No. 20-493

In the Supreme Court of the United States

YSLETA DEL SUR PUEBLO, ET AL., PETITIONERS

v.

STATE OF TEXAS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

The Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, § 107(a), 101 Stat. 668, prohibits petitioner from conducting "[a]ll gaming activities which are prohibited by the laws of the State of Texas." The question presented is:

Whether the Act subjects petitioner to the entire body of Texas gaming statutes and regulations or, consistent with the framework of *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), prohibits only those gaming activities that the State bars rather than regulates.

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INTEREST OF THE UNITED STATES

This case concerns the gaming provisions of the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, § 107, 101 Stat. 668-669, which the Fifth Circuit has construed to require state regulation of gaming on the lands of those Tribes. That interpretation has displaced federal gaming regulation under the Indian Gaming Regulatory Act (IGRA), 18 U.S.C. 1166-1168, 25 U.S.C. 2701 *et seq*. The Court's decision in this case therefore will likely affect the regulatory authority of the National Indian Gaming Commission under IGRA. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. a. Petitioner Ysleta del Sur Pueblo (petitioner) is a federally recognized Indian tribe with a reservation near El Paso, Texas. Pet. App. 1. In 1968, Congress recognized petitioner as an Indian tribe and simultaneously transferred any federal trust responsibility to the State of Texas. Act of Apr. 12, 1968, Pub. L. No. 90-287, § 2, 82 Stat. 93. For the next 15 years, the State held petitioner's 100-acre reservation in trust for petitioner. Pet. App. 19. In 1983, however, the State reversed course after its Attorney General concluded that the Texas constitution forbids the State from entering into a trust relationship with an Indian tribe. *Id.* at 19-20. In response, Congress enacted the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Restoration Act or Act), Pub. L. No. 100-89, 101 Stat. 666, to "restore[]" a "trust relationship" between the federal government and petitioner (as well as between the federal government and the Alabama-Coushatta Tribe). §§ 103(a), 203(a), 101 Stat. 667, 670.[1]

b. This case concerns Section 107 of the Restoration Act, which addresses gaming on petitioner's tribal land. That section changed significantly between the legislation's 1984 introduction and its 1987 enactment.

The initial bills to restore the United States' trust relationship with the tribes did not mention gaming. See H.R. 6391, 98th Cong. (Oct. 3, 1984); H.R. 1344, 99th Cong. (Feb. 28, 1985). After an October 1985 hearing before the House Committee on Interior and Insular Affairs, the Texas Comptroller of Public Accounts expressed opposition to the legislation unless it was amend-

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[1] The Restoration Act was formerly codified at 25 U.S.C. 731-737, and 1300g to 1300g-7 (2012). References herein are to the Public Law, not the U.S. Code.

ed to make state laws governing gaming directly applicable on petitioner's reservation. Pet. App. 121; see Ysleta del Sur Pueblo Council, Tribal Resolution T.C.-02-86 (Mar. 12, 1986) (1986 Tribal Resolution) (reprinted at Pet. App. 121-124). The House Committee thereafter added to H.R. 1344 a provision—Section 107—which authorized gaming governed by "tribal ordinance or law," but provided that, unless amended by the Secretary of the Interior and submitted to Congress, the "[tribal] requirements shall be identical to the laws and regulations of the State of Texas regarding gambling, lottery and bingo." H.R. Rep. No. 440, 99th Cong., 1st Sess. 2-3 (1985). Petitioner agreed to that provision, see Pet. App. 122, and the House of Representatives passed the bill as amended, see 131 Cong. Rec. 36,565, 36,570 (1985).

The State, however, continued to oppose the bill because it did not provide for the direct application of state law governing gaming. See Pet. App. 20-21, 121. In response, petitioner adopted the 1986 Tribal Resolution, which expressed petitioner's opposition to the "proposal that H. R. 1344 be amended to make state gaming law applicable on the reservation," but which also expressed petitioner's lack of interest in "conducting high stakes bingo or other gambling operations on its reservation" and its preference that "any gambling or bingo in any form on its reservation" instead be "prohibit[ed] outright." *Id.* at 121-123 (emphasis omitted). Petitioner's counsel explained at a Senate hearing that, "[i]n order to quiet the controversy that surrounds this issue, the tribe is simply requesting that the legislation be amended to prohibit gambling altogether." *Restoration of Federal Recognition to the Ysleta del Sur Pueblo and the Alabama and Coushatta Indian Tribes of Texas:*

Hearing on H.R. 1344 Before the Senate Select Comm. on Indian Affairs, 99th Cong., 2d Sess. 23 (1986) (statement of Don B. Miller). Consistent with that request, the Senate Select Committee amended Section 107 of H.R. 1344 to prohibit all gaming on petitioner's reservation. S. Rep. No. 470, 99th Cong., 2d Sess. 4 (1986). The Senate passed that bill with the Committee's reported text for Section 107(a): "Gaming, gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas is hereby prohibited on the tribe's reservation and on tribal lands." 132 Cong. Rec. 25,874-25,875 (1986). One day later, however, the Senate vitiated all action on the legislation. *Id.* at 26,188.

In January 1987, H.R. 318—a bill substantially identical to that Senate version of the Restoration Act—was introduced in the House. See H.R. 318, 100th Cong., 1st Sess. (Jan. 6, 1987). The House Committee further amended Section 107 to provide: "Pursuant to Tribal Resolution No. T.C-02-86 * * * , all gaming as defined by the laws of the State of Texas shall be prohibited on the tribal reservation and on tribal lands." H.R. Rep. No. 36, 100th Cong., 1st Sess. 1, 4 (1987). The House passed H.R. 318 with that text. 133 Cong. Rec. 9043, 9045 (1987).

c. While Congress was fashioning the Restoration Act, significant legal shifts were occurring in the regulation of Indian gaming generally.

As of 1987, the federal government had successfully prosecuted and enjoined operators of casino-style gaming on Indian reservations. See *United States* v. *Dakota*, 796 F.2d 186 (6th Cir. 1986) (injunction under 18 U.S.C. 1955); *United States* v. *Farris*, 624 F.2d 890 (9th Cir. 1980) (prosecution under Section 1955), cert. denied, 449 U.S. 1111 (1981); *United States* v. *Sosseur*, 181

F.2d 873 (7th Cir. 1950) (prosecution under the Assimilative Crimes Act, 18 U.S.C. 13). But States seeking to limit gaming on Indian reservations could do so only if they were covered by Public Law No. 83-280 (Public Law 280), 67 Stat. 588 (1953) (18 U.S.C. 1162; 28 U.S.C 1360 & note), as amended by Title IV of the Indian Civil Rights Act of 1968, Pub. L. No. 90-284, §§ 401-406, 82 Stat. 78-80 (25 U.S.C. 1321-1326).

Section 2 of Public Law 280 grants six specified States criminal "jurisdiction over offenses committed by or against Indians" in Indian country, and makes certain "criminal laws of such State[s]" applicable therein. 18 U.S.C. 1162(a). Section 4 grants the same States jurisdiction over "civil causes of action" to which Indians are parties that arise in Indian country, and makes applicable certain state "civil laws" that are of general application to private persons and private property. 28 U.S.C. 1360(a). Public Law 280 also initially gave the "remaining States * * * an option to assume jurisdiction over criminal offenses and civil causes of action in Indian country without consulting with or securing the consent of the [affected] tribes." *Washington* v. *Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 472-474 (1979). "[B]ut Title IV of the [Indian] Civil Rights Act [of 1968 later] amended Pub[lic Law] 280" to eliminate that option for additional States and to authorize those States instead to assume Public Law 280 jurisdiction in the future only with the consent of the affected tribes. *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Eng'g, P.C.*, 476 U.S. 877, 879 (1986); see 25 U.S.C. 1321(a)(1) (Section 401), 1322(a) (Section 402); 1323(b) (Section 403).

In *Bryan* v. *Itasca County*, 426 U.S. 373 (1976), this Court held that Section 4 of Public Law 280 granted

state courts jurisdiction over private civil litigation involving reservation Indians, but did not grant States "general civil regulatory" jurisdiction. *Id.* at 390; see *id.* at 384-390 & n.11. As a result, state efforts to regulate bingo within Indian country under Public Law 280 had been largely unsuccessful. See, *e.g.*, *Cabazon Band of Mission Indians* v. *County of Riverside*, 783 F.2d 900, 902-903 (9th Cir. 1986) (concluding that California could not enforce its gaming restrictions because California law regulated but did not prohibit bingo), aff'd and remanded, 480 U.S. 202 (1987); *Barona Grp. of the Capitan Grande Band of Mission Indians* v. *Duffy*, 694 F.2d 1185, 1188-1190 (9th Cir. 1982) (same), cert. denied, 461 U.S. 929 (1983); *Seminole Tribe* v. *Butterworth*, 658 F.2d 310, 311-315 (5th Cir. Unit B Oct. 1981) (same under Florida law), cert. denied, 455 U.S. 1020 (1982).

In February 1987, this Court affirmed the Ninth Circuit's decision in *Cabazon*, holding that Public Law 280 did not authorize state law to regulate tribal bingo operations in California. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 211-212 (1987). The Court applied a distinction between "prohibitory" criminal laws, which a State could enforce on Indian lands under Public Law 280, and "regulatory" restrictions, which it could not. *Id.* at 210; see *id.* at 207-212. As the Court explained, "[t]he shorthand test is whether the conduct at issue violates the State's public policy." *Id.* at 209. Applying that "prohibitory/regulatory distinction," *id.* at 210, the Court reasoned that, because "California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, * * * California regulates ra-

ther than prohibits gambling in general and bingo in particular." *Id.* at 211.

After this Court's *Cabazon* decision, and at the same time the Senate was considering the proposed Restoration Act, the relevant Senate committee was also considering bills to provide for federal regulation of Indian gaming nationwide in light of *Cabazon*. See, *e.g.*, *Gaming Activities on Indian Reservations and Lands: Hearing on S. 555 and S. 1303 Before the Senate Select Comm. on Indian Affairs*, 100th Cong., 1st Sess. (1987) (repeatedly discussing *Cabazon*).

d. Shortly thereafter, the Senate Select Committee on Indian Affairs reported the proposed Restoration Act (H.R. 318) with amendments. Section 105(f) of the bill carried forward a section from prior versions providing that Texas "shall exercise civil and criminal jurisdiction" on the Tribe's reservation "as if the State had assumed jurisdiction" under the provisions—25 U.S.C. 1321 and 1322—that authorize States to obtain Public Law 280 jurisdiction in Indian country. S. Rep. No. 90, 100th Cong., 1st Sess. 3 (1987) (Senate Report). The reported bill also made significant amendments to Section 107, the provision addressing gaming on tribal land. *Ibid.* The amendments to Section 107, the Committee stated, included "a restatement of the law as provided in [Public Law 280] and should be read in the context of the provisions of Section 105(f)." *Id.* at 10-11. The amended Section 107—which Congress ultimately enacted—provides:

> SEC. 107. GAMING ACTIVITIES.
>
> (a) IN GENERAL.—All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided

> in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86 which was approved and certified on March 12, 1986.
>
> (b) NO STATE REGULATORY JURISDICTION.—Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.
>
> (c) JURISDICTION OVER ENFORCEMENT AGAINST MEMBERS.—Notwithstanding section 105(f), the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

Restoration Act § 107, 101 Stat. 668-669; see Senate Report 3.[2]

Congress passed the amended bill, which included the text of Sections 105(f) and 107 discussed above. See 133 Cong. Rec. 20,957-20,958, 22,112, 22,114 (1987). Just before passage, the Chairman of the House Committee on Interior and Insular Affairs explained that the Senate's amendments to Section 107 and its sister provision for the Alabama-Coushatta Tribe incorporated the *Cabazon* framework for Public Law 280:

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[2] The amended bill also included Section 207, which governs gaming on the Alabama-Coushatta Tribe's lands and is materially identical to Section 107. 101 Stat. 672.

> [T]he Senate amendments to these sections are in line with the rational[e] of the recent Supreme Court decision in the case of Cabazon Band of Mission Indians versus California. This amendment in effect would codify for these tribes the holding and rational[e] adopted in the Court's opinion in the case.

133 Cong. Rec. 22,114 (statement of Rep. Udall); accord *id.* at 22,113-22,114 (statement of Rep. Vento) (same).

e. The next year, Congress enacted IGRA to establish a nationwide regulatory framework for tribal gaming on Indian lands. IGRA confirmed the right of Indian tribes to undertake and "to regulate gaming activity on Indian lands" if the gaming activity is conducted "within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity" and the activity is not specifically prohibited by Federal law. 25 U.S.C. 2701(5).

IGRA divides Indian gaming on Indian lands into three "classes." See 25 U.S.C. 2703(6)-(8). Tribes have "exclusive jurisdiction" over Class I gaming, 25 U.S.C. 2710(a)(1), which includes both social games for prizes of minimal value and traditional forms of Indian gaming, 25 U.S.C. 2703(6). Class II and III gaming is permitted on Indian lands only if the State "permits such gaming for any purpose by any person, organization or entity." 25 U.S.C. 2710(b)(1)(A) and (d)(1)(B).

Class II gaming includes bingo (including with electronic, computer, or technologic aids) and other similar games. 25 U.S.C. 2703(7)(A)(i). The National Indian Gaming Commission (NIGC) and the tribe regulate all Class II gaming and have enforcement authority. 25 U.S.C. 2710(a)(2), (b)(1) and (2); see 25 U.S.C. 2706(b), 2713. Class III gaming covers "all forms of gaming" other than Class I and II gaming, 25 U.S.C. 2703(8), in-

cluding casino-style gaming (*e.g.*, slot machines, roulette, and house-banked card games), see 25 U.S.C. 2703(7)(B). Class III gaming must be conducted pursuant to a compact between the State and tribe or substitute Class III procedures. 25 U.S.C. 2710(d)(1)(C) and (7)(B)(vii).[3]

2. Since 1993, both petitioner and the Alabama-Coushatta Tribe have been in litigation against Texas concerning tribal gaming. See Pet. App. 5-8. The earliest court of appeals decision, *Ysleta del Sur Pueblo* v. *Texas*, 36 F.3d 1325 (5th Cir. 1994) (*Ysleta I*), cert. denied, 514 U.S. 1016 (1995), has affected the outcome of many subsequent decisions, including the decision here.

In *Ysleta I*, petitioner sued Texas under IGRA, seeking to compel it to negotiate a compact for Class III gaming. See *Ysleta del Sur Pueblo* v. *Texas*, 852 F. Supp. 587, 589 (W.D. Tex. 1993), rev'd, 36 F.3d 1325 (5th Cir. 1994). The district court concluded that IGRA had incorporated *Cabazon*'s prohibitory/regulatory framework; that gaming was not prohibited in Texas because the State allowed bingo and the Texas Lottery; that IGRA, rather than the earlier-enacted Restoration Act, controlled; and that, in any event, the relevant Class III gaming activities were not prohibited by Texas law under Section 107(a) of the Restoration Act. See *id.* at 592-597.

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[3] If Class III gaming is conducted in Indian country without a tribal-state compact and state law would otherwise prohibit such gaming, IGRA makes that state law "appl[icable] in Indian country," 18 U.S.C. 1166(a) and (c), and gives "[t]he United States * * * exclusive jurisdiction over criminal prosecutions of violations of [those] State gambling laws," unless the relevant tribe consents to "transfer [such jurisdiction] to the State." 18 U.S.C. 1166(d).

The court of appeals reversed, holding that the Eleventh Amendment barred petitioner's suit because the Restoration Act—and not IGRA—controlled and did not purport to abrogate a State's immunity from suit. *Ysleta I*, 36 F.3d at 1332, 1335. As part of determining which statutory framework controlled, the court construed Section 107(a) of the Restoration Act to provide that all of "Texas' gaming laws and regulations" would "operate as surrogate federal law on the Tribe's reservation in Texas." *Id.* at 1334. The court reached that conclusion based on its "analysis of the legislative history of both the Restoration Act and IGRA," *id.* at 1333, and its assessment that "any threat to tribal sovereignty is of the Tribe's own making," given the 1986 Tribal Resolution proposing to ban all tribal gaming, *id.* at 1335.

3. The particular dispute here involves gaming activities at the Speaking Rock Entertainment Center (Speaking Rock), the primary location of petitioner's gaming operations. Pet. App. 28. After Texas agents concluded in 2017 that the casino's electronic machines and live-called bingo did not comply with state law and bingo regulations, the State sought injunctive relief in federal district court. See *id.* at 7, 29-32.

The district court granted summary judgment to the State and enjoined petitioner's gaming operations. Pet. App. 18-55. The court, however, stayed the injunction, *id.* at 98-104, observing that, although it believed that it had "accurately applie[d]" *Ysleta I*, the Fifth Circuit or this Court "may carefully consider the meaning of 'regulatory jurisdiction'" in Section 107(b) and conclude that the State had impermissibly exercised such jurisdiction here. *Id.* at 100.

4. The court of appeals affirmed, Pet. App. 1-17, concluding that "[its] settled precedent resolves this dispute," *id.* at 17. The court explained that, in *Ysleta I*, it had concluded that "Congress—and [petitioner]—intended for Texas' gaming laws *and regulations* to operate as surrogate federal law on the Tribe's reservation in Texas." *Id.* at 12 (quoting *Ysleta I*, 36 F.3d at 1334). The court observed that it had recently "reaffirmed [*Ysleta I*]." *Id.* at 11. The court then "re-reaffirm[ed]" that "[t]he Restoration Act and IGRA erect fundamentally different regimes, and the Restoration Act—plus the Texas gaming laws and regulations it federalizes—provides the framework for determining the legality of gaming activities on [petitioner's] lands." *Ibid.*

SUMMARY OF ARGUMENT

The Fifth Circuit erroneously construed the Restoration Act to permit Texas to *regulate* forms of gaming that the State does not *prohibit* outright. Two related provisions of the Restoration Act—Sections 105(f) and 107—specify which state laws apply to activity on petitioner's lands. Both incorporate the framework in *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), and both make clear that state law governs when it "prohibits" such activities outright, but not when it "regulates" them.

A. Section 105(f) generally applies Public Law 280 to petitioner's reservation. *Cabazon* explains the scope of that Public Law 280 jurisdiction: States have criminal-law authority to "prohibit[]" particular activities altogether but not to "regulate[]" such activities, because Congress granted no civil or criminal "regulatory" authority to States. 480 U.S. at 208-211.

B. Section 107, which governs gaming on petitioner's lands, likewise adopts *Cabazon*'s framework.

1. a. Section 107(a)'s focus on "gaming activities" that are "prohibited" by state laws, 101 Stat. 668, is most naturally read to bar only those activities that are themselves prohibited outright. If a State (like Texas) permits a gaming activity (like bingo) when it is conducted by certain persons or in a certain manner, the State simply "regulates"—rather than "prohibits"—that activity and declines to permit certain *methods* of conducting it. That conclusion carries particular force here, because *Cabazon* drew that precise prohibitory/regulatory distinction in the Indian-gaming context just six months before Congress enacted the Restoration Act.

Moreover, a violation of Section 107(a)'s gaming ban is a federal criminal offense. The logical place for Congress to have borrowed the substance of that ban was the state law that would have otherwise applied under Section 105(f) and Public Law 280, *i.e.*, laws that, under *Cabazon*, prohibit—rather than regulate—the conduct. If Congress had wanted to allow State regulation, it would not have deleted from Section 107 the text that would have applied state "administrative regulations" to gaming.

b. Section 107(b) restates the second half of *Cabazon*'s prohibitory/regulatory distinction, providing that Section 107 grants no state "civil or criminal regulatory jurisdiction." 101 Stat. 669. Texas itself concedes that Section 107(b) restates the limits of Public Law 280, and those limits flow directly from *Cabazon*.

c. Section 107(c) grants federal courts exclusive jurisdiction over an offense under Section 107(a) "[n]otwithstanding [S]ection 105(f)['s]" general grant of state

Public Law 280 authority. 101 Stat. 669. Under the court of appeals' theory, Section 107 applies the full range of state regulatory provisions and provides for state enforcement of those provisions through an injunctive action in federal court. It is quite unlikely that Congress would have saddled federal courts with that burdensome and unsatisfactory process, transforming Article III courts into quasi-regulatory bodies charged with policing through injunctions the minutiae of gaming conduct.

2. Section 107's drafting history confirms that the provision adopts the prohibitory/regulatory distinction. Indeed, as Chairman Udall explained before the Act's final passage, Section 107 codifies *Cabazon*'s Indian gaming holding and rationale.

The court of appeals erroneously relied on a passage from the Senate Report that restated earlier proposed text discussing state "administrative regulations." That passage appears to have inadvertently repeated language from an earlier Senate report on Section 107's prior text, which Congress ultimately replaced after *Cabazon*. The passage cannot support reinserting into Section 107(a) the very text that Congress itself deleted.

3. To the extent any ambiguity remains, the Indian canon would require construing Section 107 to apply only where state law fully prohibits gaming activities.

C. Section 107, correctly construed, is consistent with IGRA's national regulation of gaming in Indian country. Reversing the Fifth Circuit will thus close a significant regulatory void and correctly provide for regulation of petitioner's Class II gaming by the NIGC.

ARGUMENT

THE RESTORATION ACT PROHIBITS GAMING ON PETITIONER'S RESERVATION ONLY IF TEXAS PROHIBITS ALL SUCH GAMING IN THE STATE.

The court of appeals erroneously construed the Restoration Act to broadly permit application of state standards to tribal gaming operations on Indian lands, even where the State *regulates* forms of gaming rather than *prohibiting* them outright. The Restoration Act prohibits gaming on Indian lands only to the extent that the particular gaming activity is properly determined to be "prohibited" rather than "regulated" by state law under the framework of *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Non-prohibited gaming activities, including bingo, are therefore subject to federal regulation under IGRA.

The Restoration Act contains two related provisions governing the extent to which state law can control activity on petitioner's lands. First, Section 105(f) generally applies state civil and criminal law to petitioner's reservation pursuant to Public Law 280. Second, Section 107 applies as federal law certain state provisions that "prohibit[]" gaming activities, § 107(a), 101 Stat. 668, while providing that it grants no "civil or criminal regulatory jurisdiction" to the State, § 107(b), 101 Stat. 669. In doing so, Section 107 directly incorporates *Cabazon*'s distinction between state "prohibitory" and "regulatory" provisions.

A. Section 105(f) Generally Makes Applicable On Petitioner's Reservation State Criminal Laws That "Prohibit" Conduct But Does Not Grant State Civil Or Criminal "Regulatory" Jurisdiction

Section 105(f) of the Restoration Act generally vests the State of Texas with "civil and criminal jurisdiction within the boundaries of [petitioner's] reservation as if [the] State had assumed such jurisdiction with the consent of the tribe under [S]ections 401 and 402 of the [Indian Civil Rights Act of] 1968 (25 U.S.C. 1321, 1322)." § 105(f), 101 Stat. 668. Sections 401 and 402, in turn, authorize a State, with the consent of the affected tribe, to assume the same criminal and civil jurisdiction in Indian country conferred by Sections 2 and 4 of Public Law 280. Compare 25 U.S.C. 1321(a)(1) (Section 401) with 18 U.S.C. 1162(a) (Section 2), and 25 U.S.C. 1322(a) (Section 402) with 28 U.S.C. 1360(a) (Section 4). Section 105(f) thereby grants Texas two types of Public Law 280 jurisdiction on petitioner's reservation.

First, Section 105(f) vests the State with "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise [on the reservation]" and makes applicable certain "civil laws of [the] State." 25 U.S.C. 1322(a); see 28 U.S.C. 1360(a). That authority in Section 4 of Public Law 280 applies state civil laws to Indian country only if those laws constitute "rules of decision [applied by state courts] to decide [private] disputes." *Bryan* v. *Itasca Cnty.*, 426 U.S. 373, 384 (1976). And because a State's civil laws are "applicable only as [they] may be relevant to private civil litigation in state court," Public Law 280 confers no "general civil regulatory authority" in Indian country. *Cabazon*, 480 U.S. at 208; see *Bryan*, 426 U.S. at 384 & n.11; *id.* at 384-390. This Court has explained that a "grant

to States of general civil regulatory power over Indian reservations would result in the destruction of tribal institutions and values," which would be inconsistent with general federal Indian policy. *Cabazon*, 480 U.S. at 208; *Bryan*, 426 U.S. at 388 & n.14. Thus, a clear statement would be required if Congress intended to grant such authority. *Bryan*, 426 U.S. at 390, 392.

Second, Section 105(f) vests the State with "jurisdiction over criminal offenses committed by or against Indians" on petitioner's reservation and makes applicable certain "criminal laws of [the] State." 25 U.S.C. 1321(a)(1); see 18 U.S.C. 1162(a). That criminal-law authority found in Section 2 of Public Law 280 was primarily enacted to "combat[] lawlessness on reservations." *Cabazon*, 480 U.S. at 208. As construed in *Cabazon*, Public Law 280 embodies a prohibitory/regulatory distinction under which a State's criminal law applies to conduct in Indian country only if the State "prohibits"—rather than "regulates"—that conduct. *Id.* at 211; see *id.* at 208-211.

In *Cabazon*, the Court considered a provision of the California penal code that, in conjunction with other provisions, made it a criminal offense for anyone other than "charitable and other specified organizations" to conduct bingo games or to do so for profit or with prizes above a limited amount. 480 U.S. at 205, 208-209. California argued that its law was a "criminal law[] which Pub[lic Law] 280 permits [a State] to enforce on [Indian] reservations." *Id.* at 208-209. This Court rejected that argument. The Court instead agreed with the court of appeals' determination and a line of lower-court decisions that "Pub[lic Law] 280's grant of criminal jurisdiction" applies where state law "prohibit[s] certain conduct" but not where the State "generally permits the

conduct at issue, subject to regulation." *Id.* at 209-210 & n.9. *Cabazon* further explained that the fact that "an otherwise regulatory law is enforceable by criminal as well as civil means" will "not necessarily convert it into a criminal law within the meaning of Pub[lic Law] 280." *Id.* at 211. Instead, under the "prohibitory/regulatory distinction" that Public Law 280 embodies, "[t]he shorthand test [for whether conduct is prohibited rather than regulated] is whether the conduct at issue violates the State's public policy." *Id.* at 209-210. Applying that distinction, *Cabazon* held that Public Law 280 did not authorize California to apply its gaming laws to bingo conducted in Indian country. *Id.* at 211. The Court reasoned that the State "*regulates* rather than *prohibits* gambling in general and bingo in particular," because it "permits a substantial amount of gambling activity, including bingo," and "promotes gambling through its state lottery." *Ibid.* (emphasis added).

The scope of that Public Law 280 authority would have been clear to Congress in 1987, when it applied Public Law 280 generally to petitioner's reservation through Section 105(f). "Public Law 280 represents the primary expression of federal policy governing the assumption by States of civil and criminal jurisdiction over the Indian Nations." *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Eng'g, P.C.*, 476 U.S. 877, 884 (1986). And given the statute's central role in Indian law, "[t]he basic terms of Pub[lic Law] 280 * * * [we]re well known." *Washington* v. *Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 471 (1979); see *Ryan* v. *Gonzales*, 568 U.S. 57, 66 (2013) ("We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent.") (citation omitted). Those terms make state law applicable in

Indian country only to the extent that (1) state "civil" law is relevant to private civil litigation in state court and (2) state "criminal law" "prohibits" particular conduct. *Cabazon*, 480 U.S. at 208, 211. And as *Cabazon* determined, that jurisdiction does not grant any form of civil or criminal "regulatory" authority in Indian country. *Ibid.* As a result, if Congress had simply granted Texas authority on petitioner's reservation through Section 105(f), Texas could have applied that Public Law 280 authority to tribal gaming only if the gaming activities were "prohibited" by state law, because the State lacks general civil or criminal "regulatory" jurisdiction on petitioner's reservation.

B. Section 107 Incorporates *Cabazon*'s Framework By Barring Gaming Activities "Prohibited" By State Law And Precluding State Civil Or Criminal "Regulatory" Jurisdiction

Section 107 of the Restoration Act, in turn, specifically addresses the subject of gaming on the Tribe's lands with text that mirrors *Cabazon*'s distinction by (1) barring gaming activities "*prohibited*" by the laws of the State of Texas, § 107(a), 101 Stat. 668 (emphasis added); (2) precluding state "civil or criminal *regulatory* jurisdiction" over the matter, § 107(b), 101 Stat. 669 (emphasis added); and (3) making the federal proscription enforceable in federal court "[n]otwithstanding [S]ection 105(f)['s]" general grant of Public Law 280 authority to the State, § 107(c), 101 Stat. 669. The text of Section 107(a) prohibiting gaming activities "prohibited" by state laws, the broader statutory context, and the Act's drafting history make clear that Section 107 prohibits any form of gambling that is banned outright by state law but does not prohibit gaming that the State regulates rather than prohibits. And to the extent any

doubt remains, Indian law canons require construing the Act in that manner.

1. Section 107's text incorporates Cabazon's framework

Each of Section 107's three subsections demonstrates that Congress incorporated *Cabazon*'s distinction between activities "prohibited" under state criminal law and those merely subjected to the State's civil or criminal "regulatory" authority.

a. Section 107(a)

Section 107(a) twice uses the word "prohibited": "All gaming activities which are *prohibited* by the laws of the State of Texas are hereby *prohibited* on the reservation and on lands of the tribe." 101 Stat. 668 (emphases added). That word choice is significant.

First, even when read in isolation, the provision's focus on "gaming activities" that are "prohibited" is most naturally read to apply only to those "gaming activities" that are themselves banned, regardless of who may conduct them or the manner in which they may be conducted. If a State (like Texas) permits certain persons to conduct a gaming activity (like bingo) or permits that activity to occur when conducted a certain way, the State has not "prohibited" the "gaming activity" itself; it has simply *regulated* the activity and has declined to permit certain *methods* of conducting it.

Section 107(a)'s use of the term "prohibited" is particularly significant given this Court's *Cabazon* decision applying a prohibitory/regulatory distinction and affirming a line of lower-court decisions that had endorsed that dichotomy in the context of Indian gaming for years. See pp. 17-18, *supra*. When Congress passed the Restoration Act six months after *Cabazon* was decided, it directly applied *Cabazon*'s framework to peti-

tioner's lands generally through Section 105(f). Its use of the term "prohibited" in Section 107(a) therefore is naturally understood to apply that framework as well. Congress "presumably kn[ew] and adopt[ed] the cluster of ideas that were attached" to that "borrowed word in the body of learning from which it was taken." *Morissette* v. *United States*, 342 U.S. 246, 263 (1952); see *Stokeling* v. *United States*, 139 S. Ct. 544, 551 (2019) ("If a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.") (brackets and citation omitted).

That conclusion is reinforced by the criminal nature of the federal gaming ban in Section 107(a). A "violation of [Section 107](a)" constitutes a federal "offense," § 107(c), 101 Stat. 669, that Section 107(a) makes subject to "the same civil and criminal penalties that are provided by the laws of the State of Texas," § 107(a), 101 Stat. 668. Section 107's use of the term "offense" reflects its "most common[] use[]," *i.e.*, "to refer to crimes." *Kellogg Brown & Root Servs., Inc.* v. *United States ex rel. Carter*, 575 U.S. 650, 658 (2015). And Section 107(a)'s explanation that the offense carries the same civil and criminal "penalties" available under state law further supports the criminal nature of the federal prohibition. See *United States* v. *La Franca*, 282 U.S. 568, 573 (1931) ("The term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution.") (citation omitted). The logical place from which Congress would incorporate the substance of the federal offense is the state criminal law that would have otherwise applied directly—through Section 105(f) and Public Law 280—to "prohibit," ra-

ther than regulate, tribal gaming on petitioner's reservation. See pp. 16-19, *supra*.[4]

The fact that Congress specified that penalties for a Section 107(a) offense include the same "civil and criminal penalties" as provided under state law does not, as the State suggests (Resp. Supp. Cert. Br. 3-4), indicate that Section 107(a) somehow incorporates the State's civil regulatory provisions for gaming. It is not uncommon for legislatures to "attach civil penalties to criminal offenses." *Kellogg Brown & Root Servs., Inc.*, 575 U.S. at 659. Civil penalties can include, for instance, monetary sanctions of a predetermined sum or calculated to reflect the amount of illicit gains or a victim's losses; forfeiture; divestiture; or the reorganization or dissolution of an offense-related enterprise. See, *e.g.*, 18 U.S.C. 38(c), 670(c), 1034(a), 1964(a), 2239B(b), 2292(a). For example, when the Restoration Act was enacted, Article 18.18 of the Texas Code of Criminal Procedure authorized the forfeiture of gambling devices and gambling proceeds, and Texas considered such forfeiture an

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[4] Congress's decision to federalize what would have otherwise been state criminal gaming offenses serves an important function. After Texas had created the need for congressional action by disclaiming its trust responsibility for petitioner, but then opposed a congressional fix unless petitioner submitted to all Texas gaming regulation, see pp. 2-3, *supra*, the Tribe formally requested in Resolution T.C.-02-86 that Congress not "make state gaming law [directly] applicable on the reservation," Pet. App. 122 (emphasis omitted). The Resolution explained that the direct application of that state law was "wholly unsatisfactory to the Tribe"; would "substantial[ly] infringe[] upon the Tribe['s] power of self government"; and would "set a potentially dangerous precedent for other tribes who desire[d] to operate gaming facilities." *Ibid.* (emphasis omitted). Congress honored those concerns, stating expressly in Section 107(a) that its federal ban on gaming was "enacted in accordance with the [T]ribe's request in [that] Resolution." 101 Stat. 668-669.

in rem proceeding "against the property itself," which was a "proceeding of a civil nature." *State* v. *Rumfolo*, 545 S.W.2d 752, 754 (Tex. 1976); see Tex. Crim. Proc. Code Ann. art. 18.18 (West Supp. 1987). Section 107(a) simply incorporates any such civil penalties under state law.

Finally, the phrase "prohibited by the laws of the State of Texas" underscores Section 107(a)'s *Cabazon*-based focus on state criminal prohibitions rather than broader state regulation. If Congress had intended to reject the *Cabazon* framework and instead to permit state regulation of gaming, it presumably would have based Section 107(a)'s federal ban not only on state laws but also on state administrative regulations that can be central to a state regulatory regime. Cf., *e.g.*, 16 Tex. Admin. Code §§ 402.100-402.709 (2021) (bingo regulations). That was the course charted in a pre-*Cabazon*, unenacted version of Section 107, which prohibited all gaming as defined by state "administrative regulations" as well as "laws." H.R. 318, 100th Cong. § 107(a) (Jan. 6, 1987). That language, however, was omitted from Section 107(a) as enacted. In another context, this Court concluded that a statute discussing actions "'prohibited by law'" did not reach actions merely "prohibited by regulation." *Department of Homeland Sec.* v. *MacLean*, 574 U.S. 383, 391 (2015) (emphasis omitted). Particularly because the statute at issue in *MacLean* elsewhere mentioned regulations—like the Restoration Act, see, *e.g.*, §§ 102, 105(d), 206(d), 101 Stat. 667-668, 671—the Court concluded that "Congress's choice to say 'specifically prohibited by law' rather than 'specifically prohibited by law, rule, or regulation' suggests that Congress meant to exclude rules and regulations." *MacLean*, 574 U.S. at 391.

b. Section 107(b)

Section 107(b) further demonstrates that Section 107(a)'s ban on gaming "prohibited" by state laws reflects *Cabazon*'s two-part framework under Public Law 280, which (1) applies state criminal law that "prohibits" conduct but (2) grants no state civil or criminal "regulatory" authority. *Cabazon*, 480 U.S. at 208, 211. Section 107(a), as discussed, incorporates the first half of that framework. Section 107(b), in turn, incorporates the second: "Nothing in this section shall be construed as a grant of *civil or criminal regulatory jurisdiction* to the State of Texas." § 107(b) 101 Stat. 669 (emphasis added).

Texas's concession (Resp. Supp. Cert. Br. 6) that Section 107(b) "restates the limits of Public Law 280" effectively concedes that Congress incorporated the *Cabazon* framework into Section 107, because those limits are drawn directly from *Cabazon*'s interpretation of Public Law 280. See pp. 16-19, *supra*. Moreover, the Committee that drafted Section 107(b) not only designed it to be "a restatement of the law as provided in [Public Law 280]," but also emphasized that it "should be read in the context of the provisions of Section 105(f)," which itself applies Public Law 280 to petitioner's reservation. S. Rep. No. 90, 100th Cong., 1st Sess. 10-11 (1987).

The State contends (Br. in Opp. 14-16) that its position accords with *Cabazon* because "[S]ection 107 expressly makes the Tribe subject only to Texas's gaming restrictions," whereas *Cabazon*'s interpretation of Public Law 280 is not "specific to gaming" and reflects a broader concern with giving a "State nearly limitless control over conduct on tribal lands." But the State ignores Section 107(b)'s actual text, which provides that "[n]othing in this section"—Section 107, which applies

only to gaming—"shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas." 101 Stat. 669. Section 107(b) thereby confirms the application of *Cabazon*'s prohibitory/regulatory distinction to Section 107(a)'s gaming-specific provisions.

The State's suggestion (Resp. Supp. Cert. Br. 5-6) that Section 107(b) merely shows that the State cannot recover "civil *or* criminal penalties" in an enforcement action is similarly misplaced. The language of Section 107(b) is not directed to enforcement remedies. Instead, it addresses more broadly a state's substantive authority: "civil or criminal regulatory jurisdiction." Thus, by mirroring *Cabazon*'s prohibitory/regulatory distinction, Section 107(b) "make[s] it clear" that Section 107(a)'s imposition of a "federal ban on gaming" and its "adopti[on of] state penalties as federal penalties" in "[no] way grant[s] civil or criminal regulatory jurisdiction to the State." Senate Report 9.

c. Section 107(c)

The Restoration Act's enforcement provision—Section 107(c)—similarly supports the conclusion that Section 107(a)'s gaming prohibition does not incorporate state regulation of gaming.

Section 107(c) provides that, "[n]otwithstanding [S]ection 105(f)," federal courts have "exclusive jurisdiction over any offense in violation of [Section 107](a)." 101 Stat. 669. That confirms that state courts possess no Public Law 280 jurisdiction under Section 105(f) to entertain prosecutions or related actions based on the federal offense in Section 107(a). Nor can the State itself directly "enforc[e] federal criminal laws" like Section 107(a) in federal court, because that federal function belongs exclusively to the United States. *Cabazon*, 480 U.S. at 213-214. Section 107(c)'s second sentence

instead leaves open the possibility that Texas may seek equitable relief against tribal officers to enjoin illegal tribal gaming activities: "[N]othing in [Section 107] shall be construed as precluding the State of Texas from bringing an action in [federal court] to enjoin violations of [Section 107]." 101 Stat. 669.[5] Such an injunctive action would be a sensible way to enforce Section 107(a)'s

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[5] Texas contends (Resp. Supp. Cert. Br. 6) that this passage in Section 107(c) constitutes a waiver of "tribal [sovereign] immunity." That is incorrect. "[T]o abrogate [tribal] immunity, Congress must 'unequivocally' express that purpose." *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 790 (2014) (citation omitted). Section 107(c) contains no such clear waiver. It does not specify against *whom* such an action may be brought, and it therefore does not waive the immunity of the Tribe or tribal entities. And it provides that nothing in Section 107 "shall be construed as *precluding*" an injunctive action by the State, 101 Stat. 669 (emphasis added); it does not affirmatively *authorize* such an action. Its rule of construction merely permits the State to bring suit if the State has a relevant injunctive action.

Any injunctive action that the State might file must be brought against a tribal officer in his official capacity. Just as state officers lack sovereign immunity under *Ex parte Young*, 209 U.S. 123 (1908), "tribal [sovereign] immunity does not bar [a State's] suit for injunctive relief against * * * tribal officers[] responsible for unlawful conduct." *Bay Mills Indian Cmty.*, 572 U.S. at 796; see *Virginia Office for Protection & Advocacy* v. *Stewart*, 563 U.S. 247, 254-255 (2011) (*Ex parte Young* authorizes an injunctive action against an officer "in his official capacity" to "'vindicate federal rights.'") (citation omitted).

Under those principles, sovereign immunity would bar this suit insofar as it is against the Tribe and its Council. The State, however, also sued a tribal officer (the Tribe's Governor), who is the third petitioner in this Court. Am. Compl. ¶¶ 2-3 (Aug. 15, 2017); Pet. iii; see J.A. 34 (original complaint). Any other questions about the nature or scope of the State's injunctive action are not presented here. Cf. *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 89-93 (1998).

prohibition of gaming activities that are wholly prohibited by state law.

Under the court of appeals' theory, the State may enforce the full range of its gaming regulations, but only through a federal-court action for injunctive relief—a process that has proved to be burdensome and unsatisfactory for all parties involved. See, *e.g.*, *Texas* v. *Ysleta del Sur Pueblo*, No. 99-cv-320, 2016 WL 3039991, at *19 (W.D. Tex. May 27, 2016) (lamenting that "this litigation has transformed the [district court] into a quasi-regulatory body overseeing and monitoring the minutiae of [petitioner's] gaming-related conduct"). It is quite unlikely that Congress would have adopted a regulatory regime under which federal courts would take the place of administrative agencies and enforce the full panoply of state regulatory restrictions through injunctive suits concerning, *e.g.*, the prominence of displays of bingo cards or the number of bingo cards that can be simultaneously played on an electronic cardminding machine. See Pet. App. 29-32. By contrast, a proper construction of Section 107(a) and (c) permits the State only to seek an injunction barring tribal gaming activities that are prohibited outright by state law. That allows for the application of IGRA to bingo and other Class II gaming activities that are not so prohibited, properly leaving such matters to the NIGC's regulatory authority.

2. Section 107's drafting history confirms that Section 107 incorporates Cabazon*'s framework*

The Restoration Act's drafting history further supports construing Section 107(a) and (b) to incorporate the *Cabazon* framework.

a. The Restoration Act underwent significant change between its initial 1984 introduction and its 1987 enact-

ment. In particular, in the final version of the unenacted H.R. 1344, Section 107 would have prohibited all "[g]aming, gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas," on tribal lands. 132 Cong. Rec. at 25,874. When H.R. 318 was initially introduced in January 1987, it included the same language. H.R. 318, 100th Cong. § 107(a) (Jan. 6, 1987). But before the Senate acted, this Court decided *Cabazon*, and Congress began to grapple with the impact of that decision. By June 1987, the Senate had reworked Section 107 to reflect its current text. See Senate Report 3; pp. 4-8, *supra*. As explained by the Chairman of the House Committee on Interior and Insular Affairs—which had responsibility for both H.R. 318 and the broader bills governing Indian gaming—Section 107's revised language "in effect would codify for these tribes the holding and rational[e] adopted in the Court's opinion in [*Cabazon*]." 133 Cong. Rec. 22,114 (1987) (statement of Rep. Udall).

b. The court of appeals in *Ysleta I* reached a different conclusion by focusing on isolated aspects of the legislative history and disregarding the surrounding legal landscape.

First, the court of appeals believed that the 1987 Senate Report itself foreclosed the application of the *Cabazon* framework because the report mentioned "administrative regulations" in describing Section 107(a) as prohibiting on tribal lands "gambling, lottery or bingo *as defined by the laws and administrative regulations* of the State of Texas." *Ysleta del Sur Pueblo* v. *Texas*, 36 F.3d 1325, 1333 (5th Cir. 1994) (quoting Senate Report 10), cert. denied, 514 U.S. 1016 (1995). But the far likelier explanation is that the Senate Report mistakenly retained that language from an earlier Senate re-

port's identical description of an earlier version of Section 107(a), S. Rep. No. 470, 99th Cong., 2d Sess. 4 (1986), and thus inadvertently left in place a description of Section 107's superseded text as passed by the Senate in September 1986. Like that earlier bill, H.R. 318 was initially introduced with the same prior language for Section 107(a). See p. 28, *supra*. But when the Senate later considered H.R. 318, it significantly amended Section 107 by adopting the new text that Congress enacted, omitting the prior version's prohibition of all gaming as well as any reference to "administrative regulations," "lottery," or "bingo." See Senate Report 3; pp. 4, 7-8, *supra*. That drafting change plainly did not retain Section 107(a)'s earlier, discarded text. "Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) (citation omitted).

Second, the court of appeals observed that a committee report accompanying IGRA had specifically stated that the *Cabazon* framework would apply under IGRA, whereas the Senate Report accompanying the Restoration Act made no such reference. See *Ysleta I*, 36 F.3d at 1333-1334 & nn.17-18. But again, the Senate Report did not reflect all of the post-*Cabazon* revisions to Section 107 as enacted. And in all events, the court did not need to parse committee reports for a reference to *Cabazon*, because Section 105(f) directly incorporates, and Section 107 textually adopts, that framework. See pp. 16-27, *supra*.

Third, the court of appeals appeared to hold petitioner to a bargain that was never adopted. The court observed that the 1986 Tribal Resolution was "crystal

clear" in requesting that all gaming be prohibited on tribal land. *Ysleta I*, 36 F.3d at 1333. But while petitioner in 1986 offered to forgo all gaming, in part to avoid direct state regulation, Congress did not accept that offer. See pp. 3-8, *supra*. In June 1987, the Senate Select Committee rejected a no-gaming approach and substantially revised Section 107. Although Section 107(a) still notes that it was enacted "in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86," 101 Stat. 669, that reference to the resolution reflects that Section 107 respects the Tribe's strong opposition to direct application of state law, and conforms to the resolution to the extent of barring gaming that state law prohibits outright. See p. 22 n.4, *supra*. The reference also explains why Congress included a specific limitation on tribal gaming. Cf. H.R. Rep. No. 36, 100th Cong., 1st Sess. 6 (1987) (observing that a prior reference to the resolution had been designed to show that gaming restrictions were "not based on unilateral Congressional action against the wishes of the tribes"). In any event, the reference cannot reasonably be construed as incorporating the terms of the 1986 Tribal Resolution, because it is undisputed that Section 107(a) does not prohibit *all* gaming, as the resolution offered would be acceptable to the Tribe.

3. The Indian canon resolves any ambiguity in favor of the Tribe

To the extent any ambiguity remains, the Restoration Act should be construed in favor of petitioner. Indian tribes are subject to Congress's "plenary control," but "unless and 'until Congress acts, the tribes retain' their historic sovereign authority." *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *United States* v. *Wheeler*, 435 U.S. 313, 323 (1978)).

This Court has accordingly made clear that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana* v. *Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985); see *Bryan*, 426 U.S. at 392 (applying canon in interpreting Public Law 280). For the reasons previously discussed, Section 107 is at the very least ambiguous on the question whether it bars gaming activities only where state law prohibits them outright, rather than regulates them.

C. Correctly Construed, Section 107 Is Consistent With IGRA's Regulation Of Gaming In Indian Country

Section 107, as correctly construed to ban only those gaming activities on petitioner's lands that are wholly prohibited under Texas law, is consistent with IGRA's regulation of gaming in Indian country. That interpretation properly permits IGRA's detailed national system for Indian gaming regulation, administered by the NIGC, to apply to gaming on petitioner's lands.

Congress enacted IGRA to provide a nationwide regulatory framework for Indian gaming in "response to this Court's decision in [*Cabazon*]," which, as discussed, "held that States lacked any regulatory authority over gaming on Indian lands." *Bay Mills Indian Cmty.*, 572 U.S. at 794. IGRA vests tribes with "exclusive jurisdiction" to regulate Class I gaming on Indian lands, 25 U.S.C. 2710(a)(1), but honors *Cabazon*'s prohibitory framework for Class II and III gaming by providing that such gaming is permissible only in States that do "not, as a matter of criminal law and public policy, prohibit such gaming activity," 25 U.S.C. 2701(5). IGRA accordingly permits federally regulated Class II and Class III gaming on Indian lands only if it occurs "within a State that permits such gaming for any pur-

pose by any person, organization or entity." 25 U.S.C. 2710(b)(1)(A) and (d)(1)(B). That authorization is consistent with Section 107 of the Restoration Act, which itself prohibits gaming activities on petitioner's lands only if Texas wholly prohibits such gaming in the State under state law. See pp. 19-31, *supra*. Reversing the court of appeals' decision would bring gaming operations conducted by petitioner and the Alabama-Coushatta Tribe under IGRA's national regulatory framework and eliminate the current inconsistency within Texas, where the State's third federally recognized Tribe, the Kickapoo Traditional Tribe of Texas, operates Class II gaming pursuant to an ordinance approved by the NIGC.[6]

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[6] Petitioner and the Alabama-Coushatta Tribe are also the only tribes that operate such gaming on Indian lands outside of IGRA's regulatory structure. See U.S. Cert. Amicus Br. 21 & n.3 (discussing Wampanoag Tribe).

The Seminole Tribe conducts on-reservation gaming activities under IGRA. The Tribe's settlement of aboriginal title claims with Florida provided for the State's transfer of certain lands for the Tribe's benefit. Seminole Indian Land Claims Settlement Act of 1987, Pub. L. No. 100-228, §§ 2(4)(A), 6(a) and (c), 101 Stat. 1556, 1559-1560. With respect to only those "transferred lands," Congress extended Public Law 280 jurisdiction and, with the Tribe's agreement, authorized the application of state law more broadly to "gambling." § 6(d)(1), 101 Stat. 1560. The NIGC has informed this Office that the Tribe's gaming has not been conducted on those transferred lands.

Congress in 1993 implemented the Catawba Tribe's agreement with South Carolina to subject any tribal gaming on or off its tribal lands in that State to state regulation. 25 U.S.C. 941a(10) and (12), 941*l* (2012); Catawba Indian Claims Settlement Act, S.C. Code Ann. § 27-16-110 (1993). The Tribe conducted off-reservation bingo gaming in South Carolina but ceased those activities in 2017. See *Catawba Indian Nation closes bingo hall in Rock Hill*, Charlotte

A key objective of IGRA is to "shield [tribal gaming] from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players." 25 U.S.C. 2702(2). IGRA thus requires, for example, background investigations and licensing of all primary management officials, key employees, and third-party management officials at Indian gaming operations. 25 U.S.C. 2710(b)(2)(F)(i), 2711(a). Yet because of *Ysleta I*, petitioner and the Alabama-Coushatta Tribe have not been subject to such regulation by the NIGC.

Finally, we note that correcting the Fifth Circuit's error will not in itself permit petitioner to conduct the gaming underlying this case. In its current posture, the case does not present the question whether petitioner's gaming activities at Speaking Rock in fact constitute "bingo." The NIGC's authority includes determining whether petitioner's gaming activities are permissible Class II gaming. See 25 U.S.C. 2702(3), 2706(b); *Diamond Game Enters.* v. *Reno*, 230 F.3d 365, 369 (D.C. Cir. 2000). If the NIGC determines that some current activities in fact constitute Class III gaming, that gaming would be prohibited under IGRA unless petitioner enters a compact with the State or appropriate Class III gaming procedures are followed. See 25 U.S.C. 2710(d)(1)(C) and (7)(B)(vii); cf. 25 C.F.R. 502.3(a), 502.4(b).

Observer (May 10, 2017), https://www.charlotteobserver.com/news/local/article149654879.html. The NIGC has informed this Office that the Tribe has recently initiated gaming activities in North Carolina regulated under IGRA.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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APPENDIX

1. The Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, 101 Stat. 666 (1987), provides in pertinent part:

SEC. 101. DEFINITIONS.

For purposes of this title—

(1) the term "tribe" means the Ysleta del Sur Pueblo (as so designated by section 102);

(2) the term "Secretary" means the Secretary of the Interior or his designated representative;

(3) the term "reservation" means lands within El Paso and Hudspeth Counties, Texas—

(A) held by the tribe on the date of the enactment of this title;

(B) held in trust by the State or by the Texas Indian Commission for the benefit of the tribe on such date;

(C) held in trust for the benefit of the tribe by the Secretary under section 105(g)(2); and

(D) subsequently acquired and held in trust by the Secretary for the benefit of the tribe.

(4) the term "State" means the State of Texas;

(5) the term "Tribal Council" means the governing body of the tribe as recognized by the Texas Indian Commission on the date of enactment of this Act, and such tribal council's successors;

* * * * *

SEC. 103. RESTORATION OF THE FEDERAL TRUST RELATIONSHIP; FEDERAL SERVICES AND ASSISTANCE.

(a) FEDERAL TRUST RELATIONSHIP.—The Federal trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this title shall apply to the members of the tribe, the tribe, and the reservation.

* * * * *

SEC. 105. PROVISIONS RELATING TO TRIBAL RESERVATION.

(a) FEDERAL RESERVATION ESTABLISHED—The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

* * * * *

(d) APPROVAL OF DEED BY ATTORNEY GENERAL.—Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys title to land within El Paso or Hudspeth Counties, Texas, to the United States to be held in trust by the Secretary for the benefit of the tribe.

* * * * *

(f) CIVIL AND CRIMINAL JURISDICTION WITHIN RESERVATION.—The State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 401 and 402 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes," and approved April 11, 1968 (25 U.S.C. 1321, 1322).

* * * * *

SEC. 107. GAMING ACTIVITIES.

(a) IN GENERAL.—All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86 which was approved and certified on March 12, 1986.

(b) NO STATE REGULATORY JURISDICTION.—Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.

(c) JURISDICTION OVER ENFORCEMENT AGAINST MEMBERS.—Notwithstanding section 105(f), the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

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2. 18 U.S.C. 1162, enacted by Pub. L. No. 83-280, § 2, 67 Stat. 588 (1953), as amended, provides in pertinent part:

State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.

Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

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3. 25 U.S.C. 1321 (Pub. L. No. 90-284, § 401, 82 Stat. 78 (1968)) provides in pertinent part:

Assumption by State of criminal jurisdiction

(a) Consent of the United States

(1) In general

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

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4. 25 U.S.C. 1322 (Pub. L. No. 90-284, § 402, 82 Stat. 79 (1968)) provides in pertinent part:

Assumption by State of civil jurisdiction

(a) Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

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5. 28 U.S.C 1360, enacted by Pub. L. No. 83-280, § 4, 67 Stat. 589 (1953), as amended, provides in pertinent part:

State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which

arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

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