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## Tohono O'odham Nation v. City of Glendale, 804 F.3d 1292 (9th Cir. 2015)

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***Tohono O’odham Nation v. City of Glendale*, 804 F.3d 1292 (9th Cir. 2015)**

**Kathryn S. Ore**

*Tohono O’odham Nation v. City of Glendale* is a reminder of the tension between state governments and the federal government. It also reflects continued unease with tribal gaming policies. The Ninth Circuit reiterated the longstanding federal preemption doctrine to override the State of Arizona and City of Glendale’s attempted circumvention of the Gila River Bend Indian Reservation Land Replacement Act. In doing so, the court prevented state legislation from undermining the Tohono O’odham Nation’s ability to obtain replacement lands for its reservation.

I. INTRODUCTION

The primary issue in *Tohono O’odham Nation v. City of Glendale* was whether the Gila Bend Indian Reservation Lands Replacement Act (“Act”) preempted an Arizona law, House Bill 2534 (“H.B. 2534”), which permitted a city or town to annex certain neighboring unincorporated lands.<sup>1</sup> The Act allows the Tohono O’odham Nation (“Nation”) to purchase replacement reservation lands and request the federal government take them into trust.<sup>2</sup> Replacement reservation lands must be located outside the corporate limits of any city or town.<sup>3</sup> The United States District Court for the District of Arizona held the Act preempted H.B. 2534 and granted summary judgment to the Nation.<sup>4</sup> Upon appeal, the United States Court of Appeals for the Ninth Circuit affirmed the district court holding and ruled that H.B. 2534 was a “clear and manifest obstacle to the purpose of the Act.”<sup>5</sup>

II. FACTUAL AND PROCEDURAL BACKGROUND

The Nation primarily descends from American Indians who lived along Gila River in Arizona.<sup>6</sup> President Chester A. Arthur issued an

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1. *Tohono O’odham Nation v. City of Glendale*, 804 F.3d 1292, 1293 (9th Cir. 2015).

2. *Id.* at 1294; *see also* Gila Bend Indian Reservation Lands Replacement Act, Pub. L. No. 99-503, § 6, 100 Stat. 1798 (1986).

3. Pub. L. No. 99-503, § 6.

4. *Tohono O’odham Nation*, 804 F.3d at 1296-97.

5. *Id.* at 1300-01.

6. *Id.* at 1294.

executive order in 1882 setting aside the Gila Bend Indian Reservation (“Reservation”) in southwestern Arizona.<sup>7</sup> In 1960, the federal government completed construction of the Painted Rock Dam (“Dam”) approximately ten miles downstream from the Gila Bend Reservation.<sup>8</sup> Over the next several decades, the Reservation lands were rendered “economically unviable” by repeated flooding caused by the Dam.<sup>9</sup> To remedy the situation, the Nation petitioned Congress for new lands.<sup>10</sup> Congress recognized its trust responsibility to allocate suitable lands for the Nation, and passed the 1986 Gila Bend Indian Reservation Lands Replacement Act.<sup>11</sup> The Act authorized the Nation to assign its lands to the federal government in exchange for money, enabled the Nation to purchase lands that would be held in trust by the federal government at the request of the Nation, and released the United States from any legal claims.<sup>12</sup> Lands eligible for trust, however, could not be located “within the corporate limits of any city or town.”<sup>13</sup>

In 2003, the Nation purchased a parcel of unincorporated land surrounded by lands incorporated by the City of Glendale.<sup>14</sup> The Nation later requested a portion of the purchased lands “be taken into trust pursuant to the Act,” and publically unveiled its plan to build a gaming casino on that land (“Parcel 2”).<sup>15</sup> The Secretary of the Interior (“Secretary”) reviewed the Nation’s request and determined Parcel 2 “satisfied all the legal requirements of the Act.”<sup>16</sup> This determination was based on the Secretary’s conclusion that under the “plain and jurisdictional meaning of ‘corporate limits,’” Parcel 2 was not located “within the corporate limits of any city or town.”<sup>17</sup>

The State of Arizona and the City of Glendale (collectively “Defendants”) joined others to file lawsuits against the Department of the Interior in response to the Nation’s trust application and plan to build a gaming casino, alleging violations of the Administrative Procedure Act,

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7. *Id.*

8. *Id.*; *see also* Gila River Indian Community v. United States, 729 F.3d 1139, 1142 (9th Cir. 2013).

9. *Tohono O’odham Nation*, 804 F.3d at 1294.

10. *Id.*

11. *Id.*; *see also* Pub. L. No. 99-503.

12. *Tohono O’odham Nation*, 804 F.3d at 1294; *see* Pub. L. No. 99-503, § 6.

13. *Id.*

14. *Tohono O’odham Nation*, 804 F.3d at 1294.

15. *Id.* at 1294-95.

16. *Id.* at 1295.

17. *Id.*

the United States Constitution, and the Arizona Constitution.<sup>18</sup> The Nation intervened, and the suits were consolidated, styled as *Gila River Indian Community v. United States*.<sup>19</sup> On appeal, the Ninth Circuit determined the phrase “within corporate limits” was ambiguous and requested the Secretary “consider the phrase in light of the [identified] ambiguity.”<sup>20</sup> The Secretary reaffirmed its early interpretation, and on July 7, 2014, the federal government took Parcel 2 into trust.<sup>21</sup>

While the district court proceedings for *Gila River Indian Community* were pending, Arizona enacted H.B. 2534.<sup>22</sup> H.B. 2534 provided that a town or city could annex property surrounded, or partially surrounded, by incorporated lands, if the property owner “submitted a request to the federal government to . . . hold the [property] in trust.”<sup>23</sup> The Nation responded by filing a lawsuit against Defendants, alleging the Act preempted H.B. 2534, and H.B. 2534 violated the due process and equal protection clauses of the United States and Arizona Constitutions.<sup>24</sup> Additionally, the Nation asserted H.B. 2534 violated Arizona’s constitutional prohibition on special legislation.<sup>25</sup>

The district court entered a judgment confirming the Act preempted H.B. 2534 because it directly conflicted with Congress’s intent to enable the Nation’s lands to be put in trust.<sup>26</sup> The court denied the Nation’s due process claim, holding the Nation failed to show H.B. 2534 was “clearly arbitrary and unreasonable and unconnected to a legitimate state interest.”<sup>27</sup> It further denied the Nation’s equal protection claim, finding H.B. 2534 withstood rational-basis review.<sup>28</sup> Additionally, the court held the Nation had not demonstrated “beyond a reasonable doubt that H.B. 2534 constitute[d] special legislation.”<sup>29</sup> The parties filed cross appeals that were consolidated into a single suit.<sup>30</sup>

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18. *Id.*; see also *Gila River Indian Community*, 729 F.3d at 1144.

19. *Tohono O’odham Nation*, 804 F.3d at 1295.

20. *Id.* (citing *Gila River Indian Community*, 729 F.3d at 1147).

21. *Id.* at 1296.

22. *Id.*

23. *Id.*; see Ariz. Rev. Stat. § 9-471.04 (2011) (preempted by *Tohono O’odham Nation*, 804 F.3d 1292).

24. *Tohono O’odham Nation*, 804 F.3d at 1296.

25. *Id.*

26. *Id.*

27. *Id.* at 1297.

28. *Id.*

29. *Id.*

30. *Id.*

## III. ANALYSIS

The Ninth Circuit's analysis focused solely on the Nation's claim that the Act preempted H.B. 2534.<sup>31</sup> The court noted that Congress derives its power to preempt state law from the Supremacy Clause of the United States Constitution.<sup>32</sup> Preemption is divided into express, field, and conflict preemption.<sup>33</sup> Here, the Nation asserted "obstacle preemption," a type of conflict preemption.<sup>34</sup> Obstacle preemption occurs where "a challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"<sup>35</sup> Courts focus on "two bedrock principles" when conducting preemption analysis: first, the evaluation of congressional purpose; and second, the assumption that states' police powers should not be superseded unless that was the "clear and manifest purpose of Congress."<sup>36</sup> These principles amount to a presumption against preemption.<sup>37</sup>

Despite the presumption, the Ninth Circuit affirmed the district court's finding that the Act preempted H.B. 2534.<sup>38</sup> In doing so, the Ninth Circuit examined "the 'purpose and intended effects' of the Act," as well as the effect of H.B. 2534.<sup>39</sup> Congress passed the Act to compensate the Nation for destroying its initially reserved lands by facilitating "replacement of reservation lands with lands suitable for sustained economic use."<sup>40</sup> The Act accomplished Congress's intent by enabling the Nation to purchase land and incorporate it into tribal land by requesting the federal government hold it in trust.<sup>41</sup>

Under the Act, the federal government is required to take eligible land into trust if it meets several conditions.<sup>42</sup> First, the Nation must

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31. *Id.* at 1297-1301.

32. *Id.* at 1297 (internal citations omitted); *see* U.S. CONST. art. VI, cl.

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33. *Tohono O'odham Nation*, 804 F.3d at 1297 (citing *Kurns v. R.R. Friction Products Corp.*, 132 S. Ct. 1261, 1265-66 (2012)).

34. *Id.*

35. *Id.* (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (internal citation omitted)).

36. *Id.* at 1297-98 (citing *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)).

37. *Id.* at 1298.

38. *Id.*

39. *Id.* (quoting *Crosby*, 530 U.S. at 373.)

40. *Id.* (quoting Pub. L. No. 99-503, § 2(3)).

41. *Id.* (citing Pub. L. No. 99-503, § 6(c)-(d)).

42. *Id.* at 1299 (citing Pub. L. No. 99-503, § 6(d)).

request the Secretary take the purchased land into trust.<sup>43</sup> The land must also meet three criteria before it can be taken into trust: first, it cannot be located outside of the designated counties; second, it cannot be located “within the corporate limits of any city or town”; and third, it must “constitute[] not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be continuous to San Lucy Village.”<sup>44</sup>

Defendants did not dispute that the Nation’s trust request met the requirements of the Act.<sup>45</sup> Rather, they challenged the district court’s ruling that the Act preempted H.B. 2534.<sup>46</sup> Defendants specifically challenged the district court’s interpretation that the phrase “at the request of the Tribe” meant lands must be incorporated at the time of the request to be considered ineligible.<sup>47</sup> The Ninth Circuit determined the precise time when the Secretary assessed incorporation did not affect its preemption analysis.<sup>48</sup> Therefore, it was unnecessary to decide the issue.<sup>49</sup>

According to the Ninth Circuit’s preemption analysis, H.B. 2534 “clearly st[ood] as an obstacle to the implementation of the Act.”<sup>50</sup> In effect, at the exact moment the Nation requested the Secretary hold purchased replacement lands in trust under the Act, the City of Glendale was authorized to “effectively veto [the] application” by preemptively rendering the land ineligible through annexation.<sup>51</sup> Such action would block the trust application and “directly bar[] the Nation’s effort to incorporate purchased lands into tribal land.”<sup>52</sup>

#### IV. CONCLUSION

*Tohono O’odham Nation* exemplifies a careful analysis under the federal preemption doctrine, and more specifically, the application of obstacle preemption. Arizona’s attempt to circumvent the Act by enacting H.B. 2534 highlights the discord that often emerges between state governments and the federal government with regard to American Indian policy. The Ninth Circuit’s holding, therefore, serves as a

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43. *Id.*  
 44. *Id.*  
 45. *Id.*  
 46. *Id.* at 1300.  
 47. *Id.*  
 48. *Id.*  
 49. *Id.*  
 50. *Id.* at 1299.  
 51. *Id.* at 1300.  
 52. *Id.*

reminder of the unique relationship between the federal government and American Indian tribes. Additionally, by restricting its analysis to the federal preemption doctrine, the court avoided deciding whether H.B. 2534 violated the United States and Arizona Constitutions, and instead left those issues for a potential future case.