

No. 20-493

IN THE
Supreme Court of the United States

YSLETA DEL SUR PUEBLO, *et al.*,
Petitioners,

v.

STATE OF TEXAS,
Respondent.

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

**BRIEF FOR AMICI CURIAE NATIONAL INDIAN
GAMING ASSOCIATION, NATIONAL CONGRESS
OF AMERICAN INDIANS, AND UNITED SOUTH AND
EASTERN TRIBES SOVEREIGNTY PROTECTION
FUND IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

The National Indian Gaming Association (NIGA) is an inter-tribal non-profit organization of 184 federally recognized Indian Tribes that operate gaming enterprises throughout Indian country. NIGA also has non-voting members representing organizations, Tribes, and businesses engaged in tribal gaming enterprises around the country.

NIGA's mission is to advance the economic, social, and political interests of Indian people. NIGA strives to preserve and promote tribal sovereignty, self-sufficiency, and economic development by advocating for tribally owned governmental gaming enterprises. In pursuit of these goals, NIGA operates as an educational and public-policy resource for Tribes, policymakers, and members of the public concerning Indian gaming issues and tribal community development.

The National Congress of American Indians (NCAI) is the oldest and largest organization made up of American Indian and Alaska Native tribal governments and their citizens to advocate on their behalf. NCAI's mission is to advocate for the protection of treaty rights, inherent rights, and other rights guaranteed to Tribes through agreements with the United States and under federal law; to promote the common welfare of American Indians and Alaska Natives; and to promote a better understanding of Indian peoples.

¹No counsel for a party authored this brief in whole or in part, and no person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation of submission of this brief. Counsel for all parties have consented to the filing of this brief.

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is a non-profit organization representing 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF works at the regional and national level to educate federal, state, and local governments about the unique historic and political status of its member Tribal Nations. USET SPF has a strong interest in this case because of its potential to have a sweeping impact on foundational doctrines of Federal Indian law, the sovereign status of Tribal Nations, the sacred government-to-government, nation-to-nation, sovereign-to-sovereign relationship between Tribal Nations and the United States, and the trust and treaty responsibilities and obligations of the United States.²

² The USET member Tribal Nations include the following: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

The question presented in this case is of great importance to amici. Like other federal laws regarding tribal gaming, the statute at issue here—the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, §107(a), 101 Stat. 668-669 (1987) (Restoration Act)—was enacted to promote the federal interest in tribal sovereignty and economic development. Amici have a strong interest in ensuring that the Restoration Act and other tribal-gaming laws are implemented faithfully, for the benefit of all Tribes. The decision below undermines tribal sovereignty, frustrates economic self-sufficiency, and disrupts the national framework Congress enacted to regulate tribal gaming.

SUMMARY OF ARGUMENT

The Restoration Act provides that “[a]ll 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,” but that “[n]othing in this section shall be construed as a grant of civil or criminal *regulatory* jurisdiction to the State of Texas.” Restoration Act §107(a)-(b), 101 Stat. 668-669 (emphases added). As petitioners have explained (Br. 27-33), this language bars gaming activities on tribal lands that Texas prohibits, but does not give Texas the authority to regulate gaming on tribal land that is not subject to an outright ban. *Accord* U.S. Cert.-Stage Br. 11-16. Amici write to explain why this interpretation is supported by the Restoration Act’s statutory history and to emphasize the practical implications the Fifth Circuit’s decision will have on tribal sovereignty if upheld.

I. The United States Constitution and two centuries of case law establish that Congress (not individual States) has the authority, working with tribal govern-

ments, to structure the United States' relationship with sovereign Tribes. See U.S. Const. art. I, §8, cl. 3; *id.* art. II, §2, cl. 2; see also, e.g., *McClanahan v. State Tax Commission of Ariz.*, 411 U.S. 164, 170-171 (1973). While Congress has exercised authority to grant States certain jurisdiction over Indian lands, it has for decades consistently limited the extent of States' authority over Indian affairs.

Of particular relevance here, in 1953, Congress enacted Public Law 280, which gave a handful of States jurisdiction over both criminal cases and civil lawsuits involving Indians on reservation land. This Court has read that grant of authority narrowly, holding that while P.L. 280 allows those States to criminalize gambling on Indian land—thereby effectively prohibiting such gambling—the law does not give States the authority to regulate the metes and bounds of non-prohibited gambling. See, e.g., *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 210 (1987).

Congress enacted section 107 of the Restoration Act against the backdrop of this established distinction between States' authority to prohibit Indian gaming and their lack of authority to regulate it (even if regulations include criminal penalties for infractions). Not surprisingly, therefore, section 107's language incorporates the prohibition-regulation dichotomy: Tribal gaming is not permitted where Texas prohibits everyone in the State from engaging in such gaming. But where Texas merely regulates gaming activities, those regulations do not apply on Indian land.

That reading of section 107 is reinforced by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §2701 et seq., which established a nationwide uniform regulatory regime governing tribal gaming activities—and

which, like the Restoration Act, looks to whether gaming is “prohibited” under state law or instead merely regulated by it. There is no dispute that IGRA does not permit state regulation of tribal gaming; the Restoration Act should be read the same way. Moreover, other Tribe-specific statutes enacted around the same time as both IGRA and the Restoration Act show that when Congress *did* intend to subject tribal gaming activities to the regulatory authority of individual States, it did so in clear and unambiguous language—language starkly different than that in the Restoration Act. Given this history and context, there can be no doubt that Congress crafted the relevant provision of the Restoration Act to apply only to those gaming activities that Texas law prohibits.

II. The Fifth Circuit’s interpretation of the Restoration Act should also be rejected because it leads to anomalous results that Congress could not have intended. It undermines tribal sovereignty by limiting Tribes’ ability to control activities that occur on Indian lands, and it frustrates IGRA’s policy goal of establishing a uniform regulatory regime for tribal gaming activities. The decision below would also perpetuate decades of costly litigation regarding the exact contours of Texas’s regulatory authority. To end this confused and unworkable regime, this Court should reject the court of appeals’ rule and hold that the Restoration Act allows Texas to prohibit but not to regulate petitioners’ gaming activities.

ARGUMENT**I. THE HISTORY OF FEDERAL LAW GOVERNING STATE JURISDICTION OVER INDIANS****A. For Decades, Congress Has Sharply Circumscribed The Extent To Which State Law Governs Tribes And Tribal Members**

1. *Under The Constitution, Tribes Are Independent Sovereigns That Are Not Subject To State Authority Except As Authorized By Congress*

From the earliest days of the Republic, Indian Tribes have been recognized as distinct and independent sovereigns, predating formation of the United States itself. *See McClanahan*, 411 U.S. at 172. Tribes' sovereign authority, this Court has explained, is "not only acknowledged, but guarant[e]d by the United States." *Worcester v. Georgia*, 31 U.S. 515, 557 (1832). The Constitution gives the federal government exclusive authority over Tribes, while also requiring it to act as their trustee and hence in their best interest; States have no such authority, except where expressly conferred by Congress. *See Rice v. Olson*, 324 U.S. 786, 789 (1945). In other words, "[s]tate laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." *McClanahan*, 411 U.S. at 170-171.

This foundational "policy of leaving Indians free from state jurisdiction and control," *Rice*, 324 U.S. at 789, is implemented partly via a clear-statement rule: Before a State may exercise jurisdiction over Indians for conduct in Indian country, Congress must enact legislation expressly conferring such jurisdiction on the

State. See *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976). More generally, as this Court reiterated just last year, ambiguities in federal law governing Tribes are “to be construed in favor, not against, tribal rights.” *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2479 (2020).

2. *In Public Law 280, Congress Granted States Limited Jurisdiction—Excluding Regulatory Jurisdiction—Over Indians*

Congress exercised its exclusive authority over Indian affairs when it enacted Public Law 280 in 1953. That law initially gave six States jurisdiction over criminal offenses committed by or against Indians on Indian land, meaning that “the criminal laws of [those] State[s] ... shall have the same force and effect within Indian country as they have elsewhere within the State.” 18 U.S.C. §1162. Public Law 280 also gave those States “jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country ... to the same extent that such State has jurisdiction over other civil causes of action.” 28 U.S.C. §1360(a).

In *Bryan v. Itasca County*, this Court interpreted the latter provision narrowly: The Court held that the law gave state courts the power to hear private civil lawsuits, but not “general civil regulatory powers ... over reservation Indians,” 426 U.S. at 390, rejecting Itasca County’s argument that the statute gave it the authority to tax members of a local tribe. This holding rested on the clear-statement rule discussed above. See *id.* at 376 n.2. And Public Law 280’s lack of a clear statement was particularly glaring, this Court explained, because Congress contemporaneously enacted other laws that expressly addressed state taxation and the application of a “range of state laws to tribal mem-

bers.” *Id.* at 390. For instance, one law provided that “the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within [the States’] jurisdiction.” *Id.* These statutes, the Court reasoned, provided “cogent proof” that if Congress intended to enact a “sweeping change in the status of tribal government and reservation Indians,” it “would have expressly said so.” *Id.* at 381, 390.

3. *Cabazon Band Confirmed States’ Limited Jurisdiction Over Indians Under P.L. 280, While Also Recognizing The Importance Of Gaming To Tribal Economic Self-Sufficiency—And Hence Tribal Sovereignty*

In 1987, shortly before the Restoration Act was enacted, this Court in *Cabazon Band* extended *Bryan’s* limitation on state regulatory authority under Public Law 280 to the context of tribal gaming. *See* 480 U.S. at 210. In so ruling, the Court drew a line between state laws that prohibit conduct as a matter of criminal law and those that permit certain conduct but regulate it in some way. *Id.* Thus, the Court held, if “the intent of a state law is generally to prohibit certain conduct, it falls within [Public Law 280’s] grant of criminal jurisdiction.” *Id.* at 209. If, however, a state law “generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory” and thus does not apply to Indian reservations. *Id.* Applying this test, the Court concluded that the California laws at issue regulated rather than prohibited bingo and poker, and thus did not apply to Indian lands.

Important to *Cabazon Band’s* reasoning was its reading of Public Law 280 as consistent with “important federal interests,” such as protecting “tradi-

tional notions of Indian sovereignty and the congressional goal of Indian self-government” and the “overriding goal of encouraging self-sufficiency and economic development.” 480 U.S. at 216-217 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335 (1983)). The Court highlighted, for example, the federal government’s efforts to promote tribal bingo activities—and thereby enhance tribal sovereignty and economic development—both by making available grants and loans for the purpose of constructing bingo activities and by providing financial assistance to develop tribal gaming enterprises (among other initiatives). *Id.* at 218. The Court noted that the executive branch had routinely emphasized that it “strongly oppose[d] any proposed legislation that would subject tribes or tribal members to state gambling regulation.” *Id.* at 217 n.21. The Court also noted that President Reagan supported economic self-sufficiency for Tribes as central to Indian self-determination. *Id.* at 217 (citing Statement by the President on Indian Policy, 19 Weekly Comp. Pres. Doc. 98 (Jan. 24, 1983) (citing in turn President Nixon’s 1970 policy of tribal self-determination)). Indeed, President Reagan’s American Indian policy statement emphasized that the U.S. government had not done enough to support Indian self-determination, in that there was too much regulatory bureaucracy interfering with tribal economic development. *See* Statement by the President, 19 Weekly Comp. Pres. Doc. 98 at 1.

B. The Restoration Act, Enacted Shortly After *Cabazon Band*, Is Consistent With Congress’s Prior Limits On State Jurisdiction Over Tribes and Tribal Members, Including As To Gaming

The Restoration Act, enacted in August 1987, establishes the legal framework for Texas’s relationship

with both the Ysleta del Sur Pueblo and the Alabama-Coushatta Tribes of Texas. Pet.App.2-3. The dispute here centers on section 107 of the statute, which states both (a) that “[a]ll gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on the lands of the Tribe,” and (b) that “[n]othing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction” to Texas. Restoration Act §107(a)-(b), 101 Stat. 668-669.

Petitioners have explained (Br. 27-33) why the text and structure of section 107 establish that the Restoration Act does not grant Texas plenary regulatory jurisdiction over gaming on petitioners’ lands. That conclusion is further supported by the broader statutory history discussed above and by the history of how the Restoration Act itself was drafted.

Specifically, section 107 manifestly adopted the prohibitory/regulatory approach outlined in *Cabazon Band*. That decision was issued just six months before enactment of the Restoration Act, and the statutory language demonstrates Congress’s intent to echo *Cabazon Band*’s language, including using the word “prohibited” twice in discussing what conduct Texas may regulate. That is relevant because when Congress “employs a term of art” (like “prohibited”), “it presumably knows and adopts the cluster of ideas that were attached to” that word. *Air Wisconsin Airlines Corp. v. Hooper*, 571 U.S. 237, 248 (2014). Or as the Court has put the point more colorfully, “if a word is obviously transplanted from another legal source, ... it brings the old soil with it.” *Sekhar v. United States*, 570 U.S. 729, 733 (2013).

There is no doubt that Congress was aware of *Cabazon Band*’s prohibitory-regulatory dichotomy when it

was drafting the Restoration Act. Before the bill was signed into law, for example, the chairman of the House Interior and Insular Affairs Committee noted that a Senate amendment to section 107 was “in line with the rational[e] of” *Cabazon Band* and that the provision “would codify ... the holding and rationale adopted in the Court’s opinion in the case.” 133 Cong. Rec. 22,111, 22,114 (1987) (Rep. Udall).

This statement is borne out by the drafting history. The Restoration Act was initially introduced in 1985, before *Cabazon Band* was decided, and the bill underwent significant revisions before enactment. In particular, an early draft, H.R. 1344, 99th Cong., 2d Sess. (1986), prohibited on tribal lands all “[g]aming, gambling, lottery or bingo as defined by the laws and administrative *regulations* of the State of Texas,” 132 Cong. Rec. 25,873, 25,874 (1986) (emphasis added). Another version was introduced in the House in January 1987, just weeks before *Cabazon Band* was decided. See H.R. 318, 100th Cong., 1st Sess. (1987). The initial draft of that version, like H.R. 1344 before it, would have prohibited tribal gaming activities “as defined by the laws and administrative regulations” of Texas. Pet.App.21-22.

In April 1987, however—two months after *Cabazon Band* issued—the House Committee on Interior and Insular Affairs amended section 107(a) to strike the reference to Texas’s “administrative regulations.” As revised, the draft instead provided that “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. 36, 100th Cong., 1st Sess., at 1 (1987). With that amendment, among others, H.R. 318 passed the House. 133 Cong. Rec. 9042-9045 (1987).

The Senate further amended section 107 to its final language, which as noted provides that “[a]ll gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservations and on lands of the tribe,” but that “[n]othing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.” Restoration Act §107(a)-(b), 101 Stat. 668-669. Congress passed the law with that language, *see* 133 Cong. Rec. 20,956-20,959 (1987); 133 Cong. Rec. 22,111-22,114 (1987), and it was signed by a president whose administration stated that it would “strongly oppose any proposed legislation that would subject tribes ... to state gambling regulation,” *Cabazon Band*, 480 U.S. at 217 n.21. This statutory history makes plain that Congress consciously incorporated *Cabazon Band*’s prohibition-regulation framework into the Restoration Act.

C. IGRA And Other Laws Enacted Contemporaneously With The Restoration Act Further Underscore That The Latter Did Not Give Texas Plenary Authority Over Tribal Gaming

Petitioners’ reading of the Restoration Act is also supported by a number of statutes that were enacted around the same time.

1. IGRA Established A Regime Of Uniform Federal Regulation Of Tribal Gaming—Using Language Similar To That In The Restoration Act

IGRA, enacted just one year after the Restoration Act, created uniform “Federal standards for gaming on Indian lands,” 25 U.S.C. §2702(3). In particular, it specified in detail (1) the circumstances under which different types of gaming can occur on tribal lands and (2) what entity (the Tribe, the United States, or the State)

has the power to regulate each type. For example, Tribes have exclusive authority to regulate “social games for prizes of minimal value or traditional forms of Indian gaming,” *id.* §§2703(6), 2710(a)(1), while casino-style gaming requires either a compact between a Tribe and a State or approval from the Secretary of the Interior, *id.* §2710(d)(1), (7)(B)(vii). IGRA also adopts the *Cabazon Band* prohibition-regulation framework, developed in the context of Public Law 280, and applies it to Indian gaming generally. Accordingly, it permits “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.” *Id.* §2701(5). In effect, then, it mirrors the Restoration Act in looking to whether gaming activities are “prohibited” under state law to determine the permissibility of those activities. *Compare* Restoration Act §107(a), 101 Stat. 668-669 *with* 25 U.S.C. §2701(5).

Because the two statutes are so closely intertwined in purpose and language, “[r]espect for Congress as drafter” counsels in favor of “aiming for harmony over conflict,” *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612, 1624 (2018). This Court should thus apply the *Cabazon Band* standard to both statutes rather than adopt a regime in which Texas is governed by one legal standard and the rest of the country by another. Neither Texas nor the Fifth Circuit has met “the heavy burden of showing a clearly expressed congressional intention” for the two statutes to be read in a conflicting manner. *Id.* (quotation marks omitted).

2. *Other Contemporaneous Statutes That Expressly Authorize State Regulation Of Gaming In Specific Circumstances Reinforce The Conclusion That Federal Law Generally Forbids Such Regulation*

As this Court has explained, “Congress’ use of ‘explicit language’ in one provision ‘cautions against inferring’ the same limitation in another provision.” *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby*, 137 S.Ct. 436, 442 (2016). That canon further supports the reading of the Restoration Act urged above, because in other laws enacted just before or after the Restoration Act, Congress expressly permitted state regulation of tribal gaming activities.

For example, Congress enacted the Seminole Indian Land Claims Settlement Act of 1987, Pub. L. No. 100-228, 101 Stat. 1556 (Seminole Act), the same year as the Restoration Act. The Seminole Act directed the Secretary of the Interior to accept the transfer of a parcel of land to be held in trust as a reservation for the Seminole Tribe of Florida, *id.* §6(a), 101 Stat. 1559. But the law also provides that “[n]otwithstanding the acquisition of any land ... by the United States in trust for the tribe,” the “laws of Florida relating to alcoholic beverages, gambling, sale of cigarettes, and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State.” *Id.* §6(d)(1). And in 1993, Congress enacted the Catawba Indian Tribe of South Carolina Land Claims Settlement Act, Pub. L. No. 103-116, 107 Stat. 1118 (1993) (Catawba Act). That statute provides that “all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the *regulation* of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.” *Id.*

§14(b) (emphasis added). This language shows that Congress “knew how to draft the kind of statutory language that [respondent] seeks to read into” the Restoration Act, *State Farm*, 137 S.Ct. at 443-444, but did not do so. The absence of any similar language in the Restoration Act confirms that Congress did not intend for that statute to do so.³

II. THE DECISION BELOW WOULD HAVE ANOMALOUS AND HARMFUL RESULTS

The Fifth Circuit’s reading of the Restoration Act should independently be rejected because it would have significant negative consequences that Congress could not have intended—and in fact that “no sensible person could have intended,” *Gobeille v. Liberty Mutual Insurance Co.*, 577 U.S. 312, 319 (2016).

First, the Fifth Circuit’s decision flouts the federal government’s tribal-gaming policy (as reflected in IGRA) to erect a uniform system governing the regulation of tribal gaming and to promote tribal self-governance. *See* 25 U.S.C. §2702. Nothing in IGRA suggests that any Tribe was meant to be excluded from the law’s ambit. To the contrary, when Congress *did* intend that IGRA not apply to a particular Tribe, it said so expressly. *See* Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, §330(3), 110 Stat. 3009, 3009-227 (amending the Rhode Island Indian Claims Settlement Act to provide that “[f]or purposes of the Indian Gaming Regulatory Act ..., settlement lands

³ The U.S. District Court for the District of Columbia recently held that the Catawba Act’s restrictions do not apply to the Catawba Nation outside South Carolina. *See Eastern Band of Cherokee Indians v. U.S. Department of Interior*, 2021 WL 1518379, at *8-13 (D.D.C. Apr. 16, 2021), *appeals filed* Nos. 21-5114, -5126 (D.C. Cir. 2021).

shall not be treated as Indian lands”). The State-specific carveout to IGRA cemented in place by the decision below subjects two Tribes—petitioners and the Alabama-Coushatta Tribe—to Texas’s (demanding) regulations, while permitting other Tribes to follow the uniform scheme put into place by the federal government.

Second, the Fifth Circuit’s holding perpetuates an interpretation of the Restoration Act that has spawned decades of costly litigation and uncertainty. That is because subsection 107(c) of the Restoration Act provides that federal courts have “exclusive jurisdiction over any offense in violation of subsection (a),” 101 Stat. 669, i.e., the provision that bars petitioners from conducting “gaming activities which are prohibited by the laws of the State of Texas.” If the court of appeals were right that all Texas law regulating gaming activities applies to conduct on petitioners’ lands, Texas could enforce its regulations only through the unwieldy process of seeking relief in federal court. And as a result, federal courts have been turned into “quasi-regulatory bod[ies] overseeing and monitoring the minutiae of ... gaming-related conduct,” *Texas v. Ysleta del Sur Pueblo*, 2016 WL 3039991, at *19 (W.D. Tex., May 27, 2016). But in IGRA, Congress established an agency, the National Indian Gaming Commission, to perform this function. It would be strange indeed for Congress to want to transform federal courts—in Texas only—into quasi-gambling commissions responsible for adjudicating disputes related to, for instance, bingo graphics displays, *see* Pet.App.30-31.

Third, the Fifth Circuit’s reading of subsection 107(a) is squarely refuted by section 107(b), which states that “[n]othing 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). Yet the decision below does precisely what this language proscribes, construing section 107(a) to give Texas “civil ... regulatory jurisdiction” over gaming on tribal lands. The courts below had no answer to this; the court of appeals said only (with considerable understatement) that its reading did not “clearly elucidate subsection (b)’s effect on tribal gaming.” Pet.App.35-36. As for the district court, it said only that “the precise meaning of ‘regulatory jurisdiction’ as used in §107(b) of the Restoration Act remains unclear.” Pet.App.100. That is wrong; its meaning is quite clear—and it forecloses the lower courts’ reading.

Put simply, as a result of the Fifth Circuit’s holding, petitioners have been relegated to a “twilight zone of state, federal, and sovereign authority where the outer legal limit of their conduct is difficult to assess with precision.” Pet.App.88. A decision endorsing the Fifth Circuit’s interpretation of the Restoration Act will serve only to prolong this confusion and entrench a regime that frustrates federal policy goals and undermines tribal sovereignty.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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