

## POKER POLITICS

## DOES RULING SPELL DOOM FOR POKER AS A SKILL?

The quest for judicial recognition of poker as a game of skill to create a safe harbor from most state gambling statutes received what is likely its final blow last month by a federal judge in Idaho.



MARC  
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Ruling on a case that pitted Idaho against the Coeur D'Alene Tribe, federal district judge **B. Linn Winmill** found that poker for the purposes of state law and for that case, as a matter of Indian gaming law, was a game of chance to which the tribe was not entitled.

At issue in the case was the tribe's ability to offer hold'em. The tribe argued hold'em is a game of skill as opposed to a game of chance prohibited by Idaho's criminal code. The judge ruled "there is no dispute that in a game (or series of games) of Texas Hold'em, players risk money at least *partly* on chance."

Citing to cases I've written about, including ones from North Carolina, Pennsylvania, New York and Kansas, the judge found that while skill may be a component of the game, that most states like Idaho don't require skill predominate the game for it to be criminally prohibited as gambling.

The presence of chance in the first deal of the cards is sufficient to place poker, and specifically for this case, poker tournaments involving hold'em, as a prohibited game of chance.

The court took the case one additional step further in concluding that hold'em is a Class III game under the Indian Gaming Regulatory Act.

This ruling may come as a surprise to many of you playing poker at a tribal casino.

Poker, which doesn't involve any player banking or player-funded progressive jackpots, has been viewed as a Class II

game and is fairly widespread in Indian country.

Class III games can't be played without a compact between the state and the Indian tribe, whereas Class II games can be played as a matter of right upon properly qualified tribal lands.

Class II card games are permitted on these lands if they "are explicitly authorized by the laws of the state or are not explicitly prohibited by the laws of the state and are played at any location in the state."

Because most states allow in some form poker to be spread for charity gaming or penny ante gaming, tribes may offer poker games as Class II gaming in the more traditional commercial fashion.

The federal judge clarified that if the activity is occurring because of a failing of law enforcement to enforce the state's criminal gambling statutes, it doesn't inure to the benefit of a tribe for the purpose of permitting the activity on a Class II or in this case a Class III basis.

The significance of this case for poker players across the country could be increased scrutiny of tribal poker operations in states that haven't clarified their state laws as it relates to poker.

In addition, this opinion is expected to be appealed to the Ninth Court of Appeals, which has written a host of opinions that have served as the basis for expansion or limitation on tribal gaming. With gridlock in Washington, state and federal courts become the ultimate decision-makers on gambling expansion in our country.

— **Marc W. Dunbar** represents several gaming clients before the Florida Legislature and teaches gambling and parimutuel law at the Florida State's College of Law. Follow him on Twitter: @FLGamingWatch.

## CALL THE FLOOR



## Swallow your food, then verbalize your bet

When I was still a new player, I was eating my dinner with one hand and playing with the other in a \$1-\$2 no-limit hold'em cash game in a California cardroom. After five players limped, I tried to go all-in, but I had my mouth full and couldn't speak. With one hand, I stacked as many chips as I could and pushed the stack of 28 \$1 chips up to the line without crossing it. I then reached back and threw my remaining four \$1 chips across the line. The dealer declared my bet a \$4 call and pushed the remaining chips back to me. Was this right, should I have asked for a floor? I was later told the perimeter line wasn't really a betting line.



SAM MINUTELLO  
CALL THE FLOOR

— **Phillip Norrell, Cerritos, Calif.**

**SAM SAYS:** The first thing I would like to say about this scenario is the sense of urgency on your part was not needed.

You could have finished chewing your food before you decided to make any declaration. With that being said, I would

## VERBAL IS BINDING

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have definitely asked for the floor.

They would at the very least give you a proper explanation of the perimeter line rule. Every house has its own rules so I will not give my opinion on this just because I'm not familiar with that property's rules.

I would just like to emphasize that it's perfectly fine for you not to rush yourself and make a questionable bet when you can verbalize what your intent is even if it takes you 20 seconds to swallow your food.

— **Sam Minutello** is the Ante Up Poker Tour tournament director.