

U.S. Supreme Court debates tribal casino lawsuit

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By [Jesse J. Holland / Associated Press](#) Santa Ynez Valley News | Posted: Tuesday, May 1, 2012 12:00 am | [\(0\) Comments](#)

Several U.S. Supreme Court justices seemed troubled last week at the thought of letting a lawsuit move forward that aims to shut down an already opened tribal casino in southwestern Michigan.

"It does seem that we may be wasting our time," Justice Anthony Kennedy said during arguments Tuesday, April 24. "I'm not suggesting that the ... case is moot, but you did wait for some three years before you brought this suit. The building was built."

Casino foe David Patchak sued to stop the opening of a casino by the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians, also known as the Gun Lake Tribe, in Wayland Township, 20 miles south of Grand Rapids. Patchak challenged how the government placed the land in trust for the tribe, saying that the move was illegal since the tribe had not been recognized by the government in 1934 when the Indian Reorganization Act was passed.

His suit began before the building was constructed but the appeals process delayed its arrival at the Supreme Court.

Although the court heard the arguments last week, it is not expected to rule until sometime this summer, perhaps in June.

Also at issue is whether a private citizen has legal "standing" to challenge the federal process of taking land "into trust" for an Indian tribe.

In the Santa Ynez Valley, a decision in favor of the plaintiff would allow residents and community groups to legally dispute attempts by the Santa Ynez Band of Chumash Indians to expand their reservation.

If the court rules that Patchak does not have standing, private citizens or organizations could not pursue judicial review of any land-into-trust decisions.

The Chumash have indicated their desire to add the land, about 2 miles east of the casino at Highways 246 and 154, to their 130-acre reservation either through the Bureau of Indian Affairs' fee-to-trust process or by direct federal legislation. If made part of the reservation, the sovereign tribal land would become exempt from local and state taxes and local planning and zoning laws.

Tribal leaders have said they plan to build tribal housing on part of the "Camp 4" property and make their own wine from a vineyard on another part, but have said they don't know yet what they would do with the rest of the 1,400 acres, which is about the size of Solvang.

According to Stand Up for California!, a statewide group focused on gambling issues, 28 community organizations across the state have filed brief as amicus curiae, Latin for "friend of the court," in the Salazar v. Patchak case.

That list includes three local groups, Santa Ynez Valley Alliance, Santa Ynez Valley Concerned Citizens, and Women's Environmental Watch (W.E. Watch).

Cathie McHenry, W.E. Watch board president, said she is "hopeful that the court will affirm the judgment of the court of appeals that private citizens and community groups can challenge fee-to-trust conversions."

"Like everyone else, we will have to wait for the court's decision," she said in an email message.

W.E. Watch, founded in 1992, is dedicated to promoting education on environmental issues and their impacts on quality of life in the Santa Ynez Valley.

In its brief, the group contends "citizens and citizen groups are an essential component within the 'zone of interest' in fee-to-trust transfers" and emphasizes the negative impacts and "grim outcomes" that can and have happened in communities near casinos.

"Gaming tribes are wealthy. They can and do seek to exert great influence on politicians. Their immense financial resources allow them to cross the line from Native Americans needing support and assistance to just another big wealthy special interest seeking unfair advantage," the brief said.

Although tribal leaders have said they don't intend to build a casino on the agricultural parcel, nothing could stop them if the land becomes part of the reservation, opponents insist.

Previous attempts by the Chumash to annex property into the reservation, notably 6.9 acres across Highway 246 from the casino, have been met with opposition.

Nerissa Sugars, spokeswoman for the Chumash, said the tribe would have no comment on last week's Supreme Court hearing.

A federal judge initially refused to grant Patchak's request for an emergency stay and dismissed his lawsuit, saying his complaints that the casino would change the safety and character of the area were not enough to allow his lawsuit to move forward.

The Michigan casino opened in February 2011, only days after the U.S. Circuit Court of Appeals for the District of Columbia Circuit overruled the first judge's decision to throw out Patchak's lawsuit. The tribe and the Justice Department appealed that decision to the Supreme Court.

Patchak's lawyer, Matthew T. Nelson, argued that his client brought his lawsuit before the casino opened and before the government put the land in trust for the

tribe. The Supreme Court also ruled in 2009 in *Carcieri v. Salazar* that the Interior Secretary could put lands in trust only for tribes that were recognized before 1934.

“In spite of the knowledge of this court’s decision in *Carcieri*, they made a reasonable business decision to move forward with this, knowing the risk that they were taking that the entire basis of them being able to operate a casino and engage in Class 3 gambling could be overturned,” Nelson said.

The government and the tribe have argued that the lawsuit should be thrown out because federal law bars lawsuits attempting to overturn a decision to take title to lands in trust for tribes. “The United States has not waived its sovereign immunity from suits challenging its title to Indian trust lands,” Justice Department lawyer Eric D. Miller said.

The cases are *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 11-246, and *Salazar v. Patchak*, 11-247.

Staff writer Julian Ramos contributed to this report.