

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

North Metro Harness Initiative LLC d/b/a
Running Aces,

Case No. 24-cv-01369 (JWB/LIB)

Plaintiff,

v.

**PROPOSED *AMICUS CURIAE* BRIEF
BY STATE OF MINNESOTA.**

Keith Anderson; Michael Beattie, et. al.,

Defendants.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The State of Minnesota files this brief—in support of neither party—to provide context and information regarding the importance of compacts between the State of Minnesota and tribal entities within its borders.¹ As the chief executive of the State, the Governor is solely responsible for negotiating Tribal-State compacts to regulate gaming in Minnesota. Minn. Stat. § 3.9221, subd. 2 (2024). The State has a vital interest in ensuring that compacts with tribal nations remain effective, binding, and reliable as a foundation for productive relationships between sovereign entities. This case presents numerous questions regarding the agreements reached between the State and the sovereign nations native to its land. Based on the State’s substantial interest in the Court’s resolution of the issues presented in this litigation, the State respectfully submits this amicus curiae brief.

¹ No portion of this brief was prepared by counsel for a party, and no monetary contribution was received. *See* Fed. R. Civ. App. P. 29(a)(4)(E).

INTRODUCTION

This case concerns compacts between the State and tribal nations dating back to 1989, which memorialized the intent for the Tribes to operate video games of chance and conduct other card gaming to at least the same extent as non-tribal citizens. The State has a substantial interest in cases involving the interpretation and validity of tribal-state compacts. The State therefore writes to provide context and request the Court recognize the compacts as important and carefully crafted expressions of the Tribal-State relationship.

ARGUMENT

I. BACKGROUND

Mechanical devices simulating poker, blackjack, or other common gambling games have existed in some form for well over 100 years.² Their popularity quickly boomed, and in 1946 the federal government collected taxes on 8,479 slot machines in Minnesota.³ However, during that time, “gambling with cards, dice, gaming tables, or any other gambling device whatever” was prohibited. Minn. Stat. § 614.06 (1945). And it was similarly illegal to allow “a gambling device to be set up or used for the purpose of

² DAN GLIMNE, *Slot Machine*, BRITANNICA (last updated Aug. 13, 2024), available at <https://www.britannica.com/topic/slot-machine>.

³ MINNESOTA STATE LOTTERY, GAMBLING IN MINNESOTA: AN OVERVIEW, at 5 (March 2011), available at <https://assets1.cbsnewsstatic.com/i/cbslocal/wp-content/uploads/sites/15909630/2011/10/gambling-in-minnesota-2011.pdf> (citing VITT, MICHAEL J, *Wagering the Future: Gambling and the Law in Minnesota*, THE BENCH & BAR OF MINNESOTA (May/June 1993)).

gambling.” Minn. Stat. § 614.07 (1945). To sidestep the prohibition on using slot machines for the purpose of gambling, the machines used around the state did not pay out coins or tokens, and only awarded free plays as prizes.⁴ The free plays could be accumulated by the player, and some establishments allowed players to redeem the free plays for consideration, which in practice enabled players to use the machines as gambling devices.⁵

This tenuous existence persisted until 1984, when the legislature legalized the possession and operation of video poker machines. Minn. Stat. §§ 349.50–.60 (1984). However, the legislature did not amend the statute that prohibited gambling. Minn. Stat. § 609.75–.76 (1984) (defining illegal gambling). So although bingo was doing a booming business, slot machines and other types of gambling idled, waiting for firmer footing.

In 1987, the Tribes received the signal they needed to push for new types of gambling. The United States Supreme Court’s *Cabazon* decision held that states could not regulate bingo as a criminal matter, and that civil/regulatory questions were the domain of the Tribes. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987). *Cabazon* prompted Congress to develop a mutual system by which Tribes and states could negotiate the parameters of gambling on tribal land rather than continue with states enforcing their regulations on tribal territory.

⁴ JOHN WILLIAMS, GAMBLING IN MINNESOTA, A SHORT HISTORY, at 13 (House Research Department, March 2005) available at <https://www.house.mn.gov/hrd/pubs/gambhist.pdf>.

⁵ *Id.*

II. GAMING BY AGREEMENT.

Cabazon reinforced the fact that states are not authorities over tribal nations: “[T]ribal sovereignty is dependent on, and subordinate to, only the Federal government, not the states.” *Id.* at 207 (citing *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 154 (1980)). Consistent with their status as equals, Congress’s new method for regulating gaming on tribal lands broadly allowed some types of games, and it required each party to legalize and agree through a compact to authorize the rest.

Under the Indian Gaming Regulatory Act (“IGRA”), games are divided into three categories based on their complexity and prize structure. 25 U.S.C. § 2703(6)–(8). Class I and II games, including social games, bingo, and other games of chance, do not require compacts to be operated legally on tribal land. Class III games, including banking card games such as baccarat and blackjack, as well as slot machines (including electronic facsimiles), require three things to be legally played on tribal land. 25 U.S.C. § 2703(8); 25 U.S.C. § 2710(d). First, the tribe must have an ordinance or resolution authorizing the game. 25 U.S.C. § 2710(d)(1)(A). Second, the state must permit “such gaming for any purpose by any person, organization, or entity.” *Id.* at (d)(1)(B). Third, the gaming must be “in conformance with a Tribal-State compact entered into by the Indian tribe and the state.” *Id.* at (d)(1)(C).

The State has reached detailed agreements with each of the 11 Tribes in Minnesota to authorize each Tribe to conduct electronic video games of chance and card-playing.⁶ In 1989 and 1990, the Governor negotiated an agreement with each Tribe to “govern the licensing, regulation, and operation of video games of chance” within each reservation.⁷ The compacts conferred the “opportunity to operate video games of chance in a way that will benefit the Tribe economically, that will insure [sic] fair operation of the games, and that will minimize the possibilities of corruption and infiltration by criminal influence.” The compacts acknowledged each Tribe’s intent to “operate video games of chance pursuant to this Compact contemporaneously with its Class II gaming operations.”

In 1991 the Governor negotiated compacts with each Tribe to provide the opportunity to offer blackjack.⁸ The compacts defined the game of blackjack and acknowledged that “the positive economic effects of such gaming enterprises may extend beyond tribal governments to the tribe’s neighbors and surrounding communities, and may help foster mutual respect and understanding among Indians and non-Indians.”⁹ In exchange for the blackjack compacts, the State received waivers from each Tribe of its

⁶ ALCOHOL AND GAMBLING ENFORCEMENT, TRIBAL STATE GAMING COMPACTS, *available at* <https://dps.mn.gov/divisions/age/gambling/Pages/tribal-state-gaming-compacts.aspx> (providing copies of each of 22 compacts and amendments).

⁷ *E.g.* TRIBAL-STATE COMPACT FOR CONTROL OF CLASS III VIDEO GAMES OF CHANCE ON THE GRAND PORTAGE BAND OF LAKE SUPERIOR CHIPPEWA RESERVATION IN MINNESOTA, at 2 (June 6, 1990).

⁸ *E.g.* TRIBAL-STATE COMPACT FOR CONTROL OF CLASS III BLACKJACK ON THE LOWER SIOUX COMMUNITY RESERVATION IN MINNESOTA (Sept. 25, 1991).

⁹ *Id.*

right to request compacts for class III games based on private social bets or pari-mutuel wagering.¹⁰ These compacts demonstrated the mutual understanding between the State and the Tribes that the Tribes could conduct the same types of gambling allowed elsewhere in Minnesota.

Compacts between tribes and states do not by themselves authorize gaming. It is not until such gaming is authorized by tribal ordinance and permitted within the state that a tribe can offer any particular game within its borders. 25 U.S.C. § 2710(d). The legality of games on tribal land may therefore change as state law changes or as tribal ordinances are modified. But the ability of the legal landscape to shift does not mean that the compacts reached between the State and the Tribes should be at issue. The compacts remain valid agreements.

Given the interwoven regulatory landscape, which requires each party to independently authorize gaming, then agree on terms for its governance on tribal land, states and Tribes should be free to reach valid, enforceable agreements regardless of shifts in either entity's specific regulations. The language of the compacts demonstrates that Minnesota and the Tribes are sophisticated parties who know how to account for potential statutory uncertainty. For example, the compacts with the 11 Tribes contained the following language:

This compact is entered into pursuant to the IGRA, State law and [tribal] law. . . . It is the intent of the State that, if the Minnesota Legislature prohibits the operation or use of video games of chance for all purposes as against public policy and as a matter of criminal law, this section shall not be construed to provide for continued operation by the [Tribe] of video games

¹⁰ *Id.* at 3.

of chance pursuant to this compact. It is the intent of the [Tribe] that, if the Minnesota Legislature prohibits the use of video games of chance for all purposes as against public policy and as a matter of criminal law, this section shall not be construed to prohibit the continued operation by the [Tribe] of video games of chance pursuant to this compact.

These agreements between sovereign entities do not conflict with state law. Indeed, they account for the interplay and potential changes. The compacts' effects should not be altered without a compelling reason. This case does not present that compelling reason.

III. THE COMPACTS SHOULD NOT BE DISTURBED.

Minnesota has taken great care to recognize and develop relationships with the 11 Indian Tribes within its borders. Minnesota Statutes section 10.65, subdivision 1 (2024) acknowledges and supports “the unique status of the Minnesota Tribes and their absolute right to existence, self-governance, and self-determination.” The legislature codified the importance of “working together, learning from one another, and partnering where possible” with Indian Tribes. *Id.* at subd. 2. To that end, the importance of Tribal-State compacts cannot be overstated as a means of collaboration toward mutual benefit.

This Court should not disturb the compacts between Minnesota and the Tribes, because they have been authorized by Congress and have been given the force and effect of law. “[W]here Congress has authorized the States to enter into a cooperative agreement and the subject matter of that agreement is an appropriate subject for congressional legislation, Congress’ consent transforms the States’ agreement into federal law under the Compact Clause, and construction of that agreement presents a federal question.” *Cuyler v. Adams*, 449 U.S. 433, 434, (1981); *Kansas v. Nebraska*, 574 U.S. 445, 456 n.5 (2015) (applying *Cuyler* to “water disputes between States” despite argument that such clashes

involve “sovereign rights”). So, although this Court may construe and interpret the compacts to discern their meaning, it should exercise extreme caution before deciding any questions directed at their validity. The many compacts between Minnesota and the Tribes should be upheld as agreements between sovereign entities independent of the state laws or tribal ordinances that may impact the case.

Furthermore, Minnesota has a robust executive mechanism in place to ensure gambling is conducted legally throughout the state.¹¹ The Alcohol and Gambling Enforcement Division (“AGED”) of the Department of Public Safety is tasked with monitoring gambling statewide. Minn. Stat. § 299L.02 (2024). AGED’s website includes a tipline, where concerned citizens can report potential violations for investigation.¹² Special investigators inspect premises and devices, and special agents do background investigations to guarantee that gaming complies with statutory and compact requirements. *Id.* AGED’s extensive experience in this area includes monitoring the tribal casinos, conducting extensive criminal investigations, and ensuring compliance with tribal regulations.¹³ As the agency most familiar with the legal framework surrounding the

¹¹ ALCOHOL AND GAMBLING ENFORCEMENT, WHAT WE DO, *available at* <https://dps.mn.gov/divisions/age/about/Pages/default.aspx>.

¹² ALCOHOL AND GAMBLING ENFORCEMENT, CONTACT, *available at* <https://dps.mn.gov/divisions/age/contact/pages/default.aspx>.

¹³ ALCOHOL AND GAMBLING ENFORCEMENT, GAMBLING, *available at* <https://dps.mn.gov/divisions/age/gambling/Pages/default.aspx>.

complicated equilibrium of state and tribal interests, AGED's executive power ensures that the statutes and compacts are implemented consistently statewide.

The compacts each tribe agreed to in 1989 that govern video games of chance declare, "A principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government."¹⁴ 25 U.S.C. § 2702(1). Additionally, "The State recognizes the positive impacts that gaming may provide to the Community." These compacts are just one aspect of the complex network that balances the interests of the State with those of the Tribes.¹⁵ This Court should not unbalance this important component of Tribal-State relations without compelling reason.

¹⁴ *E.g.* TRIBAL-STATE COMPACT FOR CONTROL OF CLASS III VIDEO GAMES OF CHANCE ON THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY RESERVATION IN MINNESOTA, at 2 (Dec. 4, 1989), *available at* <https://dps.mn.gov/divisions/age/gambling/Documents/Gaming%20Compacts/Shakopee%20Mdwakanton%20Sioux%20Video%20Games%20of%20Chance%201989.pdf>.

¹⁵ DOUGLAS P. THOMPSON, THE RIGHT TO HUNT AND FISH THEREIN (2020) (discussing the efforts tribes have made since the 1970s to regain their hunting and fishing rights in lands ceded by treaty) *available at* <https://www.1854treatyauthority.org/images/ToHuntandFish.updated2020.pdf>

CONCLUSION

The State respectfully requests the Court remain cognizant the importance of meaningful, enduring compacts during its diligent review of this Case.

Dated: August 27, 2024

Respectfully submitted,

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