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# Bingo Blocked On Texas Tribe's Land, 5th Circ. Says

By [Andrew Westney](#)

Law360 (March 15, 2019, 8:03 PM EDT) -- The Fifth Circuit on Thursday upheld a lower court's decision that Texas can clamp down on the [Alabama-Coushatta](#) tribe of Texas' electronic bingo games, saying the Indian Gaming Regulatory Act didn't apply to the tribe's business.

The Alabama-Coushatta tribe was seeking to overturn a Texas district judge's [February 2018 ruling](#) that the Restoration Act of 1987 — which restored the tribe's federal recognition but also subjected it to Texas gambling laws — trumped IGRA, arguing that the [National Indian Gaming Commission's](#) finding that IGRA governed the tribe's gambling meant the court should lift an existing ban.

In a published opinion Thursday, a Fifth Circuit panel said that under a 1994 ruling by the circuit court on the nearly identical statute restoring the [Ysleta del Sur Pueblo's](#) recognition, the lower court rightly found the Restoration Act outweighs IGRA, despite the NIGC's decision.

"We thus reaffirm that the Restoration Act and the Texas law it invokes — and not IGRA — govern the permissibility of gaming operations on the tribe's lands," according to the opinion by Circuit Judge Jerry E. Smith. "IGRA does not apply to the tribe, and the NIGC does not have jurisdiction over the tribe. The district court did not abuse its discretion in denying relief from the permanent injunction."

The Alabama-Coushatta tribe and the Ysleta del Sur Pueblo have both sought for years to offer gambling, but were blocked by federal court rulings that the Restoration Act passed in 1987 — which in separate titles restored tribal rights and privileges for each tribe that had been stripped decades before — blocked their gambling despite the passage of IGRA in 1988.

The Alabama-Coushatta tribe hadn't tried to offer gambling for over a decade following a 2002 injunction from the federal court, but got a shot in the arm from a 2015 NIGC ruling

that IGRA applied to the tribe's reservation lands, which the tribe claimed impliedly repealed the section of the Restoration Act that made state gambling laws applicable to the tribe.

The state of Texas moved to block the Alabama-Coushatta tribe's bingo at the Naskila Entertainment Center in 2016, claiming that the tribe was violating the injunction.

U.S. District Judge Keith F. GIBLIN ruled in February 2018 that the tribe wasn't protected from the state's gambling restrictions, expressing regret at the "unjust" situation but saying that permission from the NIGC was not enough to authorize the tribe's electronic bingo games.

The judge [stayed his decision](#) later that month for the tribe to bring its appeal.

In Thursday's decision, the Fifth Circuit said neither the NIGC's 2015 decision nor evolving [U.S. Supreme Court](#) precedent regarding the interpretation of statutes was enough to turn the tables for the tribe.

Under the high court's 2005 ruling in [National Cable & Telecommunications Association v. Brand X Internet Services](#), only a court decision holding that a statute "unambiguously forecloses" an agency's interpretation can override that interpretation, the panel noted.

But the Fifth Circuit's 1994 ruling in the Ysleta del Sur Pueblo case does just that, the panel said, since the court in that earlier case didn't find any ambiguity in the Restoration Act when ruling that it prevails over IGRA in connection with gambling by the Pueblo — a finding that extends to the Alabama-Coushatta tribe.

The 1994 circuit court panel "employed traditional tools of statutory interpretation and found that Congress spoke to the precise issue," as required by the Supreme Court's Brand X ruling, the panel said.

And the 1994 ruling "specifically rejected the theory that to the extent that a conflict between the two exists, IGRA impliedly repeals the Restoration Act," the panel said.

Alabama-Coushatta Tribal Council Chairperson Cecilia Flores said in a statement Friday that the tribe plans to continue its court fight to be able to offer gambling.

"Naturally we are disappointed by the ruling of the three-judge panel, but the Alabama-Coushatta tribe remains committed to protecting our sovereign rights and the people whose livelihood depends on this [Naskila Gaming] facility," Flores said.

She added that the tribe plans to ask the Fifth Circuit for en banc rehearing and "stand[s] ready to appeal any adverse ruling to the United States Supreme Court as well."

Representatives for the state of Texas did not immediately respond to request for comment Friday.

The Ysleta del Sur Pueblo's own bid to revive its bingo business was [shut down recently](#), with a Texas federal judge ruling Feb. 14 that the tribe's electronic bingo machines at its El Paso facility as well as its more traditional bingo games violated state and federal law.

U.S. District Judge Philip R. Martinez granted summary judgment and a preliminary injunction to Texas, ruling the tribe's bingo machines and its live bingo games "fail to comport with Texas law and regulations, which have been federalized via the Restoration Act."

The judge in that case said that if the Pueblo and the Alabama-Coushatta tribe want to continue offering bingo on their respective reservations, they should "petition Congress to modify or replace the Restoration Act."

Circuit Judges Jerry E. Smith, Stuart Kyle Duncan and Kurt D. Engelhardt sat on the panel for the Fifth Circuit.

The Alabama-Coushatta tribe is represented Danny S. Ashby, David I. Monteiro, Megan Renee Whisler and Justin R. Chapa of [Morgan Lewis & Bockius LLP](#) and Frederick R. Petti of [Petti & Briones PLLC](#).

Texas is represented by Attorney General Ken Paxton, First Assistant Attorney General Jeffrey C. Mateer, Solicitor General Scott A. Keller and Assistant Solicitor General Eric A. White.

The case is State of Texas v. Alabama-Coushatta Tribe of Texas et al., case number [18-40116](#), in the U.S. Court of Appeals for the Fifth Circuit.

--Additional reporting by Adam Lidgett, Michael Phillis, Michelle Casady, Braden Campbell and Emma Cueto. Editing by Bruce Goldman.