

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CHICKASAW NATION *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

No. 00–507. Argued October 2, 2001—Decided November 27, 2001*

The Indian Regulatory Gaming Act (Gaming Act) provides, as relevant here, that Internal Revenue Code (Code) provisions “(including [§§]1441, 3402(q), 6041, and 6050I, and chapter 35 . . .) concerning the reporting and withholding of taxes” with respect to gambling operations shall apply to Indian tribes in the same way as they apply to States. 25 U. S. C. §2719(d)(i). Chapter 35 *imposes* taxes from which it exempts certain state-controlled gambling activities, but says nothing about tax *reporting* or *withholding*. Petitioners, the Choctaw and Chickasaw Nations, claim that the Gaming Act subsection’s explicit parenthetical reference exempts them from paying those chapter 35 taxes from which the States are exempt. Rejecting that claim, the Tenth Circuit held that the subsection applies only to Code provisions concerning tax withholding and reporting.

Held: Section 2719(d)(i) does not exempt tribes from paying the gambling-related taxes that chapter 35 imposes. Pp. 3–11.

(a) The subsection’s language outside the parenthetical says that the subsection applies to Code provisions concerning reporting and withholding, and the other four parenthetical references arguably concern reporting and withholding. The Tribes nonetheless claim that the subsection’s explicit parenthetical reference to chapter 35 expands the Gaming Act’s scope beyond reporting and withholding provisions—to the tax-imposing provisions that chapter 35 contains—and at the very least gives the subsection an ambiguity that can be resolved by applying the canon that statutes are to be construed lib-

*Together with *Choctaw Nation of Oklahoma v. United States* (see this Court’s Rule 12.4), also on certiorari to the same court.

Syllabus

erally in favor of Indians with ambiguous provisions interpreted to their benefit. Rejecting their argument reduces the chapter 35 phrase to surplusage, but there is no other reasonable reading of the statute. Pp. 3–4.

(b) The statute’s language is too strong to give the chapter 35 reference independent operative effect. The unambiguous language outside the parenthetical says without qualification that the subsection applies to “provisions . . . concerning the reporting and withholding of taxes”; and the language inside the parenthetical, prefaced with the word “including,” literally says the same, since to “include” means to “contain.” The use of parentheses emphasizes the fact that that which is within is meant simply to be illustrative. To give the chapter 35 reference independent operative effect would require seriously rewriting the rest of the statute. One would have to read “including” to mean what it does not mean, namely, “including . . . and.” To read the language outside the parenthetical as if it referred to (1) Code provisions concerning tax reporting and withholding and (2) those “concerning . . . wagering operations” would be far too convoluted to believe Congress intended it. There is no reason to think Congress intended to sweep within the subsection’s scope every Code provision concerning wagering. The subject matter at issue—tax exemption—also counsels against accepting the Tribes’ interpretation. This Court can find no comparable instance in which Congress legislated an exemption through a parenthetical numerical cross-reference. Since the more plausible role for the parenthetical to play in this subsection is that of providing an illustrative list of examples, common sense suggests that “chapter 35” is simply a bad example that Congress included inadvertently, a drafting mistake. Pp. 4–6.

(c) The Gaming Act’s legislative history on balance supports this Court’s conclusion. And the canons of interpretation to which the Tribes point—that every clause and word of a statute should be given effect and that statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit—do not determine how to read this statute. First, the canons are guides that need not be conclusive. *Circuit City Stores, Inc. v. Adams*, 532 U. S. 105, 115. To accept these canons as conclusive here would produce an interpretation that the Court firmly believes would conflict with congressional intent. Second, specific canons are often countered by some maxim pointing in a different direction. *Ibid.* The canon requiring a court to give effect to each word “if possible” is sometimes offset by the canon permitting a court to reject words as mere surplusage if inadvertently inserted or if repugnant to the rest of the statute. Moreover, the pro-Indian canon is offset by the canon warning against interpreting federal statutes as providing tax exemptions unless the exemptions are

Syllabus

clearly expressed. Given the individualized nature of this Court's previous cases, one cannot say that the pro-Indian canon is inevitably stronger, particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. Pp. 6–11.

208 F. 3d 871 (first judgment); 210 F. 3d 389 (second judgment), affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, and GINSBURG, JJ., joined, and in all but Part II–B of which SCALIA and THOMAS, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which SOUTER, J., joined.