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Supreme Court Decision Strikes Blow against Tribal Online Payday Lenders

(WASHINGTON, D.C.) A Supreme Court decision yesterday will have serious repercussions for illegal online payday lenders who claim to be affiliated with a Native American tribe, according to National Consumer Law Center attorneys with expertise in payday lending and tribal sovereign immunity. Although the decision in [*Michigan v. Bay Mills Indian Community*](#) was a victory for the tribe (which was resisting a state lawsuit over the tribe's illegal casino), the Court's reasoning demonstrates that tribal-affiliated payday lenders are not above the law.

"The game is up for payday lenders who attempt to cloak illegal conduct in tribal immunity," said National Consumer Law Center Associate Director Lauren Saunders. "The Supreme Court's decision makes clear that purportedly tribal payday lenders who loan off-reservation must comply with state laws, including interest rate caps and state licensing laws, and that courts can enter an injunction stopping illegal lending—even by tribal entities."

In a key passage in its decision, the Supreme Court emphasized that when a tribe conducts activity off-reservation, a state "has many other powers" beyond suing the tribe directly. "Indians going beyond reservation boundaries' are subject to any generally applicable state law"; the state may "deny a license." If a tribe goes ahead with unlicensed activity, the state "could bring suit against tribal officials or employees (rather than the Tribe itself) seeking an injunction for, say, gambling without a license," or even pursue criminal charges.

The Court stated strongly that a state "can shutter, quickly and permanently, an illegal casino," and the same is true for illegal payday loans that claim a tribal affiliation. "First, both states and consumers can obtain court injunctions stopping tribal payday lenders from making or collecting illegal loans," explained Saunders. "Second, off-reservation loans that violate state laws are unquestionable illegal even if made by a tribal entity, and any attempt by a payment processor, the payday lender's bank, or a debt collector to take the money out of a consumer's account is unauthorized and illegal."

"Tribal sovereignty is an important principle that respects the dignity of nations mistreated throughout American history," added Andrew Pizor, staff attorney at the National Consumer Law Center. "Fortunately, the Supreme Court decision affirms that states need not tolerate payday lenders attempting to use tribal sovereignty as a shield for illegal conduct."

Related materials:

Supreme Court Decision: *Michigan v. Bay Mills Indian Community*:

http://www.supremecourt.gov/opinions/13pdf/12-515_jq2i.pdf

NCLC's body of work re: payday lending: <http://www.nclc.org/issues/payday-loans.html>.

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