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# Tribal casino? Not so fast

By [Paul McMorrow](#) | GLOBE COLUMNIST    DECEMBER 13, 2011

THE SPAN between the signing of the law legalizing casino gambling in Massachusetts and the filing of its first legal challenge was measured in hours, not days. It likely won't be the last challenge, either.

Meanwhile, lawyers defending the state have unwittingly stepped into a bitter gambling showdown in Washington state. The Washington dispute shows that Indian gambling - the cause of the first challenge to the Massachusetts casino law - is a legal minefield. All the blind optimism in the world can't change that fact.

The federal government is getting hit from all sides in the dispute. It's being sued by a county in Washington state, by the city of Vancouver, and a group of casino opponents. It is also being sued by the Grand Ronde, an Indian tribe that operates a casino outside Portland, Oregon. The force uniting all these characters is a trial balloon floated by the Department of the Interior, which tried testing the Supreme Court's reach.

A year ago, Interior processed a reservation application for the Cowlitz, a tribe in southern Washington. Interior also ruled that this new reservation could be used for gambling. It was Interior's first land-taking on behalf of the tribe, which was federally recognized in 2002. The problem: In early 2009, the Supreme Court said Interior couldn't take reservation land for tribes.

The 2009 Supreme Court case, which was named after former Rhode Island Governor Donald Carcieri, has thrown tribal relations into chaos. The court said Congress hadn't authorized Interior to process reservations, known as taking land into federal trust, for any tribes recognized after 1934. Absent congressional action, the government lacks the authority to take land into trust for many tribes. Without it, there's no vehicle for setting up new tribal casinos.

The Cowlitz case was an attempt by Interior to make an end-run around the Carcieri decision, and it invited a flood of litigation. It will likely take years of legal wrangling, and a Supreme Court decision, to determine whether the Cowlitz may open a new tribal casino. In the meantime, new reservations,

especially new reservations for tribal gambling, remain lawsuit bait, and casino opponents hold all the leverage.

The Cowlitz case matters in Massachusetts because the new gambling law assumes, falsely, that the feds will be able to authorize a new tribal gambling reservation.

The law gives federally recognized tribes a head start in launching casino bids. If the Mashpee Wampanoag tribe and the state reach an agreement to place a casino in southeastern Massachusetts before the end of next July, one of the three newly created casino licenses will go to the tribe; if there's no agreement, the license will be competitively bid.

KG Urban Enterprises, a developer that wants to build a casino on the New Bedford waterfront, filed suit in federal court on the same day that Governor Deval Patrick signed the casino law. KG's challenge claims Beacon Hill couldn't legally give the Mashpee Wampanoag tribe an eight-month head start in the casino sweepstakes.

In its initial answer to the complaint, filed in federal court last week, lawyers for the state say lawmakers only gave the tribe the opportunity to operate within federal Indian gambling law, and that the tribe would need federal approvals before opening a Massachusetts casino. The problem is, the Supreme Court barred these federal approvals two years ago.

Since the Mashpee Wampanoag tribe received federal recognition in 2007, Beacon Hill's gambling proponents have been saying that the state can, and should, try to control tribal gambling. They're terrified of a sovereign Mashpee casino, mostly because they wouldn't get a cut of a sovereign casino's take.

By writing the Mashpee Wampanoag into the state's new gambling regime, lawmakers have leaped into a legal tangle that could take years to sort out. The state's system for licensing a tribal casino relies on federal approvals that the feds have no authority to give. Lawmakers have repeatedly suggested that if Interior isn't worried about the impact of the Carcieri decision on tribes like the Cowlitz and the Mashpee, they aren't worried either. They should be.