

MICHIGAN SUPREME COURT

Taxpayers of Michigan Against Casinos v. State

478 Mich. 99 (2007) · No. Nos. 129816, 129818, and 129822 · Decided May 30, 2007

SUMMARY

The Michigan Supreme Court held that amendatory provisions in tribal gaming compacts, and Governor Granholm's exercise of those provisions, did not violate the Michigan Constitution's Separation of Powers Clause. The Court also held that an Appropriations Clause challenge was outside the scope of the remand order and therefore was not properly before the Court. The Court reversed in part, affirmed in part, and remanded for entry of summary disposition in favor of the defendants.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Cavanagh, J.; Clifford W. Taylor, Chief Justice; Michael F. Cavanagh; Elizabeth A. Weaver; Marilyn Kelly; Maura D. Corrigan; Robert P. Young, Jr.; Stephen J. Markman
JURISDICTION	Michigan
DECIDED	May 30, 2007
DOCKET	Nos. 129816, 129818, and 129822
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from the Court of Appeals concerning the constitutionality of an amendatory provision in tribal-state gaming compacts and the Governor's exercise of that provision. The Michigan Supreme Court granted leave to appeal after remanding in an earlier decision for consideration of the separation-of-powers issue.
STANDARD OF REVIEW	De novo review applies to a decision on a motion for summary disposition and to constitutional issues; decisions concerning the meaning and scope of pleadings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion of the Michigan Supreme Court
PARTIES	Taxpayers of Michigan Against Casinos, Laura Baird, State Representative in her official capacity, State of Michigan, Little Traverse Bay Bands of Odawa Indians v. State of Michigan, Gaming Entertainment, LLC, Little Traverse Bay Bands of Odawa Indians, North American Sports Management Company

TOPICS

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gaming compacts

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QUESTIONS PRESENTED

1. Whether the tribal gaming compacts' amendatory provision, which authorized the Governor to amend the compacts without further legislative approval, violated the Separation of Powers Clause of the Michigan Constitution.
2. Whether Governor Granholm's exercise of the amendatory provision violated the Separation of Powers Clause.
3. Whether the alleged violation of the Appropriations Clause was properly before the Court of Appeals and the Supreme Court on the limited remand.
4. Whether the Court of Appeals properly struck the portion of the plaintiff's brief raising the Appropriations Clause issue.

HOLDINGS

1. The amendatory provision did not violate the Separation of Powers Clause because the Legislature properly approved the compacts and their amendment procedure by resolution, and the Governor's authority remained subject to the limits of the constitution and the compacts.
2. The Governor's exercise of the amendatory provision, including the 2003 amendments to the Little Traverse Bay Bands compact, did not violate the Separation of Powers Clause.
3. The claim that tribal payments under the compacts violated the Appropriations Clause was not properly before the Court because it exceeded the scope of the prior remand order.

KEY QUOTATIONS

“We hold that the amendatory provision and the exercise of that provision do not violate the Separation of Powers Clause because the amendatory provision was properly approved by legislative resolution and the Governor’s exercise of the amendatory provision was within the limits of the constitution.” (478 Mich. at 103)

“Plaintiff cannot raise any issue it chooses merely because this Court remanded this case to the Court of Appeals to address another issue.” (478 Mich. at 112)

FACTUAL BACKGROUND

In January 1997, Governor John Engler and four federally recognized Indian tribes signed tribal gaming compacts under the Indian Gaming Regulatory Act. The Michigan Legislature approved the compacts by resolution, and the compacts included an amendment procedure authorizing the Governor to act for the state in proposing and approving amendments. In 2003, Governor Jennifer Granholm agreed with the Little Traverse

Bay Bands of Odawa Indians to amendments permitting a second casino, changing the gambling age at that casino, altering payment directions, and extending the compact's duration.

PROCEDURAL HISTORY

Michigan and four Indian tribes entered tribal gaming compacts, which the Legislature approved by resolution. In an earlier decision, the Michigan Supreme Court held that the compacts were properly approved by resolution but remanded the separation-of-powers issue after Governor Granholm exercised the compact's amendatory authority. On remand, the Court of Appeals held that the amendatory provision violated the Separation of Powers Clause and struck an argument concerning the Appropriations Clause as outside the remand order. The Supreme Court reversed that constitutional ruling in part, affirmed the striking of the appropriations argument in part, and remanded to the circuit court for entry of summary disposition for defendants.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the circuit court for entry of judgment of summary disposition in favor of defendants. The Court affirmed in part the Court of Appeals' order striking the portion of the plaintiff's brief addressing the Appropriations Clause.

CASES CITED

- Taxpayers of Michigan Against Casinos v. Michigan, 471 Mich. 306, 685 N.W.2d 221 (2004)
- Herald Co. v. Bay City, 463 Mich. 111, 117, 614 N.W.2d 873 (2000)
- Harvey v. Michigan, 469 Mich. 1, 6, 664 N.W.2d 767 (2003)
- Dacon v. Transue, 441 Mich. 315, 328, 490 N.W.2d 369 (1992)
- Judicial Attorneys Ass'n v. Michigan, 459 Mich. 291, 296-297, 303, 586 N.W.2d 894 (1998)
- Soap & Detergent Ass'n v. Natural Resources Commission, 415 Mich. 728, 752, 330 N.W.2d 346 (1982)
- People ex rel. Sutherland v. Governor, 29 Mich. 320, 329 (1874)
- People ex rel. Ayres v. Board of State Auditors, 42 Mich. 422, 426, 4 N.W. 274 (1880)
- Woll v. Attorney General, 409 Mich. 500, 535 n.50, 297 N.W.2d 578 (1980)
- Roxborough v. Unemployment Compensation Commission, 309 Mich. 505, 510, 15 N.W.2d 724 (1944)
- Napier v. Jacobs, 429 Mich. 222, 228, 414 N.W.2d 862 (1987)
- People v. Jones, 394 Mich. 434, 435-436, 231 N.W.2d 649 (1975)
- Blank v. Department of Corrections, 462 Mich. 103, 611 N.W.2d 530 (2000)
- People v. Dettenthaler, 118 Mich. 595, 602, 77 N.W. 450 (1898)
- State ex rel. Clark v. Johnson, 120 N.M. 562, 904 P.2d 11 (1995)
- Saratoga County Chamber of Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 766 N.Y.S.2d 654, 798 N.E.2d 1047 (2003)

- Narragansett Indian Tribe of Rhode Island v. State, 667 A.2d 280 (R.I. 1995)
- Panzer v. Doyle, 271 Wis. 2d 295, 680 N.W.2d 666 (2004)
- Dairyland Greyhound Park, Inc. v. Doyle, 295 Wis. 2d 1, 719 N.W.2d 408 (2006)
- American Greyhound Racing, Inc. v. Hull, 146 F. Supp. 2d 1012 (D. Ariz. 2001), vacated on other grounds, 305 F.3d 1015 (9th Cir. 2002)
- State ex rel. Stephan v. Finney, 251 Kan. 559, 836 P.2d 1169 (1992)
- Mistretta v. United States, 488 U.S. 361, 418-419, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989)
- Field v. Clark, 143 U.S. 649, 693-694, 12 S. Ct. 495, 36 L. Ed. 294 (1892)
- National Wildlife Federation v. Cleveland Cliffs Iron Co., 471 Mich. 608, 613, 616, 684 N.W.2d 800 (2004)
- 46th Circuit Trial Court v. Crawford County, 476 Mich. 131, 141, 719 N.W.2d 553 (2006)