
In The
Supreme Court of the United States

YSLETA DEL SUR PUEBLO, THE TRIBAL COUNCIL, THE TRIBAL
GOVERNOR MICHAEL SILVAS OR HIS SUCCESSOR,

Petitioners,

v.

STATE OF TEXAS,

Respondent.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Supreme Court Rules 28.4 and 28.7, Amicus Curiae the Alabama-Coushatta Tribe of Texas (the “Tribe”) respectfully requests that the Tribe be granted leave to participate in oral argument as amicus curiae in support of Petitioners and that the Tribe be allowed ten minutes of argument time. This Court recognized the significance of on-reservation bingo gaming to tribal sovereignty in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Yet, unless this Motion is granted, every sovereign affected by this dispute over Indian gaming will be represented at oral argument with one exception: the Tribe. Because this case presents the “extraordinary circumstances” that justify divided argument, the Tribe asks that it be permitted to represent and defend its sovereign interests before this Court at oral argument.

Counsel for Petitioners do not consent to the Tribe's request.

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The Court previously has granted divided argument in cases that uniquely affect sovereigns, and it should do so here. *See, e.g., Carpenter v. Murphy*, 139 S. Ct. 398 (2018) (mem.) (granting joint motion of respondent and Indian tribe for divided argument in case with important implications for tribal sovereignty); *Idaho v. United States*, 532 U.S. 956 (2001) (mem.) (same; motion filed by respondent Indian tribe in case affecting Indian lands); *C&L Enters. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 531 U.S. 1140 (2001) (mem.) (same; motion filed by State of Texas in case concerning tribal sovereign immunity); *Amoco Production Co. v. Southern Ute Indian Tribe*, 526 U.S. 1049 (1999) (mem.) (same; motion filed by State of Wyoming in case concerning Indian tribe's ownership of coal byproduct); *Bush v. Vera*, 516 U.S. 295 (1995) (mem.) (same; motions filed by the Solicitor General, several states, and private parties in case concerning voting rights); *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 469 U.S. 1204 (1985) (mem.) (same; motions filed by the Solicitor General and the State of Montana in case concerning tribal court jurisdiction over non-Indians); *Iowa v. Omaha Indian Tribe*, 439 U.S. 1125 (1979) (mem.) (same; motions filed by the State of Iowa (among others), the United States, and Indian tribe in case affecting Indian lands).

Petitioners raise the question of whether The Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, 101 Stat. 666 (Aug. 18, 1987) (the "Restoration Act") authorizes the State of Texas to

enforce state laws and regulations governing bingo on Petitioners' lands. *See* Pet. at i. As its name suggests, the Restoration Act applies to only two tribes—Petitioner the Ysleta del Sur Pueblo (the “Pueblo”) and the Tribe—and includes virtually identical provisions concerning gaming on their lands. Section 107 of the Restoration Act governs “Gaming Activities” conducted on the Pueblo’s lands, while Section 207 governs “Gaming Activities” conducted on the Tribe’s lands. *See* Pub. L. No. 100-89, §§ 107, 207. Texas also argues that the “negotiating history” between the United States, Texas, and the Pueblo should be taken into consideration here—and the Tribe was the fourth party to those negotiations. *See, e.g.,* State’s Resp. at 41–42.

This case thus implicates four sovereigns: (1) Texas (who desires to impose its regulatory regime for bingo gaming on the lands of the Pueblo and the Tribe); (2) the United States¹ (whose Congress enacted the Restoration Act); and (3) the Pueblo and (4) the Tribe (whose tribal gaming provides employment opportunities for tribal members and a source of revenue critical to their tribal governments and economic self-sufficiency).

Although the Tribe is not a party to this case, the resolution of this Indian gaming dispute will significantly affect its sovereignty interests. *See, e.g., Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014); *Cabazon Band*, 480 U.S. 202. Tribal gaming enterprises—like the one operated by the Tribe on its lands—provide

¹ The Court called for the views of the Solicitor General at the petition stage, and the United States filed a brief as amicus curiae in support of granting the Petition. The United States subsequently filed a brief as amicus curiae in support of Petitioners on the merits and has indicated that it intends to also request divided argument.

“revenues for the operation of tribal governments and the provision of tribal services” and are “major sources of employment on [its] reservation[.]” *Cabazon Band*, 480 U.S. at 218–19. Because “[s]elf-determination and economic development are not within reach if the Tribe[] cannot raise revenues and provide employment for [its] members,” Texas’s attempts to regulate the Tribe’s gaming represents a significant infringement on its tribal government. *Id.* at 219.

As with the Pueblo, Texas has sought to apply state laws regulating bingo to the Tribe’s bingo gaming under Section 207 of the Restoration Act. But, unlike the district court in this case, the District Court for the Eastern District of Texas recently held that the Restoration Act’s plain language foreclosed Texas’s efforts to regulate bingo gaming on the Tribe’s lands and found that the Tribe’s gaming is in fact “bingo,” as defined by Texas law. *See Texas v. Alabama-Coushatta Tribe of Tex.*, No. 9:01-CV-299, 2021 WL 3884172 (E.D. Tex. Aug. 31, 2021), *appeal filed* No. 21-40722 (5th Cir. Sept. 30, 2021). That case is currently in the Fifth Circuit and has been stayed pending a decision in this case, since the Court’s interpretation of Section 107 will control the Fifth Circuit’s application of Section 207 in the Tribe’s case.

Given that the Court’s decision here will directly impact the Tribe, the Court should have the benefit of hearing the Tribe’s arguments on the Restoration Act’s interpretation, particularly since the Tribe offers an interpretation distinct from, yet complimentary to, the one advanced by Petitioners and the United States. The Tribe’s interpretation does not depend on any argument for incorporation of *Cabazon Band’s* “prohibitory/regulatory” framework, which is Texas’s central point of dispute.

See Pet. Br. at 23–33; State’s Resp. at 24–32. Indeed, the Tribe expressly disclaimed any reliance on that framework in advocating for a plain-language interpretation of the Restoration Act that the district court found persuasive in the Tribe’s case (and that foreclosed Texas from enforcing its gaming regulations on the Tribe’s lands). The Tribe advanced that same position in its amicus brief here, advocating for an interpretation of Section 107 based on the ordinary meaning of the words enacted in subsection (a), as construed against the congressionally-enacted rule of construction in subsection (b) and other well-established principles of statutory construction. *See* Tribe’s Amicus Br. at 12–25. Although *Cabazon Band’s* “prohibitory/regulatory” discussion confirms the Tribe’s interpretation, the Tribe does not believe that the “prohibitory/regulatory” framework is necessary to a construction of the Restoration Act in its favor. Given the Tribe’s distinct, but complimentary approach to the question of statutory interpretation in this case—on an issue that implicates significant sovereignty interests—the Tribe should be heard on its position and afforded an opportunity to respond to Texas’s arguments.

The Tribe has described the critical consequences for its tribal government, members, and surrounding community that will follow from the Court’s decision in this case. *See* Tribe’s Amicus Br. at 10–11. These concerns are unique to sovereigns, and the Tribe is the only sovereign affected by this case that, absent the Court’s leave, will not have a role in oral argument. Neither the Pueblo, the United States, nor Texas will suffer any prejudice from the Tribe’s participation in oral argument.

The Tribe can offer the Court a helpful, valuable perspective that compliments but is distinct from Petitioners and the United States. The Tribe therefore respectfully requests that the Court honor the Tribe's sovereignty and allow it to participate in oral argument to advocate against Texas's unauthorized attempts to infringe on the Tribe's sovereignty interests.

CONCLUSION

Amicus Curiae the Alabama-Coushatta Tribe of Texas respectfully request that the Court grant the motion to participate in oral argument and for ten minutes of argument time.

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Respectfully submitted,

/s/ Danny S. Ashby

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