

## Colorado's Southern Ute Tribe Sues State over Attempts to Regulate Tribal Sports Betting

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The Southern Ute Indian Tribe (Ute) sued the Colorado governor and the state's director of gaming enforcement in an effort to obtain a declaration that the Ute's sportsbook enterprise is lawful; injunctions against the state's allegedly unlawful actions; and costs, interest, and attorneys' fees incurred.

The Ute first entered into a gaming compact with the state in 1993, which was amended in 1995. The Ute compact is unique in that it does not include a revenue-sharing provision between the Ute and the state. Additionally, the Ute's compact recognizes that the Ute may engage in any gaming activity that is authorized elsewhere in Colorado so long as the activity mirrors the state's activity and authorized betting amounts.

The suit stems from the Ute's decision to attempt to engage in online, off-reservation sports wagering when such activities became legal in Colorado. The Ute launched the Sky Ute Sportsbook in June 2020. In response, the state took the position that the sportsbook should be regulated by the state and therefore be subject to the 10% revenue tax as well as other regulation, thereby disregarding the provisions of the Ute's compact and the Indian Gaming Regulatory Act (IGRA). Additionally, the Ute allege that the state failed to negotiate any potential changes in the state-tribal relationship in good faith, and that the state pressured the Ute's sports betting vendors and otherwise interfered with its business activities, eventually contributing to the closure of the sportsbook in 2023. The Ute allege that they intend to reenter the market.

While the state has yet to file its response, its position appears to be that online, off-reservation wagering is somehow exempt from the provisions of the Ute's compact, such that it requires the Ute to be licensed and regulated by Colorado. The off-reservation nature of online sports betting appears to be the only issue that could conceivably spur this activity, as the Ute's compact states that the tribe may conduct any Class III game that is explicitly authorized by state law. Therefore, the state's decision appears to rest on the premise that while the Ute could conduct sports betting on their reservation, state licensure is required when the wagering takes place online by off-reservation bettors.

The Ute rely on *W. Flagler Assocs. v. Haaland*, 71 F.4th 1059 (D.C. Cir 2023), *cert denied*, 144 Sup.

Ct. 10 (2024), as additional support for its position that its sportsbook operation is permissible. There, the D.C. Circuit held that nothing within IGRA explicitly prohibits a tribal-state gaming compact from authorizing statewide, online sports betting based from servers located on a reservation. The holding also noted that “an IGRA compact cannot provide independent legal authority for gaming activity outside of Indian lands, where the activity would otherwise violate state law.” *Id.* at 1068.

This matter appears to be the first instance where a state court will have to apply state laws and compact provisions to off-reservation betting in light of the *West Flagler* holding. Colorado does not appear to have any additional, unmentioned restrictions on its statewide sports betting provisions that would otherwise limit the scope of permissible bettors for a state licensee. As such, the key question appears to be whether the explicit authorization of statewide sports betting means that the Ute can engage in hub-and-spoke betting as an activity “identical to the activities ... authorized by the State of Colorado” through the provisions of their gaming compact.

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