

Civil Jurisdiction Under Public Law 280

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- 1) Bryan v. Itasca County, 426 U.S. 373 (1976) is the seminal U.S. Supreme Court case interpreting PL 280. It ruled that Public Law 83-280 (“PL 280”) confers civil adjudicatory jurisdiction on the applicable state courts to hear private disputes involving Indians. 28 U.S.C. § 1360; Bryan, 426 U.S. 373, 383-85 (1976). The Court also ruled that state civil regulatory jurisdiction over Indians on reservations is not conferred by PL 280. In reversing a Minnesota Supreme Court ruling applying Minnesota’s personal property tax to Mr. Bryan’s mobile home on the Leech Lake Reservation, the Court stated:

Thus, rather than inferring a negative implication of a grant of general taxing power in § 4 (a) from the exclusion of certain taxation in § 4 (b), we conclude that construing Pub. L. 280 in pari materia with these [contemporaneous termination] Acts shows that if Congress in enacting Pub. L. 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so. Bryan, 426 U.S. at 390.

- 2) One issue that often gets overlooked in discussion of PL 280 is that PL 280 analysis is a subset of the broader analysis of whether a state may apply its laws within Indian country. There is no “rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation.” White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980). State laws may either be federally pre-empted or may infringe on tribal self-determination. Either is sufficient to deny state jurisdiction. Bracker, 448 U.S. at 142-43.
- 3) One basis for a state to assert that its laws apply on an Indian reservation in a state is if “Congress has expressly so provided.” California v. Cabazon, 480 U.S. 202 (1987). In Cabazon, the State of California tried to assert that the California bingo statute prohibited the Cabazon Tribe’s bingo games. California argued that Public Law 280 was an express grant to the State to apply its laws on the Cabazon Reservation. In deciding in favor of the Tribe, the Court stated:

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[W]hen a State seeks to enforce a law within an Indian reservation under the authority of Pub. L. 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation under § 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.

Cabazon, 480 U.S. at 208.

- a) The court went on to find that California's bingo statutes, though containing criminal penalties in some areas, were overall a civil regulatory scheme:

In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.

480 U.S. at 211.

- b) Cabazon noted that a state's attempt to criminalize certain specific activities does not take a law out of the civil/regulatory category:

[T]hat an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law within the meaning of Pub.L. 280.

480 U.S. at 211.

- 4) If the amount of litigation is any indication, PL 280's grant of criminal jurisdiction and civil adjudicatory jurisdiction to states is fairly well settled. However, it is the area of the application of a state's civil regulatory jurisdiction that has generated the most uncertainty and hence the most litigation. The essential question in almost every disputed case of the scope of a state's civil regulatory jurisdiction is whether the law is criminal / prohibitory and thus within PL 280's grant of jurisdiction, or civil / regulatory and thus outside of its grant. Below are several cases where this issue has been examined for various subjects and jurisdictions.
- 5) The issue of whether particular state civil regulations apply in Indian country in PL 280 states requires an analysis under Cabazon:

Nothing in this opinion suggests that cock-fighting, tattoo parlors, nude dancing, and prostitution are permissible on Indian reservations within California. The applicable state laws governing an activity must be examined in detail before they can be characterized as regulatory or prohibitory. The lower courts have not demonstrated an inability to identify prohibitory laws. For example, in Unites States v. Marcyes,

557 F.2d 1361, 1363-1365 (9th Cir. 1977), the Court of Appeals adopted and applied the prohibitory/regulatory distinction in determining whether a state law governing the possession of fireworks was made applicable to Indian reservations by the Assimilative Crimes Statute, 62 Stat. 686, 18 U.S.C. § 13. The court concluded that, despite limited exceptions to the statute's prohibition, the fireworks law was prohibitory in nature. See also United States v. Farris, 624 F.2d 890 (9th Cir. 1980), cert. denied, 449 U.S. 1111, 101 S.Ct. 920, 66 L.Ed.2d 839 (1981), discussed in n. 13, *infra*. (emphasis added). Cabazon, 480 U.S. at 211, n.10.

VARIOUS STATE AND FEDERAL CASES THAT DISCUSS THE REGULATORY / PROHIBITORY ANALYSIS:

6) CALIFORNIA

- a) In Confederated Tribes of Colville Reservation v. State of Wash., 938 F.2d 146 (9th Cir. 1991), the court found the State of Washington's speeding law civil/regulatory and therefore the State could not assert jurisdiction over tribal members on the Colville Reservation. The court commented on the public policy inquiry under Cabazon:

Thus, although the government is correct that *speeding* remains against the state's public policy, Cabazon teaches that this is the wrong inquiry. Cabazon focuses on whether the prohibited activity is a small subset or facet of a larger, permitted activity – high-stakes unregulated bingo compared to all bingo games – or whether all but a small subset of a basic activity is prohibited. (emphasis in original).

Confederated Tribes, 938 F.2d at 148-49.

- b) In Quechan Indian Tribe v. McMullen, 984 F.2d 304 (9th Cir. 1993), the Ninth Circuit Court of Appeals held, based on a Cabazon analysis of the California statute, that California has the authority to regulate fireworks in Indian country.
- c) In Twenty-Nine Palms Band of Mission Indians v. Wilson, 925 F.Supp 1470 (C.D.Cal 1996), the court ruled that California's boxing statutes were civil/regulatory and therefore the State was without authority to enforce those laws on the Tribe's Reservation. (The Ninth Circuit subsequently vacated the opinion after the passage of the federal Professional Boxer Safety Act, which the parties admitted superseded state law.)

- d) In **Middletown Rancheria of Pomo Indians v. W.C.A.B.**, 60 Cal.App.4th 1340 (1998), the California appeals court held that California’s worker’s compensation laws are civil/regulatory under Cabazon analysis.
- e) **Doe v. Mann**, 285 F.Supp.2d 1229 (N.D.Cal. 2003). The plaintiff was a tribal member suing various state defendants seeking to invalidate a California state court order re an ICWA matter. The Court stated that the State court’s order was valid unless plaintiff demonstrated that her Tribe had reassumed jurisdiction over child custody proceedings pursuant to 25 U.S.C. 1918. In dicta however, the court noted that state case law supports the view California’s regulation of child welfare matters is civil / regulatory not criminal / prohibitory. “California courts have consistently held that state child dependency proceedings in juvenile court are civil actions designed to protect the child, not reprove the parent for violating a prohibition.” 285 F.Supp.2d at 1237.

7) **IDAHO**

- a) **State v. Marek**, 116 Idaho 580, 777 P.2d 1253 (App. 1989). The defendant, a Nez Perce Indian, was charged with felonies relating to injuries suffered by his two-month old daughter. Marek argued that the State did not have criminal jurisdiction to prosecute him for felony injury to a child because it was an adjunct to a state civil regulatory scheme established for the protection of children and therefore falls outside of PL 280’s grant. The court disagreed. The court ruled that the statute has a “logical place in our criminal code. It is not a mere adjunct to the Child Protective Act or Parent-Child Relationship Termination Act.” 116 Idaho at 583. “Idaho does not merely ‘regulate’—rather, it prohibits and seeks to eliminate—injury to children.” Id.
- b) **State v. George**, 905 P.2d 626 (1995). The Idaho Supreme Court found that Idaho’s traffic statutes are criminal and therefore fall within Public Law 280’s grant of criminal jurisdiction to the State of Idaho.

8) **MINNESOTA**

- a) In **State v. Robinson**, 572 N.W.2d 720 (Minn. 1997), the Supreme Court of Minnesota held that the State’s underage consumption of alcohol was criminal/prohibitory and therefore enforceable against a member of the Leech Lake Tribe for conduct occurring on the Reservation. However, Minnesota’s failure-to-yield law was civil/regulatory and therefore unenforceable.
- b) In **State vs. Stone**, 572 N.W.2d 725 (Minn. 1997), tribal members were cited for various motor vehicle violations within the boundaries of their

- reservation. The Minnesota Supreme Court held that state statutes governing failure to provide insurance, proof of insurance, driving with an expired license, driving without a license, driving with expired registration, speeding, driving with no seat belt and failure to put a child in a restraint seat were civil/regulatory for purposes of Public Law 280 and the state lacked jurisdiction.
- c) In **State v. Couture**, 587 N.W.2d 849 (Minn.App. 1999), the Minnesota Court of Appeals held that Minnesota's driving-while-intoxicated statute is criminal/prohibitory and therefore was applicable to the defendant who was a member of the Fond du Lac Tribe and driving on the Fond du Lac Reservation when he drove off the road.
 - d) **State v. Johnson**, 598 N.W.2d 680 (Minn. 1999) holds that Minnesota's traffic regulations requiring proof of insurance and prohibiting driving after revocation are civil / regulatory in nature and therefore the court has no jurisdiction to enforce them against tribal members for violations on tribal land.
 - e) In **State v. Busse**, 644 N.W.2d 79 (Minn. 2002), the Minnesota Supreme Court held that driving after cancellation presents heightened public policy concerns and was a criminal/prohibitory offense and therefore the State had jurisdiction over the tribal member who was charged when driving his vehicle on the Reservation.
 - f) In **State v. LaRose**, 2003 WL 22952750 (Minn. App.), the defendant argued that because the Minnesota legislature had decriminalized possession of small amounts of marijuana and recognized that marijuana may have valid medical uses, therefore the state's policy was not criminal / prohibitory. The Minnesota Court of Appeals disagreed and ruled that Minnesota's fifth-degree controlled substance crime (marijuana possession) was criminal/prohibitory under a Public Law 280 analysis.

CIVIL JURISDICTION UNDER PL 280 IN WISCONSIN

- 1) **State v. Lemieux**, 106 Wis.2d 484 (Ct.App. 1982). In this case, John and Peter Lemieux were cited for violations of Wis. Stat. sec 29.224(2), which prohibits the possession or transportation of uncased or loaded firearms in vehicles. The trial court held, and the court of appeals affirmed, that there was no basis for state jurisdiction over the defendants who were within the boundaries of their reservation when cited. Although Wis. Stat. sec. 29.224(2) carried criminal penalties, it was in the nature of civil regulatory law and therefore outside the grant of jurisdiction under PL 280.

- 2) **Sanapaw v. Smith**, 113 Wis.2d 232 (Ct.App. 1983). Sanapaw sued Smith in state court for the tort of battery for an incident that occurred on the Menominee Reservation. The complaint alleged that both men were Indian. There apparently was some factual dispute as to whether Smith was Indian. Smith sought to dismiss the complaint claiming that the retrocession of state jurisdiction on the Menominee Reservation to the federal government under PL 280 meant that state jurisdiction in this matter was pre-empted. In remanding the case, the court held that state court jurisdiction depended on Smith's status as an Indian or a non-Indian for jurisdictional purposes.

- 3) **County of Vilas v. Chapman**, 122 Wis.2d 211 (1985), is the first Wisconsin Supreme Court case with substantive discussion of Public Law 280. The final decision in Chapman does not rely on PL 280 to establish state court jurisdiction. The holding rests on the Wisconsin Supreme Court's adoption of the "tradition-of-self-government" test.
 - a) Gilbert Chapman was stopped by a Vilas County Sheriff's deputy on Hwy 47 on the Lac du Flambeau Indian Reservation and cited under a Vilas County Ordinance for having an open intoxicant in a motor vehicle.
 - b) Issue: Whether Vilas County has jurisdiction to enforce a noncriminal traffic ordinance against an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians for an offense which occurred on a public highway within the boundaries of the Reservation.
 - c) Reasoning: In trying to evaluate the issue, the Wisconsin Supreme Court adopted the reasoning from Rice v. Rehner, 463 U.S. 713 (1983).
 - i) The first question is whether the Tribe has a tradition of self-government in the area of traffic regulation on Highway 47 within the Reservation. Court found no written laws, therefore no history by LDF Tribe in regulating traffic.
 - (1) (What type of precedent does this set? Difficult to have a tradition of self-government for newer things (computers, cell phones, etc.) Under this rule, Tribe can instantly establish tradition by enacting ordinances in all areas. Finally, written law is not the only valid way that a Tribe may establish a tradition of self-government.)
 - ii) Second, evaluate balance of federal, state, and tribal interest in the regulation of Highway 47. Court acknowledged strong tribal and state interests in regulating Highway 47.
 - iii) The Court next looked at whether federal government had pre-empted state jurisdiction. The Court found that PL 280 does not pre-empt because under Rice when a tribe does not have a tradition of self-government, express congressional statement is not necessary to grant a state jurisdiction.
 - d) Holding: Vilas County has jurisdiction to enforce ordinance against Chapman.
 - e) PL 280 does not mention application of county laws. In fact PL 280 discusses laws of "statewide" application. Although the Chapman decision does not rest on PL 280 grounds, the reasoning in Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir. 1975), is persuasive as to why county governments should not be allowed to exercise jurisdiction on Indian Reservations:

... we conclude that Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations. Prior to passage of P.L. 280, Congress had encouraged, under § 476 of the Indian Reorganization Act, the formation and exercise of tribal self-government on reservation trust lands. A construction of P.L. 280 conferring jurisdiction to local county and municipal governments would significantly undermine, if not destroy, such tribal self-government. By transferring regulation of all matters of local concern to local governments, the tribal government would be left little or no scope to operate. We think it more plausible that Congress had in mind a distribution of jurisdiction which would make the tribal government over the reservation more or less the equivalent of a county or local government in other areas within the state, empowered, subject to the paramount provisions of state law, to regulate matters of local concern within the area of its jurisdiction.
532 F.2d at 662-63.

- f) The facts in Santa Rosa differed from Chapman in that the County in Santa Rosa was trying to enforce county general laws on tribal trust land. Vilas County was trying to enforce county ordinance on state highway on the reservation.
- 4) In State v. St. Germaine, 150 Wis.2d 171 (Ct.App. 1989), the Court of Appeals ruled that Operating After Revocation third and fourth offense and operating while intoxicated, third offense, were criminal/prohibitory. Therefore, the State had jurisdiction over the offenses, which occurred on the Lac du Flambeau Reservation involving Lac du Flambeau tribal members. The court engaged in a more narrow analysis stating that the dispositive issue was whether OAR and OWI 3rd were criminal, not whether driving as a whole was criminal/prohibitory.
- 5) In St. Germaine v. Chapman, 178 Wis.2d 869 (Ct.App. 1993), the Court of Appeals ruled that the state circuit court did not have jurisdiction to hear a petition for a domestic abuse restraining order filed by a member of the Lac du Flambeau tribe against another LDF member where the tribe had a tribal court and had an ordinance in place that was substantially similar to the state statute in this area.
- 6) In an unpublished opinion, State v. Cutler, 1994 WL 656820 (Wis.App.), the Wisconsin Court of Appeals ruled that Wisconsin's fireworks sale statute was civil/regulatory and therefore unenforceable against Ms. Cutler. In this case the court examined three possible sources for state jurisdiction: 1) PL 280 did not provide jurisdiction to the State due to the finding that the fireworks statute was civil/regulatory; 2) the Chapman rule did not grant the State jurisdiction as the St. Croix Tribe had in place a fireworks ordinance and therefore had a sufficient tradition

of self-government; and 3) there were no “exceptional circumstances” that permitted state jurisdiction.

- 7) In **State ex rel. Lykins v. Steinhorst**, 197 Wis.2d 875 (Wis.App. 1995), the Wisconsin Court of Appeals held that Wisconsin’s extradition laws are criminal/prohibitory and therefore fully applicable to Lykins, an Apache tribal member who had been arrested on Ho Chunk trust land in Wisconsin.
- 8) In **State v. Burgess**, 2003 WI 71, 262 Wis.2d 354, the Wisconsin Supreme Court ruled that Wis. Stat. ch. 980, governing the confinement of sexually violent persons, was criminal/prohibitory in nature and therefore applicable to Burgess, an enrolled member of the Lac du Flambeau Indian tribe who had committed sexual assault on the Reservation. 2003 WI ¶ 19. The Court added dicta that stated that even if “chapter 980 is strictly construed as a ‘civil’ law in its entirety, it is civil/adjudicatory rather than civil/regulatory, and therefore falls within PL 280’s grant of civil jurisdiction to the State.” 2003 WI ¶ 20.
- 9) **Wis. AG. Op. vol. 80, p. 337 (11/13/1992)**, discusses off-reservation impacts of on-reservation conduct and concludes the State can regulate ATMs.
- 10) **Lac du Flambeau v. Wisconsin**, 770 F.Supp 480 (W.D. Wis. 1991); Class III gaming is “permitted” in Wisconsin as that term is used in IGRA, 25 U.S.C. §§ 2701, et seq.