

November 10, 2017

Volume 23, Issue 36

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A publication of
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The _____ MICHIGAN GAMING _____ Newsletter



SUPREME COURT HEARS ORAL ARGUMENTS ON SEPARATION OF POWERS ISSUE IN TRIBAL LAND DISPUTE

On November 7, 2017, the United States Supreme Court heard oral arguments in the case of *Patchak v. Zinke*, a challenge to the Gun Lake Tribe's acquisition of land from the federal government on which it constructed a casino. Gun Lake acquired land in Wayland, Michigan that a local resident, David Patchak, contested. In the lawsuit Patchak filed, the dispositive issue was whether Patchak had standing to sue, an issue that the Supreme Court had previously resolved in Patchak's favor. After the prior Supreme Court's decision, President Barack Obama signed into law on September 26, 2014 the "[Gun Lake Trust Land Reaffirmation Act](#)" (the "Gun Lake Law"). The Gun Lake Law reaffirmed the Department of the Interior's decision to take the land into trust for the Gun Lake Tribe and barred any lawsuit from challenging the Department of the Interior's decision.

Scott Gant, Patchak's attorney, argued that the Gun Lake Law violated the separation of powers of the judicial and legislative branches of the government, stating it was: "precisely the kind of legislative review of judicial decisions that the Framers rejected when they designed the Constitution." He also argued that: "the fact that a statute strips jurisdiction from a court doesn't mean that it's immunized from review under separation of powers." He noted: "[p]art of what's offensive here to the separation of powers principles is that Congress is directing the outcome in a case." He concluded by arguing: "What Congress cannot do is direct the outcomes of a case even under the guise of jurisdiction."

Ann O'Connell, representing the Interior Department Secretary Ryan Zinke, refuted Patchak's claims, arguing there was no separation of powers issue.

She noted: “The Court acknowledged in Patchak I that barring claims like Petitioner’s is within Congress’s legislative powers.” She contended: “Congress also eliminated federal court jurisdiction over challenges to the trust status of this property, thereby revoking the waiver of sovereign immunity in the [Administrative Procedures Act].” Ms. O’Connell refuted the argument that the Gun Lake Act was targeting Patchak, arguing: “this is not a statute that is directed toward just Smith v. Jones, Smith wins. This is a case that applies to any suit related to [the Gun Lake tribal land].”

Pratik Shah appeared on behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians. He argued “if you are excluding completely the federal courts from adjudication, that does not raise a separation of powers problem.” He concluded by stating: “We’re strictly on separation of powers grounds, and there is no separation of powers problem in this Court withdrawing jurisdiction, including with respect to pending cases.”

The Supreme Court will issue its opinion at some point before the close of the 2017-2018 session in June 2018.

CAESARS WINDSOR ANNOUNCES EXPANSION

Caesar’s Windsor recently announced the renovation of their property, which will involve the renovation of 389 rooms in the Forum tower and the reconfiguration of some restaurants. In the short term, the plan requires the closure of The Artist Café. The renovation will commence in early 2018.

“We reviewed our entire food and beverage operations and wanted to focus on the areas we were doing very well and what was most popular with our guests,” said Jhoan Baluyot, Manager of PR and Communications for Caesar Windsor. In conjunction with the renovations, Legends Sports Bar will extend its hours.

Caesars Windsor has opened two nightclubs and renovated two restaurant outlets in the past two years.

OHIO CASINO REVENUES DROP IN OCTOBER

The Ohio Casino Control Commission [released October revenue figures](#), and Ohio’s casinos experienced a nearly 1 percent drop in revenue in October, although Jack Casino in Cleveland experienced a small increase.

At Hollywood Casino Toledo, revenues were down almost 1% at \$16.1 million. Hollywood Casino Columbus revenues were down almost 3% at \$17.8 million. Penn National Gaming owns both casinos. While Jack Entertainment’s Jack Cincinnati Casino’s revenue was down .2% to \$15.7 million, Jack Entertainment’s Cleveland Casino experienced a revenue increase of 1% to \$16.9 million.

Overall, total revenue was down from \$67.1 million in September to \$66.5 million in October. Despite the decrease, revenue for the year through October is up nearly 2% at \$682.5 million as compared to \$669.4 million last year. The revenue generated at the casinos still outpaced the seven racinos in Ohio, with October revenue down 1.4% in October. The racinos year-to-date revenue, however, has outpaced the casinos revenue, increasing 7% to \$802 million as compared to 2016 revenue through October of \$750.2 million.

AMERICAN GAMING ASSOCIATION BOARD OF DIRECTORS ELECTS NEW CHAIRMAN

Per a press release dated November 9, 2017, the American Gaming Association’s (AGA) Board of Directors announced that it has elected Tim Wilmott, CEO of Penn National Gaming, Inc., as the casino industry group’s next Chairman. Wilmott will serve a two-year term beginning in January 2018. He succeeds outgoing AGA Chairman, Jim Murren, Chairman and CEO of MGM Resorts, who has led the AGA board since 2014.

Wilmott has been actively involved in AGA leadership since 2015 as an Executive Committee member and Director of the Board, as well as Chair of the Finance and Investment Committee.

“I’m immensely proud of the progress we have made in establishing our industry as mainstream entertainment, a source of strong jobs and as a crucial economic engine of the U.S. economy,” said Murren. “Tim is a chief executive of the highest caliber and has been an engaged and invaluable member of the AGA Board and Executive Committee and a strong partner to me personally. He has contributed greatly to our past successes and has my full support as he leads us into the future.”

Wilmott joined Penn National Gaming in February 2008 as President and Chief Operating Officer and was later named Chief Executive Officer in November, 2013. Prior to joining Penn National, Wilmott was with Harrah’s Entertainment from 1987 to 2008, where he served as Chief Operating Officer.

“I am excited to continue working with Geoff and the AGA team to advance issues critical to the gaming industry’s success,” said Wilmott. “I certainly have big shoes to fill following Jim’s tenure as Chairman, but I look forward to continuing the momentum that he initiated.”

“I am indebted to Jim for his tremendous leadership over two consecutive terms as our Chairman,” said Geoff Freeman, President and CEO of the AGA. “Throughout, he has been committed to modernizing the Association and has led an era marked by significant progress on important matters of policy and building stronger relationships in Washington and with key stakeholders across a variety of industries.”

Freeman continued, “We are fortunate to have Tim as our next Chairman. His passion for our industry, shared vision and deep involvement on a number of critical issues assures a smooth and

successful transition into the future. Tim will be instrumental in driving the implementation of our 2020 Strategic Plan and I know I speak for our team, and the entire industry, when I say we look forward to working together.”