

**ANOTHER LEGAL CHALLENGE TO INDIAN GAMING
MAVERICK GAMING LLC V UNITED STATES IS USING SIMILAR ARGUMENTS
AS THE *BRACKEEN* CASE — AND THE SAME LAW FIRM**

[Pauly Denetclaw*](#)

Republished from *Indian Country Today*, April 3, 2023, <https://ictnews.org/news/another-legal-challenge-to-indian-gaming>.

Owner of Maverick Gaming, Eric Persson, was in an interview with Fox News at one of the 31 casinos he owns across the West called Great American Casino in Tukwila, Washington. Persson was wearing a baseball cap with his company's logo on it.

“There's zero circumstances in which I'd settle,” Persson said resolutely. “There's zero circumstances in which I'd quit. I have the resources to go all the way, and so do they. So there's going to be a battle. We're going to have a lot of fun, and I'm going to win.”

In Washington, card rooms attached to bars and restaurants are legal. At one point there were over 200 card rooms but that number has dropped significantly.

“We've seen as it's been reducing, it's been consolidating and turning more into a casino business than a mom and pop restaurant with a game to play to help increase the sale of cheeseburgers and beer,” said Christine Masse, an attorney at Miller Nash LLC during a panel at the 2023 Indian Gaming Association Convention and Tradeshow in San Diego, California.

Persson, a competitive poker player, now owns 23 of the 40 or so card rooms in the state. Shockingly, the Shoalwater Bay citizen is the lead plaintiff in *Maverick Gaming LLC v United States*,^[1] a case challenging the Indian Gaming Regulatory Act on the ground of equal protection, stating that tribal status is based on race. Tribal status as a political classification is affirmed by treaties, the United States constitution and several case laws including *Morton v Mancari*.

The plaintiff's are also challenging the ruling in *Morton v Mancari*, a case that gave hiring preference to American Indians and Alaska Natives in the Bureau of Indian Affairs under the Fifth Amendment.

“So to rectify that they're seeking a few things. They want a declaration that the compacts are void and to prohibit execution of new ones in the future,” Lenny Powell, an attorney with Jenner & Block said during the panel.

This would mean that current gaming compacts in Washington state would be voided. The Shoalwater Bay Indian Tribe intervened and asked the courts to dismiss the case. Washington state, the United States and the other gaming tribes did not oppose. In late February, the courts dismissed the case but the plaintiff is unsurprisingly appealing to the 9th Circuit Court of Appeals.

Persson is represented by Gibson, Dunn & Crutcher, the same law firm who took *Brackeen v Haaland*, a case challenging the Indian Child Welfare Act, all the way to the Supreme Court. The arguments in both cases are nearly identical.

“They did tweak it a little bit. It's not exactly word for word the whole way through, but it's pretty darn close,” Powell said.

Much like the Brackeen case, a negative outcome in the Maverick case could have far reaching implications that would impact not just the tribes in Washington.

“I think it's very, very important to note that if Maverick is successful in taking this to the Supreme Court, this would undo (the Indian Gaming Regulatory Act) for not just Washington, it would invalidate tribal compacts throughout the nation,” said Rebecca George, executive director for the Washington Indian Gaming Association.

The 250 federally recognized tribes who operate casinos in 30 states have an economic impact of more than \$100 billion. Indian gaming accounts for 44 percent of the entire gaming and gambling industry. This case could impact not just Indigenous nations but the non-Native counties that surround them.

“We are one of the top 10 employers in Washington state when you combine all of the employment between our tribal governments and tribal enterprises,” George said. “Often in rural areas, the tribe will be the top employer making a huge impact on rural areas.”

Unlike commercial gaming whose profits go to private entities, tribal gaming directly impacts Indigenous nations by providing funding for tribal governments to run, building infrastructure, funding needed assistance programs and for some direct aid to tribal citizens. Indian gaming has been life changing for some tribes, creating economic development in nations that otherwise wouldn't have been able to. Tribal governments need money to make money, gaming was and is a lucrative way to do that.

“We're talking about basic infrastructure and in my lifetime running water,” George said. “To think of the undoing of IGRA, it's hard to stomach as an Indian person from the reservation, knowing and seeing where this money goes.”

[1. Details on the case can be found at, or in links at, Wikipedia, https://en.wikipedia.org/wiki/Maverick_Gaming_v._United_States_of_America#:~:text=United%20States%20of%20America%20is,American%20tribes%20within%20the%20state. The appeal was still pending as of June 15, 2023. Progress of the case can be followed at: <https://dockets.justia.com/docket/washington/wawdce/3:2022cv05325/309992>. Since the argument is essentially the same as that of plaintiffs in *Brckeen*, which the Supreme Court did not accept, it would appear that even if the case were permitted to go forward, plaintiff would lose - Stephen Sachs].

*Pauly Denetclaw, a citizen of the Navajo Nation, is Haltsooi (Meadow People) born for Kinyaa'áanii (Towering House People). An award-winning reporter based in Gallup, New Mexico, she has worked for the Navajo Times and Texas Observer covering Indigenous communities, and her radio pieces have aired on KYAT, National Native News, NPR's Latino USA and Texas Public Radio. She is a board member of the Native American Journalist Association. Follow her on Twitter, @pdineclah.