

## US Court in landmark tribal gaming decision

1st July 2011 By **Simon Liddle**

### **In a landmark decision that could have far-reaching consequences for tribal casinos, the US Supreme Court has chosen not to intervene in a dispute between the state of California and the Rincon Band of Luiseno Indians.**

When renegotiating the gaming compact with [tribal leaders](#) in 2003, State Governor Arnold Schwarzenegger attempted to boost California's income by offering tribes the opportunity to add hundreds of slot machines to their estates in return for a percentage of their earnings.

Although some went along with the deal, the Rincon Band of Luiseno Indians, which operates Harrah's Rincon Casino and Resort, argued that it amounted to a new tax on tribes that offer gaming.

A decision by the US Supreme Court this week not to hear an appeal from California upheld an earlier decision by the US 9th Circuit of Appeals that the state's bargain was unfair.

Dennis Whittlesey, tribal gaming expert at law firm Dickinson Wright, said the Supreme Court's decision effectively ruled that the gaming compact with the tribe was illegal under the Federal Indian Gaming Regulatory Act because it required the tribe to pay money directly into the state's General Fund in return for allowing the tribe to have more slot machines in its casino.

"This almost certainly will impact the efforts of California and other cash-strapped states to generate new revenues through tribal casinos," he told InterGaming. "The federal law authorises states to receive compensation for costs related to tribal gaming, such as regulation and gaming addiction, and to off-set the effects of casinos on surrounding communities.

"However, states are prohibited from assessing taxes on tribal casino revenues, and payments to the General Fund appeared to violate that provision of law since the Rincon Band was getting nothing in return for the required payments that could be deemed 'exclusive'."

The same situation exists elsewhere in other states where governors have attempted to create an "exclusive grant" to tribes in return for payments to the state treasuries.

"The Rincon decision brings into question the legality of such tribal financial concessions and certainly jeopardises any future efforts by any governor to negotiate any such terms in the future," said Whittlesey. "In short, the decision is a game changer in the states' attempts to generate new revenue through tribal casinos."