrelevant.[71] The Court's role is "to discern and apply the policy" Congress adopted, not "question whether Congress

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61. *Id.*
62. *Id.* (citing State Farm Fire & Casualty Co. v. United States ex rel. Rigsby, 580 U.S. 39, 34 (2016)).
63. *Id.* at 1942–43.
64. *Id.* at 1943–44.
65. *Id.* at 1942–43.
66. *Id.* at 1942 (citing Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987, § 9, 101 Stat. 709–710; Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, § 14(b), 107 Stat. 1136).
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 1942–43.
71. *Id.* at 1943.

adopted the . . . most workable policy."[72] In dismissing Texas's policy argument, the Court agreed that both Public Law 280[73] (PL 280) and IGRA create a prohibition and regulatory distinction which creates challenges.[74] Further, the Court reasoned Texas's interpretation of the Texas Restoration Act created its own unworkability challenges.[75] Section 107(c) would task federal courts with "enforcing the minutiae of state regulations governing the conduct of permissible games," which is "a role usually played by state gaming commissions or the National Indian Gaming Commission."[76]

## IV. DISSENT

Four members of the Court: Chief Justice Roberts, Justice Thomas, Justice Alito, and Justice Kavanaugh, dissented.[77] The dissent went through largely the same analysis as the majority, focusing on the plain meaning of the statute and Congressional intent, but interpreted the Texas Restoration Act to allow Texas to regulate gaming on the Tribe's land for two reasons. First, in Section 107(a) of the Texas Restoration Act, Congress did not adopt a narrow definition of gaming by referring to specific games, rather the language referred to "gaming activities" generally.[78] Second, the use of the word "prohibited" did not implicitly incorporate PL 280 and *Cabazon*.[79]

The dissent's analysis concluded the plain text of the Texas Restoration Act applied all of Texas's gaming laws to the Tribe.[80] The dissent, in reading Section 107(a), used two pieces of the statute to reach its conclusion. First, it reasoned that because Congress used the term "all gaming activities," and not "types of gambling" or games "categorically" banned, Texas law should apply because "all gaming activities" is broad, not narrow.[81] Second, the language of Section 107(a) incorporating the Tribal Resolution "is statutory text."[82] Congress included language that incorporated the Tribal Resolution at the Tribe's "request."[83] The dissent determined, therefore, that Texas law should apply to the Tribe because the

72. *Id.* at 1943–44.
73. Pub. L. No. 280 (codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360)
74. *Id.* at 1944.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.* at 1948.
79. *Id.* at 1950.
80. *Id.* at 1948–50.
81. *Id.* at 1948–49.
82. *Id.* at 1949.
83. *Id.*

Resolution is categorical, and all gaming by the Tribe that is inconsistent with Texas laws and regulations is banned.[84]

Further, the dissent analyzed the use of the word "prohibited" and reached the conclusion it did not incorporate the framework from PL 280 and *Cabazon*.[85] In reaching this conclusion, the dissent analyzed Section 105(f) of the Texas Restoration Act where Congress explicitly incorporated PL 280.[86] Section 107(a) does not share a resemblance to PL 280, nor does the use of the word "prohibited" indicate Congress intended the word as a term of art.[87] Lastly, because Section 107(b) refers to both "civil" penalties and administrative "regulations," Congress likely did not "implicitly incorporate only Texas's gaming laws that are criminal/prohibitory."[88] Therefore, the dissent reasoned *Cabazon's* framework should not apply and Texas's regulatory gaming laws should apply to the Tribe.[89]

## V. CONCLUSION

Navigating the complexities of Federal Indian Law and statutory interpretation, this case centered around a nuanced analysis of the Texas Restoration Act. The Court held the Texas Restoration Act does not allow Texas to regulate gaming on the Tribe's land where Texas has not categorically banned gaming under Texas law.[90]

The holding is significant in the context of the fight for tribal sovereignty. The first sentence of this case states, "Native American Tribes possess 'inherent sovereign authority over their members and territories.'"[91] Supreme Court rulings around tribal sovereignty in the context of economic activities are muddled.[92] The tension between states and tribes

84. *Id.*
85. *Id.* at 1950.
86. *Id.*
87. *Id.*; *see* note 56.
88. *Id.*
89. *Id.*
90. *Id.* at 1944.
91. *Id.* at 1934 (quoting Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Oklahoma, 498 U.S. 505, 509 (1991)).
92. *See, e.g.*, Washington State Dept. of Licensing v. Cougar Den, Inc. 139 S. Ct. 1000 (2019) (holding the State of Washington could not tax fuel purchased by the Yakama Tribe to sell to tribal members); Wagnon v. Prairie Band of Potawatomi Indians, 546 U.S. 95 (2005) (holding the State of Kansas's tax on fuel purchased by the Prairie Band of Potawatomi Tribe from off-reservation fuel distributors did not infringe on the Tribe's sovereignty).

regarding regulation of gaming activity has led to much litigation.[93] However, gaming is an activity with a deep history amongst tribes.[94] And in this case, the Supreme Court promoted tribal sovereignty.

93. *See generally*, California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) (wherein California tried to regulate tribal gaming and the Court held Public Law 280 did not allow California to apply state regulatory gaming laws to tribal bingo operations); Justin Neel Baucom, *Bringing Down the House: As States Attempt to Curtail Indian Gaming, Have We Forgotten the Foundational Principles of Tribal Sovereignty*, 30 AM. INDIAN L. REV. 423 (2006) (discussing state attempts to curtail tribal gaming).

94. *See, e.g.*, Renee Roman Nose, *An Oral History of the Ancient Game of Sla-Hal: Man Versus Animals*, INDIAN COUNTRY TODAY, (last updated Sept. 13, 2018), https://perma.cc/XHK4-ZYC6.