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Aquinnah Wampanoags Move Closer To Developing Bingo Parlor

Appellate Court Ruling Favors Gambling Prospects

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While large-scale casino gambling projects capture public attention in Massachusetts, the Wampanoag Tribe of Gay Head (Aquinnah) hopes to build a bingo parlor on Martha's Vineyard. A federal appeals court's decision last month would allow the tribe's hopes to become reality.

The Aquinnah Wampanoags inhabited Martha's Vineyard long before European colonization, but the tribe did not receive federal recognition until 1987, following its lawsuit against the town of Gay Head (now Aquinnah) to eject record title holders from claimed lands. The dispute was settled in 1983, with 485 acres of "settlement lands" transferred to the tribe. Congress implemented the settlement in 1987 under the Wampanoag Tribal Council of Gay Head Inc., Indian Claims Settlement Act. The Claims Settlement Act specifically subjected the settlement lands to state and local laws, "including those laws and regulations which prohibit or regulate the conduct of bingo and other games of chance."

While the Aquinnah Wampanoags were finalizing their settlement, another lawsuit affecting Native American rights was making its way through the federal courts. The U.S. Supreme Court's landmark 1987 decision in *California v. Cabazon Band of Mission Indians* held that state regulation of tribal bingo games impermissibly

infringed on tribal government. Cabazon created uncertainties about gambling regulations on tribal lands, and raised concerns that organized crime would infiltrate tribal gaming. In response, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, hoping that well-managed tribal gaming facilities would promote economic and political self-sufficiency for Native Americans.

IGRA created a complex regulatory system for gambling on tribal lands, with three classes of gaming. Class I gaming, which is traditional Native American games with small prizes, is permitted in all instances. Class II gaming, which includes bingo, is permitted in states where it is not prohibited outright. Class III gaming, which is full casino gambling, is allowed only by compact between the tribe and the state. IGRA established the National Indian Gaming Commission (NIGC) to administer the law and approve Class II tribal gaming ordinances. The results of IGRA are manifest, as Native American tribes have built successful casinos drawing millions of enthusiastic gamblers.

When Massachusetts passed legislation in 2011 allowing regulated casino gambling, the Aquinnah Wampanoag initially sought to negotiate a Class III gaming compact with the commonwealth, but without success. The tribe submitted a less ambitious proposal to NIGC in 2013, for a Class II bingo facility on tribal lands. NIGC ap-

proved the facility, whereupon the tribe notified the commonwealth of its plans to build a bingo parlor without state approval. The commonwealth reacted swiftly, filing suit in state court to block the project, claiming that the 1987 Claims Settlement Act prohibited a bingo parlor. The tribe removed the suit to federal court. The town of Aquinnah intervened, taking the commonwealth's side in the dispute.

The federal district court ruled that the tribe's settlement lands were not covered by IGRA and were therefore subject to state gaming regulations, offering two reasons. First, the tribe failed to exercise sufficient governmental powers over its land; and second, the Claims Settlement Act of 1987 precluded the tribe from building a gaming facility, despite IGRA. The district court entered summary judgment against the tribe, blocking its project. The tribe appealed to the U.S. Court of Appeals for the First Circuit, which reversed the district court on April 10.

The appellate court disagreed with the district court's analysis on both issues. First, as to whether the tribe exercised sufficient governmental powers, the appellate court noted that the tribe operated housing, healthcare, education, public safety and social services programs on settlement lands. The tribe also had passed tribal ordinances and employed a part-time judge, as well as being a party to several federal and state intergovernmental agreements. The appellate

court found that the tribe exercised ample governmental powers over tribal lands.

Second, the appellate court ruled that IGRA, passed in 1988, partially repealed the 1987 Claims Settlement Act, because it was enacted after the Claims Settlement Act and it specifically allows bingo and other Class II gaming on tribal lands in states that do not

prohibit such gaming. The appellate court reversed the district court, and ordered the district court to enter judgment in favor of the tribe.

Martha's Vineyard is a summer vacation paradise for the well-heeled, with sandy beaches and beautiful scenery, including Gay Head's colorful cliffs. It may soon host

a bingo parlor operated by the Aquinnah Wampanoags, which could provide revenue to the tribe during the island's lean winter months. ■

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