

ORIGINAL 2021 OK 03



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE HONORABLE GREG TREAT,
SENATE PRESIDENT PRO TEMPORE,
in his official capacity, and THE
HONORABLE CHARLES McCALL,
SPEAKER OF THE HOUSE, in his
official capacity,

Petitioners,

v.

THE HONORABLE J. KEVIN STITT,
GOVERNOR OF THE STATE OF
OKLAHOMA, in his official capacity,

Respondent.

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STATE OF OKLAHOMA
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ROWE, J., concurring in result:

¶1 I concur with the Court's judgment that the new compacts entered into between the Governor and the United Keetoowah Band of Cherokee Indians and the Kialegee Tribal Town, respectively, are invalid under Oklahoma law. I cannot accede, however, as to any finding or implication in the Court's opinion that the Joint Committee could validate these compacts.

¶2 While the facts of this case are slightly different from those in *Treat I*, in that the compacts at issue here do not expand the scope of permissible Class III gaming, they nevertheless conflict with the STGA in important ways.¹ Because

¹ Specifically, the compacts grant the Governor exclusive authority to authorize new forms of gaming beyond those permitted by the STGA and to settle disputes arising between the State and the Tribes under

these compacts stand in conflict with Oklahoma law, they operate not only as agreements between the State and the Tribes but also as amendments to Oklahoma law. The Joint Committee cannot make valid and enforceable an unlawful compact.

¶3 A finding or implication to the contrary would be inconsistent with this Court's jurisprudence on the non-delegation doctrine. Article V, Section 1 of the Oklahoma Constitution vests legislative authority in the Legislature exclusively:

The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.

The non-delegation doctrine "rests on the premise that the legislature must not abdicate its responsibility to resolve fundamental policy making by [1] delegating that function to others or [2] by failing to provide adequate directions for the implementation of its declared policy." *City of Oklahoma City v. State ex rel. Okla. Dept. of Labor*, 1995 OK 107, ¶12, 918 P.2d 26, 29 (citing *Democratic Party of Oklahoma v. Estep*, 1982 OK 106, ¶16 n.23, 652 P.2d 271, 277 n.23). If the Joint Committee could approve compacts that operate as amendments to Oklahoma law, the Joint Committee would possess functional legislative authority.² Such an arrangement would unquestionably run afoul of the non-delegation doctrine.

the compacts. The compacts also authorize monetary sanctions on the Tribes for violations of the compacts and appropriates those funds to the Office of Management and Enterprise Services.

² This does not necessarily render the power of the Joint Committee illusory. The Joint Committee still possesses the power to approve or disapprove compacts that are consistent with Oklahoma law.