No. 02-1563

In The
Supreme Court Of The United States

SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA,

Petitioner,

v.

IOWA MANAGEMENT & CONSULTANTS, INC.,

Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.,* provides an extensive regulatory scheme for the conduct of gaming on Indian land. Included in this regulatory scheme is the requirement that the Chairman of the National Indian Gaming Commission approve a Tribe's Gaming Ordinance and any management contract for the operation and management of gaming activity. The question presented is:

> Does the Indian Gaming Regulatory Act, 25 U.S.C. §2701 *et seq.,* completely preempt state court jurisdiction over a dispute concerning the nature and validity, under a Tribe's Gaming Ordinance and federal law, of a contract between that Tribe and a non-Indian casino management company?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Sac & Fox Tribe of the Mississippi in Iowa respectfully petitions for a writ of certiorari to review the judgment and opinion of the Supreme Court of Iowa in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Iowa (App. A) is reported at 656 N.W.2d 167. The opinion of the Iowa District Court for Tama County, Case No. EQV 004156 (App. B), is unreported.

JURISDICTION

The judgment of the Iowa Supreme Court was entered on January 23, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

Pertinent provisions of the following are set forth in the appendix:

U.S. Const. Art. I, § 8, Cl. 3;

U.S. Const. Art. VI, Cl. 2;

Title 25 of the United States Code, §§ 2701, 2702, 2710 and 2711;

Sac & Fox Tribe of the Mississippi in Iowa Gaming Ordinance (hereinafter the "Gaming Ordinance"), §§ 1.01, 1.02, 2.01, 2.03, 2.04, 3.01, and 3.03 ; and

Compact between the Sovereign Indian Nation of the Sac & Fox Tribe of the Mississippi in Iowa and the Sovereign State of Iowa to Govern Class III Gaming on Indian Lands of the Sac & Fox Tribe of the Mississippi in Iowa (hereinafter the "Gaming Compact"), §§ 5, 6, 7.1, and 17.3.

STATEMENT OF THE CASE

This case involves a gaming-related contract between a federally-recognized Indian tribe – the Sac & Fox Tribe of the Mississippi in Iowa ("Tribe"), and a non-Indian party – Iowa Management & Consultants, Inc., an Iowa Corporation ("IMCI"). The question posed is whether the Indian Gaming Regulatory Act (the "IGRA"), 25 U.S.C. § 2701 *et seq.*, completely preempts state court jurisdiction over disputes arising from the governance of gaming activities on Indian land.

In December 1996, the Tribe and IMCI entered into a contract under which IMCI would provide advice to the Tribe on matters relating to the operation of the Tribe's gaming enterprise, the Meskwaki Casino, located on federal land near Tama, Iowa. The Tribe engages in Class II and Class III gaming, in accordance with the IGRA, at the Meskwaki Casino.

The National Indian Gaming Commission ("NIGC") reviewed the December 1996 contract between the Tribe and IMCI, and on March 5, 1997, informed the Tribe that although the contract was labeled a "consulting agreement," the NIGC believed that IMCI was in violation of the IGRA, 25 U.S.C. §§ 2710, 2711, by either managing the Tribe's gaming operation without NIGC approval of the contract or by obtaining a proprietary interest in the Tribe's gaming operation.

In response to the NIGC's opinion, the Tribe and IMCI redrafted the contract. The redrafted contract was signed on October 14, 1997. Immediately following this redrafting, the NIGC commenced an investigation to determine whether IMCI was in violation of the IGRA under the contract terms. During the course of the investigation by the NIGC, the Sac & Fox Gaming Commission ("Tribal Gaming Commission") also commenced an investigation into the contract in accordance with the NIGC-approved Gaming Ordinance.

In December of 1997, IMCI sought arbitration under the contract's arbitration clause. The Tribe asserted that the contract was void and, therefore, the claim was not arbitrable. The arbitration panel concluded that it could not proceed with the arbitration unless IMCI were able to first obtain a valid order compelling arbitration.

The Tribal Gaming Commission conducted a two day hearing in May of 1998 and concluded in June of 1998 that IMCI violated tribal gaming regulatory laws by: 1) entering into a contract with the Tribe's gaming enterprise, in excess of $5,000, without seeking approval of that contract from the Tribal Gaming Commission; 2) failing to obtain tribal gaming licenses; and 3) contracting to manage the Tribe's Casino under the guise of a "consulting" contract and not seeking Tribal Gaming Commission approval of this management contract. In the Matter of the Investigation and Licensing Inquiry Concerning Iowa Management and Consultants, Inc. and Lowell Junkins, Findings of Fact, Conclusions of Law, and Recommendations (Sac & Fox Gaming Comm. June 9, 1998) ("IMCI I") (App. F) (*citing* Gaming Ordinance, §§ 1.01, 1.02, 2.01, 2.03, 2.04, 3.01 and 3.03). These determinations by the Tribal Gaming Commission, pursuant to tribal law, led to the Tribal Gaming Commission's conclusion that IMCI was disqualified from working at the Tribe's Meskwaki Casino gaming operation without valid tribal gaming licenses and, further, that the contracts between IMCI and the Tribe were void. (App. F __).

The NIGC's investigation of the 1997 contract ultimately was placed on inactive status after the Tribal Gaming Commission determined that IMCI's violations of tribal law voided both contracts.

After the Tribal Gaming Commission entered an order voiding the contract based upon tribal gaming regulatory law, and after the NIGC then tabled its investigation, IMCI brought suit in the United States District Court for the Northern District of Iowa to compel arbitration and to establish an escrow account under the terms of the contract. The District Court granted the Tribe's motion to dismiss the complaint for lack of subject matter jurisdiction, concluding that under the "well-pleaded complaint" rule, IMCI did not present a federal question in its affirmative allegations and instead impermissibly relied upon the Tribe's anticipated defense to create federal question jurisdiction. Iowa Management & Consultants, Inc. v. Sac & Fox Tribe

of the Mississippi in Iowa, No. 1:99cv48 (N.D. Iowa filed May 6, 1999). The District Court did not reach the merits of IMCI's claim.

IMCI appealed the District Court ruling to the United States Court of Appeals for the Eighth Circuit. On appeal, IMCI argued for the first time that under the IGRA's comprehensive regulatory scheme, state law was completely preempted. Inasmuch as IMCI had not argued complete preemption in the District Court, however, the Court of Appeals majority opinion did not address IMCI's newly-raised assertion that the IGRA provides complete preemption. Instead, on March 23, 2000, the Court of Appeals affirmed the District Court's dismissal on the same grounds as those relied upon by the District Court, stating:

> Here, IMCI alleges a routine contract action involving the Tribe, a matter over which federal courts do not have jurisdiction [citation omitted], and IMCI's anticipatory contention that the Tribe may invoke the provisions of IGRA as a defense is insufficient to confer federal question jurisdiction on this court, [citation omitted]. IMCI's allegation that it is entitled to arbitration under the Federal Arbitration Act (FAA) also fails to present a federal question ….

Iowa Management & Consultants, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa, 207 F.3d 488, 489 (8th Cir. 2000) ("IMCI II").

Frustrated with this result, IMCI then filed the instant action in the Iowa District Court in and for Tama County. The Tribe filed a motion to dismiss, citing the complete preemption by IGRA of IMCI's state law claims.[1] The state district court denied the Tribe's motion to dismiss and held that it had jurisdiction,[2] declared the Tribal Gaming Commission's determination of the contract as void under tribal law to be erroneous, ruled against the Tribe on the merits of the IGRA management contract issue, and entered an order compelling arbitration. Iowa Management & Consultants, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa, Case No. EQV 004156 (App. B). The Tribe appealed the state district court's order compelling arbitration to the Supreme Court of Iowa, raising again the complete preemption by IGRA of IMCI's state law claims.[3]

After unsuccessfully seeking a stay pending appeal from the Iowa Supreme Court, the Tribe participated in the arbitration, and a split arbitration panel entered an award in favor of IMCI on its state law claims. The Tribe then filed an action against IMCI in the United States District Court for the Northern District of Iowa to vacate the arbitration award, asserting that the award and the underlying contract were invalid under various federal law provisions, including the IGRA. The District Court dismissed the suit, based in part on the presumed validity of the state district court's order compelling arbitration. Sac & Fox Tribe of the Mississippi in Iowa v. Iowa Management & Consultants, Inc., No. C01-0169 (N.D. Iowa May 30, 2002). The Tribe has

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1 Section I of the brief to the state district court was captioned "Under Supreme Federal Law, this Court Lacks Jurisdiction Over the Tribe and the Subject Matter of These Proceedings." Section II was captioned "The Court Cannot Hear the Matter nor Determine the Validity of the Underlying Agreement because State Court Jurisdiction Over Matters Involving Indian Gaming is Completely Preempted by Federal Law."

2 Iowa Management & Consultants, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa, Case No. EQV 004156, slip op. at 4 (App. B).

3 Section I of the Tribe's brief to the Iowa Supreme Court contained a discussion which was captioned "The Indian Gaming Regulatory Act Preempts State Jurisdiction to Determine the Validity of a Contract Involving Indian Gaming".

appealed that decision to the United States Court of Appeals for the Eighth Circuit, and oral argument was heard on February 14, 2003; no decision has yet been rendered.

In the instant action, the Supreme Court of Iowa affirmed the state district court's assumption of jurisdiction. Iowa Management & Consultants, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa, 656 N.W.2d 167, 171 (Iowa Jan. 23, 2003) ("IMCI III") (App. 9a). It also affirmed the determination that the Tribal Gaming Commission had erred in its interpretation and application of its own gaming ordinance. Id. at 174. (App. A). It did, however, reverse the state district court's judgment to the extent it had attempted summarily to adjudicate the Tribe's defense that the entire agreement, including the arbitration clause, was void under the IGRA as an unapproved management agreement, and remanded for further proceedings thereon.

REASONS FOR GRANTING THE PETITION

State and federal courts have repeatedly held that, in enacting IGRA, Congress intended completely to preempt state court jurisdiction over the conduct and regulation of gaming on Indian lands. The Iowa Supreme Court's decision asserting state court jurisdiction is in conflict with the decisions of those courts and the policy and purpose behind IGRA, and should be reviewed and corrected by this Court.

I. THIS COURT HAS JURISDICTION.

28 U.S.C. § 1257(a) provides this Court with jurisdiction over "final judgments or decrees" of a state supreme court. As recently as its decision this Term in Pierce County, Wash. v. Guillen, 537 U.S. ___, 123 S.Ct. 720 (2003), the Court has recognized that there are cases in which the decision of a state supreme court as to an important federal question is "final" for purposes of § 1257 even though a remand has been ordered as to other issues. In the present case, the Iowa Supreme Court's decision that it had jurisdiction over this matter despite the Tribe's assertion of complete federal preemption is such a decision, under the reasoning of this Court in Local No. 438 Constr. & General Laborers' Union, AFL-CIO v. S. J. Curry, 371 U.S. 542 (1963). In Local No. 438, this Court held it had jurisdiction, observing that:

> The federal question raised by petitioner in the Georgia court, and here, is whether the Georgia courts had power to proceed with and determine this controversy. The issue ripe for review is not whether a Georgia court has erroneously decided a matter of federal law in a case admittedly within its jurisdiction (compare Gibbons v. Ogden, 6 Wheat. 448, 5 L.Ed. 302) nor is it the question of whether federal or state law governs a case properly before the Georgia courts. Compare Local 174, Teamsters, etc., v. Lucas Flour Co., 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593. What we do have here is a judgment of the Georgia court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power and instead is within the exclusive domain of the National Labor Relations Board.

> Whether or not the Georgia courts have power to issue an injunction is a matter wholly separate from and independent of the merits of respondents' cause.

Id. at 548. See also Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 483 (1975) (discussing Curry).

Similarly, in the Iowa courts, the Tribe's primary argument was that the IGRA completely preempts state court jurisdiction over the issues involved in this dispute, which concerns the nature and validity of an Indian gaming contract. The Iowa Supreme Court explicitly rejected that argument, holding: "The judgment of the district court is affirmed in regard to its assumption of jurisdiction to hear and decide both the petition to compel arbitration and the tribe's federal-law defenses thereto." IMCI III at 174 (App. 15a). Like the NLRA preemption of state court jurisdiction at issue in Curry, the IGRA preemption at issue here involves an important federal policy – discussed in the following section of this Petition – requiring the subject matter to be determined by federal courts (or, in certain instances, tribal entities) and not in state courts. Accordingly, this Court has jurisdiction at this time to review the state court order at issue.

II. THE IOWA SUPREME COURT'S HOLDING THAT STATE COURTS HAVE JURISDICTION OVER TRIBAL GAMING RELATED CONTRACT DISPUTES IS IN CONFLICT WITH THE INTENT OF CONGRESS IN ENACTING THE IGRA AND WITH THE DECISIONS OF OTHER STATE AND FEDERAL COURTS.

In California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), this Court held that "[s]tate jurisdiction is pre-empted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." Id. at 216 (citing New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 334 (1983)).

Applying that standard to Indian gaming, the Court concluded, pre-IGRA, that even a state's interests in preventing the infiltration of organized crime did "not justify state regulation of the tribal bingo enterprises in light of the compelling federal and tribal interest supporting [tribal enterprise]." 480 U.S. at 221-22. Those compelling federal and tribal interests included promotion of tribal self-government and economic development by tribal and federal regulation of gaming activity on Indian lands exclusive of the state, including tribal development and implementation of federally-approved tribal ordinances regulating Indian gaming activities, and federal review and approval of gaming management contracts. Id. at 216-19.

The IGRA was adopted one year after Cabazon was decided. Both the plain language of the IGRA and its statutory history demonstrate that it maintains federal preemption of state law in the field of Indian gaming. Section 2(5) of IGRA states:

> Indian tribes have the *exclusive right* to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a

> matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2701(5) (emphasis added).

The Senate Report on the IGRA unambiguously states:

> Consistent with these principles, the Committee has developed a framework for the regulation of gaming activities on Indian lands which provides that in the exercise of its sovereign rights, unless a tribe affirmatively elects to have State laws and State jurisdiction extend to tribal lands, the Congress will not unilaterally impose or allow State jurisdiction on Indian lands for the regulation of Indian gaming activities. [IGRA] *expressly preempt[s] the field in the governance of gaming activities on Indian lands*.

S. Rep. No. 446, 100th Cong., 2d Sess. 5-6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3075-3076 (emphasis added).

A. The Iowa Supreme Court's Holding that State Courts Have Jurisdiction is in Conflict with Federal Court Decisions on the Issue, Including Those of the Federal Court of Appeals for the Circuit Which Includes Iowa.

The Iowa Supreme Court's decision conflicts with the decisions of at least two federal courts of appeals. Those circuits cite the plain language and statutory history of the IGRA in concluding that the IGRA completely preempts state jurisdiction over tribal gaming related matters such as those at issue here. See Gaming Corp. of America v. Dorsey & Whitney, 88 F.3d 536, 548-49 (8th Cir. 1996) (holding that where Indian gaming regulatory actions are implicated, state jurisdiction is entirely preempted); Cabazon Band of Mission Indians v. Wilson, 37 F.3d 430 (9th Cir. 1994) (holding IGRA preempts state tax on wagers at Indian gaming facility). Cf. Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians, 63 F.3d 1030, 1046-47, 1049 (11th Cir. 1995) (holding that IGRA neither expressly nor implicitly provides a right of action to challenge licensing procedures and decisions of tribal gaming commissions); Crow Tribe of Indians v. Racicot, 87 F.3d 1039, 1043-44 (9th Cir. 1996) (holding that tribal gaming commission determinations of issues within its jurisdiction are given preclusive effect and are not reviewable in federal courts).[4]

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[4] All gaming in Indian country is regulated by and subject to the provisions of IGRA – not even state lottery tickets may be sold in Indian country without complying with the provisions of IGRA. Coeur d'Alene Tribe v. Idaho, 842 F. Supp. 1268, 1282, 1283 (D. Idaho 1994) (holding sales of state lottery tickets must comply with IGRA and the Tribe's Ordinance). The scope of IGRA's preemption is co-extensive with the scope of IGRA, and so extends to all "Indian gaming that occurs on *Indian lands*." AT&T Corp. v. Coeur d'Alene Tribe, 45 F.Supp.2d 995, 1000 (D. Idaho 1998)(emphasis in original). Under IGRA, federal courts have exclusive jurisdiction over claims against a tribe under IGRA, while tribal regulatory and/or adjudicatory bodies retain exclusive jurisdiction to determine the validity of agreements under tribal laws. Bruce H. Lien Co. v. Three Affiliate Tribes, 93 F.3d 1412, 1419 (8th Cir. 1996) (holding that the underlying issue of a contract's validity must be resolved in tribe's fora before the tribe can be compelled to arbitrate pursuant to the provisions of that contract); Abdo v. Fort Randall Casino, 957 F.Supp. 1111, 1113-14 (D.S.D. 1997) (holding that tribal forum must determine contract's validity before exercise of federal jurisdiction over contract claims).

The most dramatic – and important – conflict is with the decisions of the federal court of appeals for the circuit which includes the state of Iowa. In Gaming Corp., supra, the Eighth Circuit discussed the structure of IGRA, the legislative history of the IGRA, and the preclusive effect IGRA has on state court jurisdiction of claims involving Indian gaming regulatory decisions. The Eighth Circuit held that state court jurisdiction is preempted where a claim implicates decisions made by a tribal gaming commission.

In Gaming Corp., the Ho-Chunk Nation's casino manager, Golden Nickel, Inc., had a provisional tribal gaming license, but was subsequently denied a permanent gaming license by the tribe's gaming commission. The other plaintiff, Gaming Corp., had a contingent plan to merge with Golden Nickel, but was also denied a permanent gaming license by the tribe's gaming commission. The effect of the denial of gaming licenses was that the plaintiffs were no longer qualified to manage the casino. Plaintiffs then brought suit against the tribe's attorneys in the Minnesota state court system, alleging inter alia that they violated state common law by intentionally and/or negligently making plaintiffs appear unsuitable for gaming licenses, resulting in the adverse tribal gaming commission ruling. After the matter was removed to federal court, plaintiffs moved for remand to state court, and the issue before the Court of Appeals was whether the case raised a federal question.

The Eighth Circuit held that the complaint against the Tribe's attorneys in connection with a tribal gaming commission decision raised a federal question because IGRA had completely preempted the field. The scope of complete federal preemption extended to "[a]ny claim which would directly affect or interfere with a tribe's ability to conduct its own licensing process." Id. at 549.

In reviewing the statutory history of IGRA, the court noted that "[e]very reference to court action in IGRA specifies federal court jurisdiction. [] State courts are never mentioned." Id. at 545 (citations and footnote omitted). The court concluded, on this basis and by examination of other federal statutes, that "Congress apparently intended that challenges to substantive decisions regarding the governance of Indian gaming would be made in federal courts." Id.

The Eighth Circuit further stated:

> Subject to congressional divestment, the [Ho-Chunk] nation has a great interest in not having its decisions questioned by the tribunal of another sovereign. IGRA reflects the intent of Congress that tribes maintain considerable control of gaming to further their economic and political development. The nation established the [tribal gaming] commission as its licensing body under IGRA and prescribed the procedures to be used by the commission under the nation's gaming ordinance. The nation also has an appeals process which the management company used in this action against the tribe. Nothing in the structure created by IGRA or in the tribal-state compact here suggests that the management companies should have the right to use state law to challenge the outcome of an internal governmental decision by the [Ho-Chunk] nation.

Id. at 549 (footnote omitted).

The Iowa Supreme Court's decision directly conflicts with Gaming Corp. Like the Ho-Chunk Nation, the Sac & Fox Tribe exercised its sovereign power to establish a Tribal Gaming Commission. Like the Ho-Chunk Nation ordinance, the Gaming Ordinance of the Sac & Fox Tribe defines the Tribal Gaming Commission's duties and authorities and establishes the Tribal Gaming Commission as an agency of the Tribal Government.

Subsequent to the Tama County District Court decision in this matter, the Eighth Circuit both reaffirmed and clarified its holding in Gaming Corp. Casino Resource Corp. v. Harrah's Entertainment, Inc., 243 F.3d 435 (8th Cir. 2001), involved a breach of contract claim between a former casino management company and a subcontractor of the management company. The tribe was not a party to the suit. Harrah's contracted to manage a proposed casino for the Potawatomi Tribe, and Harrah's and Casino Resource entered into a "Technical Assistance and Consulting Agreement." After the Potawatomi Tribe was unable to secure a tribal-state compact, Harrah's and the Tribe agreed to terminate the management agreement. Casino Resource subsequently filed suit against Harrah's in federal court claiming diversity jurisdiction over its state law claim against Harrah's.

The Eighth Circuit held that Casino Resource's state law claim was not preempted by IGRA. The fact that the plaintiff's state law claims were not preempted resulted from the clear distinction between claims which are against tribes or their agents, such as the claims in Gaming Corp. (and those in the case before this Court), and claims to which tribal interests are only peripheral, such as the claims in Casino Resource.

> Unlike the potential infringement on a tribe's governance of gaming that was present in Gaming Corp., a *non-tribal entity's* state law claim (that does not implicate tribal interest) *against another non-tribal entity* is not of central concern to IGRA. In Gaming Corp., the fiduciary relationship between the tribe and law firm underpinned our conclusion. 88 F.3d at 549.

243 F.3d at 440 (emphasis added) (citations omitted). The court further explained that "[a] contract dispute with the Nation itself would present another situation altogether." Id. at 439 n.5.

In fulfillment of the duties bestowed upon it by the IGRA, pertinent provisions of the Gaming Compact (App. D), and the Gaming Ordinance, the Tribe's Gaming Commission here investigated IMCI's actions to determine if IMCI and its employees complied with *tribal* laws. The Tribal Gaming Commission held that it had lawful jurisdiction under the Gaming Ordinance to determine whether IMCI's purported contract violated tribal law and/or whether IMCI was required to obtain Gaming Commission approval of its contract prior to working in the heavily regulated field of Indian gaming. IMCI I at 1-2; Gaming Ordinance at Chap. 2, §2.04; Chap. 3, §3.01; and Chap. 4. The Tribal Gaming Commission determined that IMCI violated tribal gaming regulatory laws, and therefore declared the contract void. IMCI I (App. F__).

The distinction the Eighth Circuit drew between Gaming Corp. and Casino Resource reaffirms that "[a]ny claim which would directly affect or interfere with a tribe's ability to

conduct its own licensing process should fall within the scope of complete preemption." Gaming Corp., 88 F.3d at 549. The rationale stated by the Eighth Circuit was that "[i]f a state, through its civil laws, were able to regulate the tribal licensing process outside the parameters of its compact with the [tribe], it would bypass the balance struck by Congress." Id.

IMCI's position in the case below is materially identical to that advanced by the plaintiffs in Gaming Corp., except that, if anything, the nexus between tribal governmental decision-making and the assertion of state jurisdiction is more immediate here than in Gaming Corp. The plaintiffs in Gaming Corp. sought a ruling against the Tribe's attorneys, but not against the Tribe itself. In the present case, IMCI directly challenges the Tribal Gaming Commission's decision, which implicated licensing and related gaming regulatory issues under tribal law, in direct contravention of the holding in Gaming Corp. The Iowa Supreme Court based its holding upon its erroneous conclusion that the Gaming Commission incorrectly interpreted tribal gaming regulatory law, as codified in the Sac & Fox Tribe's Gaming Ordinance. IMCI III at 174 (App. 15a) (holding that, contrary to the Gaming Commission's interpretation of tribal gaming regulatory law, "the contract is not one that must be approved by the tribal gaming commission under the ordinance").

The Iowa Supreme Court has placed itself in the position of regulating the Sac & Fox licensing process and declaring actions of the Tribe's gaming regulatory body to be invalid. Such a result is directly contrary to federal court precedents, including those of the circuit in which Iowa is located, and should be reviewed – and reversed – by this Court.

B. The Iowa Supreme Court's Decision is also in Conflict with the Decisions of Other State Courts.

Few plaintiffs have attempted to assert that state courts have jurisdiction over tribal gaming regulation, undoubtedly because federal law mandates that state jurisdiction is preempted. In the few cases which have been brought, the state courts, like their federal counterparts, have almost uniformly held that IGRA preempts state law and state jurisdiction related to tribal gaming.

For example, after a comprehensive analysis of the statutory history of the IGRA, the California Court of Appeals held that "federal courts have exclusive jurisdiction to review issues involving Indian gaming activities." Great Western Casinos, Inc. v. Morongo Band of Mission Indians, 88 Cal. Rptr.2d 828, 841 (Cal. Ct.App. 1999). Great Western Casino brought suit in state court against the Morongo Band, individual officials and members of the band, the Band's law firm, and a member of that firm, asserting numerous state law claims and a federal Racketeer Influenced and Corrupt Organizations Act claim. The California trial court dismissed all claims on grounds of tribal sovereign immunity and federal preemption and the state court of appeals affirmed. This Court denied certiorari. 531 U.S. 812 (2000).

Similarly, in Mashantucket Pequot Gaming Enterprise v. Kennedy, 26 Conn. L. Rptr 674, 2000 W.L. 327243 (Conn. Super. Ct. 2000), the Connecticut Superior Court held that the IGRA preempted state jurisdiction. In Mashantucket, a Connecticut state statute established that a contract to extend credit for gaming purposes was void as against public policy, but the tribal-state compact permitted the tribe to extend credit. The court determined that the IGRA

preempted state law, holding that the tribal-state compact has the force of federal law, preempting the state statute. See also J.C. Hatcher v. Harrah's NC Casino Co., 565 S.E.2d 241, 243 (N.C. App. 2002) (stating "we agree that the IGRA preempts state laws regulating gaming"); Calvello v. Yankton Sioux Tribe, 584 N.W.2d 108 (S.Dak. 1998) (relying on Gaming Corp. to hold that IGRA completely preempts state jurisdiction).

These state court decisions further highlight the important error of the Iowa Supreme Court's decision, an error which this Court should exercise this opportunity to review and correct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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