No. 24-1161

In the Supreme Court of the United States

MAVERICK GAMING LLC,

PETITIONER,

v.

UNITED STATES OF AMERICA, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

NICHOLAS W. BROWN
Attorney General

NOAH G. PURCELL
Solicitor General
Counsel of Record

TERA M. HEINTZ
WILLIAM MCGINTY
Deputy Solicitors General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200
noah.purcell@atg.wa.gov

QUESTION PRESENTED

Petitioner Maverick Gaming wanted to conduct sports betting and casino-style gambling in Washington State, but Washington law allows only tribes with state gambling compacts to conduct these activities. Maverick filed a lawsuit seeking to invalidate all of Washington's gambling compacts with Washington tribes. Because Maverick sought to invalidate contracts to which Washington tribes were parties, the tribes obviously became necessary parties to the dispute. But the tribes, of course, are generally immune from suit due to sovereign immunity. The Shoalwater Bay Tribe moved to intervene for the sole purpose of filing a motion to dismiss under Rule 19, arguing that the tribes were necessary parties and could not be joined. Maverick responded that the federal government could adequately represent the Tribe, but the district court disagreed, finding an actual conflict of interest between the Tribe and federal government. The district court granted the motion to dismiss, and the court of appeals affirmed.

The question presented is:

Whether the district court abused its discretion in dismissing this lawsuit under Rule 19 for failure to join a necessary party where all parties agreed that an Indian tribe had a legally protected interest at stake and could not be sued due to sovereign immunity, and where the trial court found that the federal government could not adequately represent the Tribe due to an actual conflict of interest.

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INTRODUCTION

Maverick Gaming's petition mischaracterizes the decision below and argues for certiorari based on the strawman it creates. This Court should deny review.

Washington State banned casino-style gaming for a century, allowing it beginning in the 1990's only on tribal lands under detailed compacts between the State and Indian tribes. When this Court struck down the federal statute prohibiting most states from offering sports betting in 2018, Washington enacted a law permitting amendment of its tribal-state gaming compacts to authorize sports betting on tribal lands.

Petitioner Maverick Gaming wants to offer sports betting and casino-style games on non-tribal lands in Washington, and it claims that Washington law restricting those activities to tribal lands violates federal law. Rather than simply challenging Washington's statute in state or federal court, however, Maverick filed a broader suit, seeking to invalidate the State's existing tribal gaming compacts under the Indian Gaming Regulatory Act, the federal Constitution, and the Administrative Procedure Act.

Because Maverick sought to invalidate contracts to which Washington tribes were parties, the tribes were quintessential necessary parties to this case under Rule 19. Sovereign immunity, however, meant that Maverick could not force the tribes to become parties. The Shoalwater Bay Tribe moved to intervene for the limited purpose of filing a motion to dismiss under Rule 19, arguing that it was a necessary party and could not be joined. Maverick argued that the case could proceed without the Tribe

because the federal government could adequately represent it. But the district court found that a conflict existed between the federal government and the Tribe and rejected Maverick's argument, ordering the case dismissed. The court of appeals affirmed.

In seeking certiorari, Maverick contends that the court of appeals adopted a bright-line rule requiring dismissal of any APA claim whenever a Tribe "benefits" from a challenged federal action and invokes sovereign immunity. *See* Pet. i (Question Presented). But the court below did no such thing. Instead, it carefully applied the multi-factor test required under Rule 19 to the specific facts of this case. It even cited with approval numerous Ninth Circuit decisions finding that tribes were *not* necessary parties based on the specific facts of those cases. And district courts within the Ninth Circuit continue to find the same when the facts warrant.

Maverick claims that the Ninth Circuit's alleged "bright-line" rule conflicts with the approach of other circuits, but there is no such rule. In fact, the cases Maverick cites from other circuits apply the same multi-factor approach as the Ninth Circuit did below: they simply reached different conclusions on different facts. In reality, each of those circuits has sometimes found, just as the Ninth Circuit did here, that a case could not proceed because a tribe was a necessary party and could not be joined.

Even if there were a circuit split about the proper approach to Rule 19—which there is not—this case would be a terrible vehicle to address it. Maverick conceded below both that the Tribe had a legally protectable interest in each of the claims in this case

and that the federal government could not adequately represent that interest if it had a conflict of interest with the Tribe. Pet. App. 21a; BIO. App. 70a. But both the district court and the Ninth Circuit found that the federal government had an actual conflict of interest with the Tribe here, a decision that Maverick does not ask this Court to review. This Court's review would thus be highly circumscribed by Maverick's concessions. Moreover, Maverick's parent company recently filed for Chapter 11 bankruptcy, so this case either already is or may soon become moot, as Maverick may not even have an interest in the relief it requests by the time this Court could hear the case.

In short, there is no circuit split, the decision below correctly applied Rule 19, and this case presents serious vehicle problems. The Court should deny certiorari.

STATEMENT OF THE CASE

A. Washington's Regulation of Gambling

Washington has strictly regulated gambling since its statehood. In 1889, Washington's constitution prohibited *all* forms of gambling. Wash. Const. art. II, § 24 (1889). In 1972, voters enacted a constitutional amendment requiring a supermajority of the state legislature or electorate to authorize gambling. Wash. Const. art. II, § 24 (*amended by* S.J. Res. 5, p. 1828, 42nd Leg., Reg. Sess. (Wash. 1971)).

The following year, the state legislature created Washington's Gambling Commission and authorized limited forms of gambling, such as licensed charitable bingo games and raffles, amusement games, and the

use of punch boards and pull-tabs. 1973 Wash. Sess. Laws, 1st Ex. Sess., ch. 218, § 22. To this day, most forms of gambling are illegal on non-tribal lands in Washington, with continued exceptions for certain charitable activities, social card games, and similar amusement games. *See generally* Wash. Rev. Code § 9.46. Otherwise, the legislature has chosen to prohibit for-profit "professional gambling activities" on non-tribal lands in recognition of the "close relationship between professional gambling and organized crime." Wash. Rev. Code § 9.46.010.

B. *Cabazon* and the Indian Gaming Regulatory Act

Congress enacted the Indian Gaming Regulatory Act (IGRA) in response to this Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). There, this Court held that, if a state allowed gaming for even a limited purpose, it could not enforce its gaming regulations on tribal land without Congress's express authorization. *Id.* at 217.

Congress enacted IGRA the next year. Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat 2467 (Oct. 17, 1988); *see also* S. Rep. No. 100-446 (1988) *reprinted in* 1988 U.S.C.C.A.N. 3071. *Cabazon Band* had led to "an explosion in unregulated gaming" on Indian reservations located in States that did not criminally prohibit all gaming. *Ysleta del Sur Pueblo v. Texas*, 36 F.3d 1325, 1330 (5th Cir. 1994), *abrogated on other grounds by Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685 (2022). While Congress recognized that substantial gaming revenues "fostered tribal autonomy, it nonetheless became concerned that

unregulated growth might invite criminal elements." *Id.* Congress passed IGRA to balance the "right of tribes to self-government" while, at the same time, protecting "'both the tribes and the gaming public from unscrupulous persons.'" *Id.* (citation omitted); *see also* S. Rep. 100-446 at 2 (1988).

IGRA applies exclusively to gaming offered by Indian tribes on Indian lands, dividing gaming into three classes. 25 U.S.C. § 2703(6), (7), (8). Class I and II gaming includes low-stakes social games, traditional forms of tribal gaming, and bingo. 25 U.S.C. § 2703(6), (7). Class III games are casino-style, such as slot machines, roulette, and sports betting. 25 U.S.C. § 2703(7); *see also Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712,715 (9th Cir. 2003).

This case concerns class III gaming. *See* Pet. App. 9a. Under IGRA, tribes can negotiate class III gaming rights with States if such activities are (1) authorized by a tribal ordinance; (2) "located in a State that permits such gaming for any purpose by any person, organization, or entity"; and (3) conducted in conformance with a tribal-state compact. 25 U.S.C. § 2710(d)(1).

IGRA establishes a process for negotiating a tribal-state compact that requires a tribe to (1) enact an ordinance allowing class III gaming; (2) request that the state in which the tribal lands are located negotiate a tribal-state compact setting the terms under which tribal gaming will be conducted; and (3) obtain the Secretary of the Interior's approval of the compact. 25 U.S.C. § 2710(d). Once submitted to

the Secretary, if the Secretary takes no action on a gaming compact within forty-five days, "the compact shall be considered to have been approved by the Secretary." 25 U.S.C. § 2710(d)(8)(C).

IGRA also grants courts authority to order States to negotiate a gaming compact in good faith. *Id.* If no compact results within sixty days of an order, IGRA mandates a mediation process. 25 U.S.C. § 2710(d)(7)(B)(iv), (v). If the mediation process fails, the Secretary "shall prescribe" the terms of the class III gaming. 25 U.S.C. § 2710(d)(7)(B)(vii). But these compact-negotiation provisions apply only to States that do not categorically criminalize class III gaming. 25 U.S.C. § 2710(d)(1).

The compacting process allows tribes and States to negotiate and establish "various matters between two equal sovereigns." S. Rep. 100-446 at 13. "States and tribes are encouraged to conduct negotiations within the context of the mutual benefits that can flow to and from tribes and States." *Id.*

C. Tribal Gaming in Washington Post-IGRA

After IGRA went into effect, Washington enacted a statute authorizing the negotiation of gaming compacts with federally recognized Indian tribes. 1992 Wash. Sess. Laws 762-63 (ch. 172, § 2), *codified at* Wash. Rev. Code § 9.46.360. The statute directs the Washington Gambling Commission to negotiate, and the Governor to sign, IGRA compacts with federally recognized Indian tribes on behalf of the State. *Id.*; *see also* Wash. Rev. Code § 43.06.010. Class III gaming remains illegal on non-Indian lands in Washington.

Washington thereafter negotiated and entered into gaming compacts with each of the twenty-nine federally recognized tribes within its borders. *See* Wash. State Gambling Comm'n, *Tribal Gaming Compacts and Amendments*, https://www.wsgc.wa.gov/tribal-gaming/gaming-compacts (last visited Aug. 7, 2025). In accordance with IGRA, the Secretary reviewed and approved each of these compacts. *See id.* Most of the tribes that have entered into gaming compacts with Washington State operate some form of class III gaming on their lands. Wash. State Gambling Comm'n, *Tribal Casino Locations*, https://www.wsgc.wa.gov/tribal-gaming/casino-locations (last visited Aug. 7, 2025) (22 tribes operate 29 casinos).

The path toward these negotiated compacts was not always smooth. The compacts represent the successful resolution of longstanding inter-governmental disputes over tribal gaming. For instance, throughout the 1990s and early 2000s, the Shoalwater Bay Tribe, the State of Washington, and the federal government were embroiled in disputes over gaming activities conducted by the Tribe. *See* Pet. App. 14a-15a; *see also United States v. Shoalwater Bay Indian Tribe*, 205 F.3d 1353, 1999 WL 1269343, at *1 (9th Cir. Dec. 27, 1999) (detailing litigation concerning Shoalwater Bay Tribe gaming activities). These included federal actions to seize gaming machines operated by the Tribe, and a dispute about whether the Tribe could offer class III gaming in the absence of an IGRA compact. *See Shoalwater Bay Indian Tribe*, 1999 WL 1269343, at *1. Only after more than a decade of disputes, and after the federal government was enjoined from taking further

enforcement action against the Tribe, did the Tribe and the State agree on a gaming compact in 2002. *See* Pet. App. 15a.[1]

In 2020, after this Court struck down a federal statute prohibiting most States from allowing sports betting, *Murphy v. National Collegiate Athletic Ass'n*, 584 U.S. 453 (2018), Washington enacted a law permitting amendment of its tribal-state gaming compacts to authorize tribes to conduct sports betting on tribal lands. 2020 Wash. Sess. Laws 1047, *codified at* Wash. Rev. Code § 9.46.0364. In explaining its reasons for limiting sports betting to tribal lands, the Washington Legislature noted the tribes' "more than twenty years' experience with, and a proven track record of, successfully operating and regulating gaming facilities in accordance with tribal gaming compacts." 2020 Wash. Sess. Laws 1046 (ch. 127, § 1). The legislature concluded that "[t]ribal casinos can operate sports wagering pursuant to these tribal gaming compacts, offering the benefits of the same highly regulated environment to sports wagering." *Id.*

Since then, most of the tribal-state compacts in Washington have been amended to specifically permit sports betting. Pet. App. 13a. These compacts establish the methods by which such gaming will be

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[1] The original 2002 Tribal-State Compact for class III Gaming Between the Shoalwater Bay Indian Tribe and the State of Washington is available at https://wsgc.wa.gov/sites/default/files/2024-06/H-2002%20Compact%20%28s%29.pdf. Three amendments, including a 2021 amendment authorizing sports betting, is available at https://wsgc.wa.gov/sites/default/files/2024-08/H-2021%20Amendment%203%20%28SW%29%28s%29.pdf.

conducted and the security measures that will be in place to guard against crime and fraud. *See generally* Wash. State Gambling Comm'n, *Tribal Gaming Compacts and Amendments*.

D. Procedural Background and the Ninth Circuit's Opinion

Maverick sought for many years to persuade Washington officials to enact legislation allowing sports betting at its cardrooms. Pet. App. 6a, 12a-13a. After failing in these efforts, Maverick filed a federal lawsuit in the District of Columbia against various federal officials ("Federal Defendants") and Washington State officials ("State Defendants") responsible for the approval and administration of the Washington tribes' gaming compacts and sports betting compact amendments. Pet. App. 16a. The complaint did not name any of Washington's twenty-nine federally recognized tribes as defendants. Pet. App. 16a. The D.C. district court transferred that suit to the Western District of Washington. Pet. App. 17a.

Maverick thereafter filed an amended complaint asserting claims under the Administrative Procedure Act (APA), 42 U.S.C. § 1983, "equitable principles," and the Declaratory Judgment Act, based on allegations that Washington's criminal gambling laws and its tribal-state compacts violate IGRA, Equal Protection, and the Tenth Amendment. Pet. App. 16a-18a. Specifically, Maverick alleged that "because Washington prohibits any non-tribal entities from offering sports betting," Washington's laws did not comply with 25 U.S.C. § 2710(d)(1)(B). BIO App. 155a. Similarly, Maverick alleged that Washington law violates the Equal Protection Clause

of the Fourteenth Amendment by permitting Indian tribes alone to offer sports betting, asserting that tribal status is "a racial and ancestral classification" instead of a political one. BIO App. 157a-58a. Based on these allegations, Maverick argued that the Secretary's approval of the State's and Tribes' gaming compacts violated IGRA and the Constitution and sought to invalidate all of Washington's gaming compacts. BIO App. 157a-60a, 177a-78a. Additionally, as part of its requested relief on its APA claim, Maverick sought a declaration "that the Compact Amendments [entered into between Washington and tribes] violate IGRA" and "that the Tribes' sports-betting activities violate IGRA." BIO App. 170a.

The Tribe successfully moved to intervene in the case for the limited purpose of filing a motion to dismiss under Federal Rule of Civil Procedure 19 (Rule 19) and Federal Rule of Civil Procedure 12(b)(7). Pet. App. 18a. The district court granted the Tribe's motion. Pet. App. 18a. The district court found that the lawsuit implicated the Tribe's "economic and sovereign rights," making it a required party under Rule 19. Pet. App. 56a. Maverick did "not directly dispute Shoalwater has a legally protected interest that could be impaired by the instant litigation," but argued that the United States could adequately represent the Tribe's interests. Pet. App. 56a. The district court disagreed, holding that because of the "actual, not hypothetical or unknown, conflicts with the United States" with respect to gaming on tribal land in Washington, the United States could not adequately represent the Tribe. Pet. App. 61a. It also found that the lawsuit could not proceed in the Tribe's

absence in "equity or good conscience." Pet. App. 66a. The district court dismissed Maverick's claims without prejudice. Pet. App. 67a.

Maverick appealed to the Ninth Circuit, which affirmed the district court. Pet. App. 7a. Specifically, the court affirmed the district court's determination that the Tribe was a required party under Rule 19(a). With respect to Maverick's first two claims, its APA claim and its claim that the compacts themselves violate federal law, the court noted that Maverick "concede[d] that the Tribe has a legitimate interest in the legality of its gaming compact and sports betting amendment." Pet. App. 21a. It found that "because Maverick's APA and equal protection claims [regarding the compacts] seek relief that would result in the invalidation of the Tribe's gaming compact and sports betting amendment, Maverick does not dispute that the Tribe has a legally protected interest in the first and second claims in the First Amended Complaint . . . ." Pet. App. 21a-22a. While Maverick argued on appeal that the Tribe had no legally protectable interest in Maverick's third claim challenging the State's criminal prohibition of class III gaming on non-tribal lands, the court held that Maverick had failed to preserve the issue for appellate review "because it was not 'raised sufficiently for the trial court to rule on it.'" Pet. App. 22a (citation omitted).

The Ninth Circuit also affirmed the district court's determination that the Federal Defendants could not adequately protect the Tribe's interests. First, it found that the Federal Defendants "do not share the Tribe's sovereign and economic interests

in protecting and furthering its class III gaming operations." Pet. App. 29a. Second, it agreed with the district court's conclusion that the Federal Defendants had "actual, not hypothetical or unknown conflicts" with the Tribe due to the "federal government's documented history of adverse action toward the Tribe in litigation over the Tribe's gaming operations[.]" Pet. App. 32a. The court concluded that the Tribe was thus a required party under Rule 19(a). Pet. App. 32a.

The court held that Rule 19(b) was also satisfied. First, it found that the Tribe could not be joined due to sovereign immunity. Pet. App. 32a-33a (citing *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 991 (9th Cir. 2020) and *Bondi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016 (9th Cir. 2016)). Second, the court found that the litigation could not proceed in equity and good conscience absent the Tribe's involvement because a judgment rendered without the Tribe would significantly prejudice the Tribe's sovereign and economic interests and that prejudice could not be lessened by narrowing the scope of relief. Pet. App. 38a-39a. The court acknowledged that the adequacy of a remedy and the absence of any alternative forum for Maverick's claims weighed in Maverick's favor but ultimately held that the Tribe's interest in sovereign immunity outweighed Maverick's interests. Pet. App. 39a-41a.

Finally, the court declined to apply the public rights exception to this case. It held that Maverick's suit focused primarily on its private interest in operating gaming facilities, not vindicating public rights. Pet. App. 42a-43a. "Because Maverick's suit could destroy [the Tribe's] legal entitlements, the

district court did not abuse its discretion in determining that the public rights exception does not apply." Pet. App. 43a. Accordingly, the court affirmed the district court's ruling dismissing the lawsuit. Pet. App. 43a.

E. Maverick's Parent Company Filed for Bankruptcy

On July 14, 2025, Maverick's parent company filed for Chapter 11 bankruptcy. *In re RunItOneTime, LLC*, No. 4:25-BK-90191 (ARP) (Bankr. S.D. Tex. July 14, 2025). In its first day filings, it details a proposed restructuring that entails the sale of all of its assets, including all of its cardrooms in Washington. Declaration of Jeff Seery in Support of Chapter 11 Petitions and First Day Relief, *In re RunItOneTime, LLC*, No. 25-BK-90191 (ARP) (Bankr. S.D. Tex., July 14, 2025) (ECF No. 18).

REASONS FOR DENYING THE PETITION

A. There Is No Circuit Split

Maverick cannot show a genuine legal conflict warranting this Court's review because federal courts apply the same fact-intensive, discretionary standard under Rule 19 to determine whether an absent party is necessary and indispensable. Maverick attempts to manufacture a legal conflict by citing cases in which courts applied the same legal rule to reach different outcomes. But different courts applying a discretionary standard to different facts in different cases will inevitably reach different outcomes. This is not a legal conflict. While Maverick may disagree with the decision of the courts below, that disagreement does not create a conflict warranting this Court's

review. *See* Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

1. The Ninth Circuit applies a fact-specific, discretionary standard to determine the joinder of parties

As the first step to contriving a legal conflict, Maverick mischaracterizes the decision below as adopting a bright-line rule requiring dismissal of an APA claim whenever a tribe "benefits" from the challenged federal action and invokes sovereign immunity. *See* Pet. i (Question Presented). But the court below held no such thing; in fact, it cited with approval numerous Ninth Circuit decisions finding that tribes were *not* necessary and indispensable parties based on the specific facts and circumstances of those cases.

Nothing in the Ninth Circuit's opinion adopts the bright-line rule plaintiff alleges. Instead, the court analyzed the joinder issue under the multi-factored, discretionary standard set forth in Rule 19. Pet. App. 20a-26a. As detailed further below (*infra* at Section B), the Ninth Circuit's findings on each factor were eminently reasonable. But more importantly for present purposes, they reflect the court's careful, fact-driven approach and its acknowledgment of different possible outcomes in cases involving different federal stakes or tribal interests and even citing such cases. *See* Pet. App. 28a. For example, in *Southwest Center for Biological Diversity v. Babbitt*, 150 F.3d 1152 (9th Cir. 1998) (per curiam), the Ninth Circuit found that an absent tribe was not a necessary party to a

challenge to the Secretary of Interior's plan to use additional water capacity behind the Roosevelt Dam. While acknowledging that the tribe had a legally protectable interest in the litigation, the court held that the federal government could adequately represent that interest because it shared the tribe's "strong" interest in the outcome of the case and did not have any conflicts with the tribe. *Id.* at 1154; Pet. App. 29a.

Similarly, in *Alto v. Black*, 738 F.3d 1111, 1115 (9th Cir. 2013), the Ninth Circuit held that the Bureau of Indian Affairs (BIA) could adequately represent an absent tribe's interest in limiting tribal enrollment to qualified individuals where "the tribe's own governing documents vest[ed]" the BIA with "ultimate authority over membership decisions." Pet. App. 28a (quoting *Alto*, 738 F.3d at 1115); *see also Washington v. Daley*, 173 F.3d 1158 (9th Cir. 1999) (holding that a tribe was not a necessary party in a challenge to a rule adopted by the Secretary of Commerce where the federal government had a significant stake in defending its own rule and lacked any conflicts with the absent tribe); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990) (holding that absent tribe was not a necessary party for request for injunctive relief because federal government could adequately defend against a challenge to its regulatory process, while finding tribe necessary for adjudication of other issues).

Maverick is simply wrong that the Ninth Circuit requires dismissal of APA claims whenever an absent tribe benefits from federal decision-making.

2. Other circuits apply the same discretionary analysis as the Ninth Circuit

Other circuits apply the same fact-intensive, discretionary analysis as the Ninth Circuit in determining whether an absent tribe is a necessary or indispensable party, including in APA cases. Maverick cites one decision each from the D.C. and Tenth Circuits that reached different outcomes in different cases, but these cases do not conflict with Ninth Circuit law. Pet. 17-19 (citing *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1350-52 (D.C. Cir. 1996) and *Sac & Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1259 (10th Cir. 2001)). To the contrary, both cases *followed* Ninth Circuit law to conclude that the federal government could adequately represent absent tribes' interests in those cases because, unlike here, the federal government did not have a conflict of interest with the absent tribes and shared a similar practical interest in the outcome.

In *Ramah*, for example, the court found that the absent tribes did not have a legally protectable interest in federal funds allocated by the Secretary of Interior because distribution of the funds would result in "negligible" benefits to absent tribes and would not impact tribal contractual rights. 87 F.3d at 1350. On this ground alone, *Ramah* does not pose a true conflict with the decision below because Maverick conceded that the Shoalwater Tribe had a legally protectable interest in each of its claims and waived any argument to the contrary. Pet. App. 21a-22a.

Beyond this key distinction, the court in *Ramah agreed* with Ninth Circuit law that the federal government "*cannot* adequately represent [the] interest of nonparty Tribes where 'competing interests and divergent concerns of the tribes' might conflict with United States' role as trustee." *Ramah*, 87 F.3d at 1352 (emphasis added) (quoting *Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir.1992), *cert. denied*, 509 U.S. 903 (1993)). This followed the essentially universal rule that an existing party to litigation cannot adequately represent the interests of a necessary party when their interests actually or potentially conflict.[2] The *Ramah* court cited *Shermoen*

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[2] *See, e.g.*, *Tell v. Trs. of Dartmouth Coll.*, 145 F.3d 417, 419 (1st Cir. 1998) (dismissing case due to "obvious" potential conflicts between absent and existing parties); *Oneida Indian Nation of New York v. City of Sherrill*, 337 F.3d 139, 170 (2d Cir. 2003) (affirming that existing party cannot adequately represent necessary parties when interests conflict), *rev'd and remanded*, 544 U.S. 197 (2005); *Epsilon Energy USA, Inc. v. Chesapeake Appalachia, LLC*, 80 F.4th 223, 235 (3d Cir. 2023) (remanding to determine conflict of interest because, "without a perfect identi[t]y of interests, a court must be very cautious in concluding that a litigant will serve as a proxy for an absent party" (alteration in original) (quoting *Tell*, 145 F.3d at 419)); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Rite Aid of South Carolina, Inc.*, 210 F.3d 246, 251, 255 (4th Cir. 2000) (dismissing case when existing party had "interest separate and distinct" from absent party); *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305, 1311 (5th Cir. 1986) (holding absent parties were necessary given conflicting interest with existing parties); *Glancy v. Taubman Ctrs., Inc.*, 373 F.3d 656, 675 (6th Cir. 2004) (remanding to determine adequacy where existing party's "distinct but overlapping interests could come into conflict" with necessary party's interest); *Two Shields v. Wilkinson*, 790 F.3d 791, 799 (8th Cir. 2015) (dismissing case after finding a

to contrast its own facts, which showed no similar conflict. Here, however, the court below found that the federal government had an "actual, not hypothetical or unknown conflict[]" with the Tribe based on a "documented history" of the federal government acting as an adverse party to the tribe on gaming issues. Pet. App. 61a. Maverick simply ignores this finding in this case, which self-evidently distinguishes *Ramah*.

On top of these distinctions, the *Ramah* court recognized that the federal government had a significant practical stake in the outcome of the litigation. There, plaintiffs challenged a federal program administered by the federal government and calculations independently determined by the federal government. In contrast, the absent tribes had little practical interest in the case given that the most they could receive if the Secretary successfully defended the lawsuit was a pro rata distribution of "less than $100." *Ramah*, 87 F.3d at 1351-52. Importantly, *Ramah* did not rely on a general rule insulating APA claims from Rule 19 dismissal. *See Id.* The *Ramah* court simply held that the fact-intensive and discretionary standard of Rule 19 was not met.

Here, the Secretary has no similar practical stake in the outcome of this case. Maverick's APA claim does not challenge the Secretary's rules, processes, programs, or even its independent decision-making. Instead, Maverick's challenge focuses on

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conflict between absent and existing parties); *Fla. Wildlife Fed'n Inc. v. U.S. Army Corps of Eng'rs*, 859 F.3d 1306, 1317 (11th Cir. 2017) (dismissing case where existing party was "not in any position to safeguard" absent party's interests).

Washington State law and argues that granting sports betting rights to tribes alone unconstitutionally discriminates based on race and violates IGRA. BIO App. 156a-60a. While fashioned as a challenge to the lawfulness of the Secretary's approval, Maverick's lawsuit has little to do with the Secretary's independent decision-making or actions. Unlike in *Ramah*, the Secretary has little if any interest in defending Washington State law and nowhere near the same economic and sovereign interest as the Tribe in defeating claims that, if successful, would "eviscerate[] the Tribe's 'very ability to govern itself, sustain itself financially, and make decisions about its own' gaming operation." Pet. App. 59a (alteration in original) (citation omitted). *Ramah*'s determination that the federal government could adequately defend against claims challenging a federal program that did not implicate significant tribal interests or contractual rights simply does not conflict with the decision below.

The Tenth Circuit's decision in *Fox Nation* similarly creates no conflict. The court in *Fox Nation* likewise relied on Ninth Circuit precedent to conclude that the federal government could adequately represent the absent tribe's interests because, unlike here, the Secretary had no identified conflicts with the tribe and shared a "virtually identical" interest in the outcome of the case. 240 F.3d at 1259 (citing *Daley*, 173 F.3d at 1167-68). Specifically, the court highlighted that the lawsuit focused solely on the "propriety of the Secretary's determinations" in purchasing a particular tract of land, allocating federal funds to the purchase, and designating the land as a reservation—decisions that

the Secretary had a significant practical interest in defending. *Id.* at 1258. The *Fox Nation* court relied on this same identity of interest in its Rule 19(b) analysis, finding that the absent tribe would not be prejudiced by proceeding in its absence. *Id.* at 1260. And, just like the court in *Ramah*, the Tenth Circuit in *Fox Nation* did not rely on a general rule that challenges to agency action under the APA are exempt from Rule 19, but instead applied the rule and found, under the facts of that case, that dismissal was inappropriate. *Id.* at 1259-60.

The situation in *Fox Nation* differs starkly from Maverick's APA claim, where an actual conflict precluded the United States from representing the Tribe as detailed above. Thus, far from demonstrating a conflict with Ninth Circuit law, *Fox Nation* shows only that courts applying the same fact-specific, discretionary rule involving different claims and evidence may reach different outcomes. But the rule of law that *Fox Nation* applied fully comports with Ninth Circuit law and the decision below.

Not only do the Tenth and D.C. Circuit cases cited by Maverick fail to demonstrate a genuine legal conflict, Maverick also ignores numerous decisions in both circuits that found that absent tribes *were* necessary and indispensable parties to suits against the federal government when the government could not adequately represent tribal interests due to a conflict of interest or an inadequate stake in the outcome of the case. Both circuits apply the same discretionary analysis employed by the Ninth Circuit below. For example, as then D.C. Circuit Judge Ginsburg held (joined by then Circuit Judge Scalia): "Rule 19 was designed 'to steer analysis away from

the technical and abstract character[ization] of the rights or obligations of the persons whose joinder [is] in question,' and to direct attention instead to 'the pragmatic considerations which should be controlling.'" *Cloverleaf Standardbred Owners Ass'n, Inc. v. Nat'l Bank of Wash.*, 699 F.2d 1274, 1277-78 (D.C. Cir. 1983) (alterations in original) (citation omitted).[3] In *Cloverleaf*, like in *Ramah* and *Fox Nation*, the court *followed* Ninth Circuit law to hold that "when a district judge adverts to the relevant considerations and engages in a careful, pragmatically-oriented analysis to determine whether a person who cannot be joined as a party is 'needed for just adjudication,'" appellate courts should generally respect those discretionary judgments. *Id.* at 1280 (quoting *Walsh v. Centeio*, 692 F.2d 1239 (9th Cir. 1982)).

Applying this pragmatic standard, the D.C. Circuit has repeatedly deemed tribes necessary and indispensable parties where the federal government has an actual or potential conflict of interest with the absent tribe or lacks a practical stake in the outcome of the proceedings. For example, in *Wichita & Affiliated Tribes of Okla. v. Hodel*, 788 F.2d 765, 775 (D.C. Cir. 1986)—an APA case—the D.C. Circuit affirmed the dismissal of claims under Rule 19 against the federal government where the government had divergent stakes in the outcome of the case, as demonstrated by its willingness to concede part of the

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[3] *See also Kickapoo Tribe of Indians of Kickapoo Rsrv. in Kan. v. Babbitt*, 43 F.3d 1491, 1495 (D.C. Cir. 1995) (holding that Rule 19 "calls for a pragmatic decision based on practical considerations in the context of particular litigation").

absent tribes' claims, and a potential conflict of interest due to its competing allegiances to three other tribes. The *Hodel* court recognized—like the Ninth and Tenth Circuits—that when "there is a conflict between the interests of the United States and the interests of Indians, representation of the Indians by the United States is not adequate." *Id.* (quoting *Manygoats v. Kleppe*, 558 F.2d 556, 558 (10th Cir. 1977)) (citing *New Mexico v. Aamodt*, 537 F.2d 1102, 1106 (10th Cir. 1976), *cert. denied*, 429 U.S. 1121 (1977); *Hansen v. Peoples Bank of Bloomington*, 594 F.2d 1149 (7th Cir. 1979)).

Similarly, in *Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489, 1497 (D.C. Cir. 1997), the D.C. Circuit dismissed a challenge to the federal government's formal recognition of a tribe. Although the federal government took the same position in the litigation as the absent tribe, the court found that the government had switched its position on the issue twice since the 1940s and could potentially reverse itself again, giving the federal government a different stake in the outcome of the case than the absent tribe, with its very sovereignty at stake. *Id.*

Just like the D.C. Circuit, the Tenth Circuit has repeatedly deemed tribes necessary and indispensable parties in cases where the federal government has an actual or potential conflict of interest with the absent tribe or lacks a practical stake in the outcome of the proceedings. For example, in *Enterprise Management Consultants, Inc. v. United States ex rel. Hodel*, 883 F.2d 890, 893-94 (10th Cir. 1989), the Tenth Circuit affirmed the dismissal of a lawsuit challenging the Secretary of Interior's validation of bingo management contracts between an

absent tribe and a gaming company. Affirming the bedrock principle that absent parties to a contract challenged in litigation are quintessential necessary parties, the court held that the federal government could not represent the tribe's sovereign interest in avoiding "hav[ing] its legal duties judicially determined without consent." *Id.* at 894. The court also applied the same rule as the Ninth Circuit in assessing the four Rule 19(b) factors to conclude that "when . . . a necessary party under Rule 19(a) is immune from suit, 'there is very little room for balancing of other factors' set out in Rule 19(b), because immunity '"may be viewed as one of those interests 'compelling by themselves.'"'" *Id.* (quoting *Wichita & Affiliated Tribes*, 788 F.2d at 777 n.13).[4]

Similarly, in *Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 540 (10th Cir. 1987), the Court affirmed the dismissal of a challenge against the federal government for failure to join a tribe as a necessary and indispensable party. There, like here, the lawsuit challenged the Secretary of Interior's approval of contracts—oil and gas leases—to which the absent tribe was a party. Recognizing that the tribe's interest in the leases struck at the "the heart of the controversy," the court relied on Ninth Circuit precedent to affirm that "[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of

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[4] *See also Tewa Tesuque v. Morton*, 498 F.2d 240, 242 (10th Cir. 1974); *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 996, *modified on reh'g*, 257 F.3d 1158 (10th Cir. 2001) (holding that absent tribes were necessary and indispensable in lawsuit challenging tribal contracts).

the action are indispensable." *Id.* at 540 (quoting *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975), *cert. denied*, 425 U.S. 903 (1976)). The court held that a claim just against the Secretary of Interior, without the tribe's presence, would be "'sterile and a complete waste.'" *Id.* at 539 (citation omitted).

Maverick's claimed conflict with the Seventh and Eighth Circuits similarly falters. In *Thomas v. United States*, 189 F.3d 662, 665-66 (7th Cir. 1999), the Seventh Circuit held that absent tribes did not have a legally protectable interest in the case because, "at its base," the lawsuit challenged "the way certain federal officials administered an election for which they were both substantively and procedurally responsible." Here, however, Maverick did not dispute that the Tribe had a legally protectable interest in each of its claims, and the Ninth Circuit determined that it had waived any arguments to the contrary. Pet. App. 22a. Moreover, in *Thomas*, the government's exclusive responsibility for administering tribal elections gave it a much more practical stake in the outcome of the case than the government has here. *Thomas* does not conflict with Ninth Circuit law.

Maverick is also wrong that the decision below is "in tension" with the Eighth Circuit's decision in *South Dakota ex rel. Barnett v. U.S. Department of Interior*, 317 F.3d 783, 786 (8th Cir. 2003). There, the absent tribe had "not identified any specific Tribal interest implicated in th[e] litigation that the United States cannot or will not adequately protect," or any non-speculative conflict of interest between the federal government and the tribe. *Id.* The decision in

Barnett, based on different claims and arguments (and under Rule 24, not Rule 19), does not remotely conflict with the decision below.

In short, Maverick's claimed circuit conflict cannot withstand the slightest scrutiny. It claims that in the Ninth Circuit, challenges to government action under the APA are doomed to summary dismissal whenever they incidentally affect any sovereign's interest, where the rest of the federal courts allow APA suits to proceed regardless of Rule 19. *See*, *e.g.*, Pet. 16-17. But neither proposition is true. Its cited cases show only that different courts applying the same discretionary, fact-intensive rule in different lawsuits will sometimes reach different outcomes. That does not create a legal conflict.

B. The Court of Appeals Properly Affirmed the District Court

The Ninth Circuit was correct to hold that the district court did not abuse its discretion by dismissing this suit under Rule 19.

1. The Shoalwater Bay Tribe is a required party under Rule 19(a)

Maverick conceded below that the Tribe has a legally protectable interest with respect to each of Maverick's claims under Rule 19(a); the Ninth Circuit found that Maverick had waived any argument to the contrary. Pet. App. 21-22a. Thus, Maverick's sole argument here is that the United States can adequately represent the Tribe's interests. But the Ninth Circuit found that the federal government has an actual conflict of interest with the Tribe due to its lengthy history litigating as an adverse party to the

Tribe on gaming issues. Pet. App. 31a-32a. Maverick does not even mention this finding, let alone contest it, which by itself supports the Ninth Circuit's determination that the federal government cannot adequately represent the Tribe in this case.

On top of this, the Ninth Circuit correctly found that the Secretary's limited interest in defending its approval of the gaming compacts at issue did not give it a sufficient stake in the outcome of the litigation to adequately represent the Tribe. Importantly, Maverick does not seek review of the dismissal of its Section 1983 claims asserting that Washington's "actions executing and administering the unlawful Compacts and Compact Amendments violate" federal law, implicitly acknowledging that the Secretary has no interest in defending Washington law. BIO. App. 171a (Count Two of the complaint); *see also* Pet. i. (Question Presented). But in doing so, Maverick concedes too much because it argued below that these claims "advance[] the same legal arguments." BIO App. 13a-14a. And of course they do—Maverick's APA claim asserts that the Secretary should not have approved the gaming compacts at issue because Washington law violates the Constitution and IGRA and that any gaming compact made in reliance on Washington law is likewise invalid. *See* BIO App. 154a-158a. Maverick's APA claim also sought broad relief against tribes in Washington, seeking a declaration "that the Compact Amendments violate IGRA" and "the Constitution's guarantee of equal protection, and the Tenth Amendment, and therefore were not validly entered into and are not in effect" and

"that the Tribes' sports-betting activities violate IGRA." BIO App. 170a. Given Maverick's broadly formulated claim, the Ninth Circuit was right to look beyond the Secretary's narrow interest in defending its approval of the gaming compacts to determine whether the federal government had an adequate stake in the case to defend against Maverick's APA claim.

Maverick argues that under the Ninth Circuit's analysis "the United States will almost never be an adequate representative in APA cases affecting tribes' (or other sovereigns') interests." Pet. 26. But that's not true. The reason that the United States is a particularly bad representative here is because it has an actual conflict with the Tribe—a determination that Maverick does not challenge. Pet. App. 32a. Moreover, the United States has no practical stake in the compacts Maverick challenges. IGRA compacts are negotiated by States and tribes. The United States serves primarily as an intermediary between the parties to the compact. *See generally* 25 U.S.C. § 2710. The Secretary need not even act on a given compact for it to go into effect. 25 U.S.C. § 2710(d)(8)(C). *See* Pet. App. 31a-32a. On top of this, Maverick never submitted comments to the Secretary regarding its objections to the compacts Maverick sued about, robbing the Secretary of any ability to consider those objections or provide a reasoned response to them. *See generally* BIO App. 127a-80a (showing the complaint never alleged Maverick objected to the compact amendments to the Secretary). In an appropriate case, where the federal government does not have an

actual conflict of interest and the plaintiff does not seek such broad relief against tribes, the United States might be an adequate representative. But here, the Ninth Circuit was correct to conclude it is not.

And in other contexts, where the United States takes agency action to achieve its own policy goals, the federal government's interests are often sufficiently aligned with tribal (or other sovereign) interests to defeat a motion to dismiss under Rule 19(a). *See*, *e.g.*, *Alto*, 738 F.3d at 1128. But, as the Ninth Circuit held, on the facts of this case, those interests are not sufficiently aligned here.

The rule Maverick proposes—that the United States is *always* the only required party in any APA action—has been rejected by the D.C. Circuit for almost forty years. *See Wichita & Affiliated Tribes*, 788 F.2d at 778 n.14 ("[R]eview otherwise available under the Administrative Procedure Act may be unavailable due to the impossibility of joining an indispensable party."); *see also Cook v. FDA*, 733 F.3d 1, 12 (D.C. Cir. 2013) (considering Rule 19 challenge raised by amicus in an APA case and tailoring relief under Rule 19(b)). And, while not expressly so holding, this Court has intimated the same. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 154 (1967) (noting in APA pre-enforcement challenge that "courts may even refuse declaratory relief for the nonjoinder of interested parties who are not, technically speaking, indispensable."), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

The United States does not share the Tribe's practical interests and has an actual conflict with the Tribe. It is not, therefore, an adequate representative for purposes of Rule 19(a).

2. The Ninth Circuit was correct that Rule 19(b) also requires dismissal

Maverick faults the Ninth Circuit's analysis of Rule 19(b), a multi-part equitable inquiry, for giving sovereign immunity too much weight. Pet. 28-29. But the Ninth Circuit followed this Court's precedent regarding the nature of sovereign immunity. In *Republic of Philippines v. Pimentel*, 553 U.S. 851, 865 (2008), this Court considered sovereign immunity itself as an interest that may be injured by proceeding in the absence of the required sovereign. And it held that injury to that sovereign interest will in many cases be dispositive of the Rule 19(b) inquiry because that is the purpose of sovereign immunity—to make the sovereign immune from the consequences of lawsuits. *Id.* at 867 ("A case may not proceed when a required-entity sovereign is not amenable to suit."). Sovereign immunity is appropriately invoked under Rule 19(b) to dismiss a lawsuit even if "plaintiffs will be left without a forum for definitive resolution of their claims." *Id.* at 872 (citing *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 497 (1983)); *see also United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 513 (1940) ("The desirability for complete settlement of all issues between the parties must, we think, yield to the principle of [tribal sovereign] immunity.").

The Ninth Circuit uses precisely the approach this Court has taken. It has rejected the approach of "some courts [that] have held that sovereign immunity forecloses in favor of tribes the entire balancing process under Rule 19(b), . . . continu[ing] to follow the four-factor process even with immune tribes." *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002). Nonetheless, the prejudice to a tribe's sovereignty itself is usually weighty enough to dismiss an action where a sovereign tribe is a required party under Rule 19(a). *See Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 857 (9th Cir. 2019). "But that result is contemplated under the doctrine of [tribal] sovereign immunity." *See Pimentel*, 553 U.S. at 872.

The Ninth Circuit also correctly rejected application of the public rights exception here. Maverick cites to no case holding that the public rights doctrine applies to IGRA litigation, and the D.C. Circuit agrees with the Ninth that it does not. *See Kickapoo Tribe of Indians of Kickapoo Rsrv. in Kan. v. Babbitt*, 43 F.3d 1491, 1500 (D.C. Cir. 1995). This case does not implicate a federal regulatory program or implementation of a federal policy. *Cf. Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 364-65 (1940) (holding public rights exception applied where National Labor Relations Board ordered employer to cease enforcing contracts made in violation of the National Labor Relations Act). Rather, the Ninth Circuit was correct that Maverick's claims are primarily about preventing its commercial competitor from having a commercial advantage. Pet. App. 41a-42a. These are not public rights that warrant disregarding Rule 19 or accepting certiorari.

C. This Case Is an Imperfect Vehicle for the Question Raised

Finally, this case is not an appropriate vehicle to consider the question presented by Maverick. Maverick's waiver of key issues, its exaggeration of the impacts of this case, its impending bankruptcy, and the unusually circumscribed interest of the federal government in defending against Maverick's broad APA claim make this a particularly poor vehicle to address the federal government's adequacy to defend more typical APA claims.

1. Maverick waived key issues

Maverick conceded below both that the Tribe had a legally protectable interest in each of the claims in this case and that the federal government could not adequately represent that interest if it had a conflict of interest with the Tribe. Pet. App. 21a; BIO App. 70a. But both the district court and the Ninth Circuit found that the federal government had an actual conflict of interest with the Tribe—a decision that Maverick does not ask this Court to review. Pet. i (Question Presented). Maverick thus waived any argument that no conflict exists. *See* Rule 14 ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."). By waiving any challenge to that conflict determination, Maverick also effectively waived its argument that the federal government can adequately represent the Tribe's interest in this case notwithstanding that conflict.

Maverick also waived a much more straightforward as-applied challenge to Washington's laws permitting sports betting solely by tribes on

tribal lands, which could have provided a more direct pathway to the relief Maverick seeks. Maverick asserted a claim under 42 U.S.C. § 1983 against the Washington State Defendants but framed this claim before the district court as challenging existing tribal gaming compacts and, as such, conceded that the Tribe had a legally protectable interest with respect to that claim. Pet. App. 22a. While Maverick attempted to argue on appeal that the Tribe had no legally protectable interest, both the majority and the concurrence held that Maverick had waived the issue by failing to raise it "'sufficiently for the trial court to rule on it.'" Pet. App. 22a; *see also* Pet. App 49a ("Maverick did not dispute that the Tribe 'has a legally protected interest that could be impaired by the instant litigation,' without distinguishing among the different counts of the complaint."). Maverick's lack of an alternative forum for its claims is due to its own strategic litigation choices. These strategic choices by Maverick appear to arise from its efforts to keep this case in the D.C. District Court rather than in Washington, where the Ninth Circuit had previously rejected Maverick's Equal Protection and IGRA arguments on the merits. *See generally Artichoke Joe's*, 353 F.3d 712. Maverick is now bound by its own choices, which make this case a poor vehicle for addressing the application of Rule 19 to APA cases generally.

2. Maverick overstates the impact of the decision below

Maverick also grossly exaggerates the impact of the decision below about the future viability of APA claims that implicate tribal interests. Maverick's sky-is-falling predictions rest on a mischaracterization

of Ninth Circuit law as adopting a bright-line rule requiring dismissal of APA claims any time a tribe claims an interest in a case. Contrary to Maverick's assertions, *Diné*, *Klamath*, and the decision below did not represent a sea-change in the Ninth Circuit's Rule 19 jurisprudence. None of the cases even reversed a district court's denial of a motion to dismiss. Instead, each case *upheld* a district courts' discretionary determination that an absent tribe was a necessary and indispensable party under a deferential standard of review, while preserving district court discretion to conclude otherwise when warranted. Since those decisions issued, numerous district courts in the Ninth Circuit have denied motions to dismiss suits against the federal government that implicate tribal interests. *See, e.g.*, *Protect the Peninsula's Future v. Haaland*, No. CV23-5737-BHS, 2025 WL 1413734, at *3-4 (W.D. Wash. May 15, 2025) (denying Rule 19 motion to dismiss for failure to join absent tribes); *Bell v. City of Lacey*, No. 3:18-cv-05918-RBL, 2019 WL 4318615, at *2-3 (W.D. Wash. Sept. 12, 2019) (same).[5]

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[5] *See also Ariz. State Legislature v. Biden*, No. CV-24-08026-PCT-SMM, 2024 WL 5264605, at *5 (D. Ariz. Sept. 9, 2024) (rejecting Rule 19 motion to dismiss where federal government had no conflicts with tribes and evidence demonstrated that federal government's and tribe's interests were "especially aligned"); *Klamath Tribes v. U. S. Bureau of Reclamation*, No. 1:21-CV-00556-CL, 2023 WL 7182617, at *17 (D. Or. Sept. 11, 2023) (denying Rule 19 motion to dismiss where court found that "case in equity and good conscience can proceed" without absent tribes and the Ninth Circuit had "no bright line rule for resolving this issue"), *report and recommendation adopted* 2024 WL 471977 (D. Or. Feb. 7, 2024);

As further evidence of the supposedly dire consequences of the decision below, Maverick cites a district court amicus brief filed by a state seeking dismissal of a case under Rule 19. Pet. 33. But it neglects to mention that the district court did not grant the motion and instead resolved the case on other grounds. *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 532 F. Supp. 3d 846, 856 (D. Ariz. 2021) (granting motion to dismiss for lack of standing). Given the many recent district court cases in the Ninth Circuit denying Rule 19 motions to dismiss, Maverick's dire prognostications that *Diné*, *Klamath*, and the decision below sound the death knell for APA challenges implicating tribal interests ring hollow.

3. The federal government's interests here are not representative of typical APA cases

This is an unrepresentative case for testing Rule 19's applicability to APA actions. Not only does the Secretary have a circumscribed role in reviewing and approving gaming compacts under IGRA, but at the time the Secretary approved the gaming compacts at issue (and continuing to today), its decision fully comported with controlling U.S. Supreme Court authority going back to *Morton v. Mancari*, 417 U.S. 535 (1974). *Mancari* recognized that tribes have a

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Pilant v. Caesars Enter. Servs., LLC, No. 20-CV-2043-CAB-AHG, 2020 WL 7043607, at *5 (S.D. Cal. Dec. 1, 2020) (denying Rule 19 motion to dismiss where plaintiffs did not challenge tribal sovereignty or tribal agreements); *California v. Azuma Corp.*, No. 23-16200, 2024 WL 4131831, at *4 (9th Cir. Sept. 10, 2024) (affirming denial of motion to dismiss for failure to join tribes where existing defendants, represented by sophisticated counsel, shared same interest as tribes in defending lawsuit).

unique status under federal law as quasi-sovereign entities and that distinctions based on tribal status reflect political rather than racial classifications.

Maverick's APA claim does not challenge the Secretary's actual decision-making process based on this controlling law: it instead seeks a seismic change in the law under the guise of challenging the Secretary's approval of a specific gaming compact. Maverick's APA claim is truly the tail wagging the dog. And while the Secretary has an interest in its compact approvals, this is not a standard APA case focusing primarily on the agency's own rulemaking, enforcement, or other policy. *See*, *e.g.*, *Biden v. Nebraska*, 600 U.S. 477, 488 (2023) (challenge to Department of Education policy).

4. Maverick's claims are, or may soon become, moot

Finally, underscoring the vehicle problems in this case, Maverick's parent company has filed for Chapter 11 bankruptcy and the entities bringing this action may not even have an interest in the relief they request by the time this Court hears the case, should it choose to do so. *See Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) ("[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed." (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895))). The prospect that the case is or may soon become moot presents one more obstacle to cleanly presenting the question Maverick wants this Court to answer.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

NICHOLAS W. BROWN
Attorney General
State of Washington

Noah G. Purcell
Solicitor General
Counsel of Record

Tera M. Heintz
William McGinty
Deputy Solicitors General

PO Box 40110
Olympia, WA 98504-0100
360-753-6200

August 27, 2025

APPENDIX

No. 23-35136

In The United States Court Of Appeals For The Ninth Circuit

MAVERICK GAMING LLC,

Plaintiff – Appellant,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants – Appellees,

SHOALWATER BAY TRIBE,

Intervenor – Defendant – Appellee.

On Appeal From the United States District Court for the Western District of Washington
Case No. 3:22-cv-05325-DGE

The Honorable David G. Estudillo

REPLY BRIEF OF PLAINTIFF-APPELLANT MAVERICK GAMING LLC

THEODORE B. OLSON
MATTHEW D. MCGILL
LOCHLAN F. SHELFER
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Phone: 202.955.8668
Email: tolson@gibsondunn.com

Counsel for Plaintiff-Appellant

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INTRODUCTION

The Administrative Procedure Act ("APA") establishes the right to judicial review of illegal and unconstitutional federal governmental action and waives federal sovereign immunity to ensure the vindication of that right. The Shoalwater Bay Tribe ("Tribe"), however, asks this Court to adopt an extreme interpretation of Rule 19 that would radically transform APA litigation, foreclosing judicial review of all manner of federal agency action. On every legal issue presented in this case, the Tribe and the federal government are fully aligned. Yet, under the Tribe's theory, that is not sufficient. According to the Tribe, any sovereign—Tribe, State, or foreign country—has the power to insulate federal agency action from judicial review. That is not the law.

The Tribe largely relies on *Dine Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), and *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022). The Tribe asks this Court to expand those cases—both of which involve the unique interplay between Indian interests and the federal government's duties under environmental statutes—into blanket rules that hand sovereigns the power to veto judicial review of illegal governmental actions. But this lawsuit is fundamentally different from those cases. Here, the federal defendants do not have any competing interests under the relevant statute—to the contrary, the relevant provisions of IGRA all push the federal defendants *toward* a position in sync with the Tribe. Unsurprisingly, the Tribe is unable to identify a single

merits argument it would advance in this litigation that the federal defendants would not. They are in perfect harmony.

Extending *Dine Citizens* and *Klamath* to this new context would put the Court squarely at odds with the rule in other Circuits, with other cases decided by this Court, and with the longstanding position of the United States. Additionally, the consequences of this expansion would be severe and unworkable. Anytime federal agency action benefits a sovereign—whether an Indian tribe, a State, or a foreign nation or instrumentality—that sovereign will be able to force dismissal. That means sovereign entities will be able to wield Rule 19 as a sword, shutting down judicial review of all manner of APA claims—constitutional, statutory, or administrative.

The Court should reject the Tribe's attempt to short-circuit this litigation and remand for the district court to consider Maverick's constitutional, statutory, and administrative claims.

ARGUMENT

I. The Tribe Is Not A Required Party Under Rule 19(a).

A. Disposing Of This Action In The Tribe's Absence Would Not Impair The Tribe's Ability To Protect Its Interests.

1. The Federal Defendants Adequately Represent The Tribe's Interests.

a. The Tribe is not a required party under Rule 19(a) because "'[t]he United States can adequately

represent an Indian tribe unless there exists a conflict of interest between the United States and the tribe,'" and here the Tribe cannot "demonstrate how such a conflict might actually arise in the context of this case." *Washington v. Daley*, 173 F.3d 1158, 1167–68 (9th Cir. 1999); Opening.Br.27–31.

Indeed, although many cases have considered APA challenges to IGRA compacts like this one, *see* Opening.Br.28–30 (citing cases), the Tribe cannot point to a single IGRA challenge where the federal government and the absent tribe were making the same arguments, yet the absent tribe was held to be a required party.

The federal government agrees that "the United States is the only required defendant to a claim challenging final agency action." U.S.Br.2; *see also* U.S.Br.23 ("[H]olding that non-federal entities are necessary for an APA action to proceed undermines Congress' decision to waive the United States' sovereign immunity for suits brought under the APA and could sound the death knell for any judicial review of executive decisionmaking.") (cleaned up). As the United States recently explained to the Supreme Court, "where, as here, the government defends its action on the legal and factual grounds on which that action was based, the gov-ernment's defense ordinarily will 'as a practical matter' sufficiently 'protect' an 'interest relating to the subject of the [suit].'" U.S. Br. 23, *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 2023 WL 6367584, No. 22-1116 (U.S. Sept. 27, 2023).

The Tribe and the district court below took the stunning position that a conflict exists here because, if the compacts were invalidated, then the United States' interest in upholding federal law would conflict with the Tribe's desire to violate that law by offering class III gaming without a valid compact. *See* ER-14. But Rule 19 is concerned only with "legally protected interest[s]." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990). The Tribe has no cognizable "'interest in continuing practices' that violate" federal law. *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017).

On appeal, the Tribe has wisely abandoned that position. The Tribe now points to a different argument that it claims it would make and the United States would not: that tribes *can* lawfully offer class III gaming even without a compact. Tribe.Br.23. That argument fails twice over. First, it is irrelevant because it would arise only in a future enforcement action, not in this case. Second, it is manifestly wrong.

First, the argument is irrelevant because the Tribe does not demonstrate any conflict "in the context of *this case*." *Daley*, 173 F.3d at 1168 (emphasis added). The only relevant interest for Rule 19 is the "interest in the adjudication of the underlying merits of [the] suit." *Sw. Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998) (per curiam). The merits of this case focus on whether the Secretary of the Interior validly approved the compacts at issue. That question has nothing to do with the Tribe's insistence that—in the future and outside the context of this case—it will continue to offer class III gaming even if a court invalidates the compacts. The Tribe therefore has not shown any

conflict in the context of this case. Rather, it has simply asserted that it may have defenses against future enforcement actions that may (or may not) arise after a judgment in Maverick's favor. That is not sufficient to demonstrate a conflict with the United States in the context of this case, where the Tribe and the federal defendants are aligned on every issue presented.[1]

The state defendants, meanwhile, suggest that the Tribe might offer discovery that no other party would offer. Washington.Br.34–35. Not so: as the parties have stipulated, this case "presents questions of law that appear to be resolvable through dispositive motions . . . without the need for factual discovery." ER-128. The state defendants note that Maverick "filed an expert report" with its summary-judgment motion, Washington.Br.35, but those materials simply establish standing; they do not necessitate any discovery, let alone discovery that only the Tribe could conduct.

Second, the Tribe's position fails for the additional reason that—as the Tribe itself concedes—only "reasonable" arguments can demonstrate inadequacy of representation. Tribe.Br.26–27. There is nothing reasonable about the Tribe's frivolous argument that tribes can lawfully offer Class III gaming absent a compact. The text of IGRA is clear: "Class III gaming activities shall be lawful on Indian

[1] The Tribe argues that there is a conflict in this litigation because one of the forms of relief that Maverick has requested is a declaration that the Tribe's gaming activities are unlawful. Tribe.Br.29. But even if that were relevant—which it is not—the solution under Rule 19 is simply to "shap[e] the relief" to avoid any prejudice to the Tribe. Fed. R. Civ. P. 19(b)(2)(B).

lands *only if* such activities are . . . conducted in conformance with a Tribal-State compact . . . that is in effect." 25 U.S.C. § 2710(d)(1)(C) (emphasis added). Absent a compact, numerous criminal statutes unambiguously prohibit offering Class III gaming on Indian lands. *See, e.g.*, 15 U.S.C. § 1175(a); 18 U.S.C. § 1166(c)(2); 25 U.S.C. § 2710(d)(6); *see also* Opening.Br.50. This Court has recognized this principle: "Class III gaming is permitted on Indian lands only if, *inter alia*, a tribe and the state enter a tribal-state compact that the Secretary of the Interior then approves." *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022). That is why the United States "enforce[d]" federal law against the Tribe when it attempted to illegally offer gambling operations without a compact in the 1990s. Tribe.Br.7–9.

The Tribe nevertheless maintains that its argument is not frivolous, pointing to *United States v. Spokane Tribe of Indians*, 139 F.3d 1297 (9th Cir. 1998). Tribe.Br.27–28. But the Tribe misreads that case. *Spokane Tribe* held only that the United States could not seek an injunction against a Tribe offering illegal gambling under IGRA "when [a] state[] refuse[s] to negotiate" with the Tribe. 139 F.3d at 1302. That holding involves only the circumstances under which the United States may enforce IGRA via injunction, which is a completely separate question from whether the Tribe possesses the "right to offer Class III gaming" absent a compact. Tribe.Br.23 (heading altered). This distinction is clear from

Spokane Tribe's reiteration of the legal rule: "[w]ithout a compact in place, *a tribe may not engage in class III gaming*." 139 F.3d at 1299 (emphasis added).

Moreover, this Court has explained that *Spokane Tribe*'s limitation on seeking an injunction does not apply where the "considerations at issue" in *Spokane Tribe*—namely, a State refusing to negotiate—are absent. *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 n.8 (9th Cir. 2000). And in any event, *Spokane Tribe* itself acknowledged that the federal government could still enforce federal law against illegal tribal gambling operations by seeking "fines, imprisonment and confiscation of gambling devices." 139 F.3d at 1302 n.7; *see also United States v. 1020 Elec. Gambling Machs.*, 38 F. Supp. 2d 1219, 1223 (E.D. Wash. 1999) (*Spokane Tribe* does not apply when the federal government "is seeking forfeiture"). *Spokane Tribe* is no help to the Tribe's argument.

In short, the only tribal interest that is actually implicated in this case is the validity of the Tribe's compact and the amendments thereto. None of the defendants provides any explanation for how the United States' representation would be inadequate on this issue. In fact, the Tribe still fails to identify any merits argument it would raise in *this* case that the federal defendants would not.

Instead, the Tribe argues that, even if the federal defendants are adequate representatives for count I (Maverick's APA claim), they are inadequate representatives for counts II and III (the claims against the state defendants). But count II advances

the same legal arguments as count I, *see* ER-116–20, and, as explained further below, count III does not implicate tribal interests at all because it does not challenge any tribal compacts, *see infra* at 21–23; Opening.Br.47–48.

The state defendants, for their part, conjecture that there might be a conflict in the future because of "a change in administrations." Washington.Br.29. But no defendant gives any reason to think that a new administration would change the United States' longstanding position. The United States has always maintained its current legal position, across administrations of both political parties. *See, e.g.*, U.S. Br. in Opposition at 7–21, *Artichoke Joe's v. Norton*, 2004 WL 1791354, No. 03-1602 (U.S. Aug. 2, 2004). And in any event, the state defendants provide no authority for the proposition that a hypothetical change in presidential administrations at some time in the future could possibly be enough to render the federal government an inadequate representative now—a proposition that, if true, would mean the federal government could *never* be an adequate representative.

In sum, the Tribe cannot show an actual conflict with the federal defendants that is likely to arise in the context of this case, and it thus is not a required party under Rule 19(a).

b. Next, as Maverick demonstrated in its Opening Brief, this Court has recognized that there is a presumption of adequate representation when: (1) the parties have the same ultimate objective; (2) the government is defending its own action; or (3) the government is charged by law with

representing the absentee's interests. *See* Opening.Br.31–39. The Tribe's attempts to evade these overlapping presumptions—all of which underscore the federal government's adequacy here—fail.

First, the Tribe argues that these presumptions apply under Rule 24 but not Rule 19. Tribe.Br.36–37. That is a nonstarter: "In assessing an absent party's necessity under Fed. R. Civ. P. 19(a), the question whether that party is adequately represented parallels the question whether a party's interests are so inadequately represented by existing parties as to permit intervention of right under Fed. R. Civ. P. 24(a)." *Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992); Opening.Br.32 n.9. The Tribe's contention that Rule 19 "has no" adequate-representation provision (Tribe.Br.36) misunderstands the rule and flatly contradicts the bevy of caselaw holding that a party is not "required" under Rule 19(a) if an existing party adequately represents its interests. *See, e.g.*, Opening.Br.27–31 (collecting cases). In fact, the Rule 19 standard is *harder* for the Tribe to satisfy than the Rule 24 standard, as the Tribe itself argued below. *See* Dkt. 68 at 10 n.4 (arguing in intervention motion that "the Rule 24 standard is more liberal" than Rule 19).

Second, the Tribe asserts that "the Supreme Court has recently called all of these articulated presumptions in the context of Rule 24 into doubt." Tribe.Br.37 (citing *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191 (2022)). But the Supreme Court in *Berger* expressly made clear that it was *not* abrogating any of the presumptions applicable in this case, instead stating: "[T]o resolve this case we need

not decide whether a presumption of adequate representation might sometimes be appropriate when a private litigant seeks to defend a law alongside the government or in any other circumstance." 142 S. Ct. at 2204. The Tribe also cites this Court's decision in *Callahan v. Brookdale Senior Living Communities, Inc.*, Tribe.Br.37, but there, too, the court "offer[ed] no opinion as to whether [the 'same ultimate objective' presumption] remains good law." 42 F.4th 1013, 1021 n.5 (9th Cir. 2022).

c. Ultimately, the Tribe's chief contention is that *Dine Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), and *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022), worked a doctrinal sea change. According to the Tribe, those two cases swept away this Court's numerous decisions holding that the United States is an adequate representative, and at the same time handed Indian tribes a newfound power to preclude judicial review of any federal agency action that implicates tribal interests. Tribe.Br.33–34. That is a drastic overreading of those cases. Opening.Br.39–47.

As even the Tribe is forced to concede, *Dine Citizens* and *Klamath* stand only for the proposition that "federal defendants are unable to adequately represent an absent tribe where their obligations to follow relevant laws are in tension with tribal interests" in a particular case. Tribe.Br.30. As Maverick explained in its Opening Brief, there is no such tension here. Both the Tribe and the United States believe that the compacts comport with federal law. Opening.Br.42–43.

The state defendants accuse Maverick of arguing that *Dine Citizens* and *Klamath* are "applicable only in environmental cases." Washington.Br.31. That is not Maverick's argument. Rather, Maverick's position is that the federal government in those cases had competing statutory obligations that were in tension with the Tribe's interests. In *Dine Citizens*, the federal government had an "overriding interest . . . in complying with environmental laws such as NEPA and the ESA." 932 F.3d at 855; *see also Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 997 (9th Cir. 2020) (characterizing *Dine Citizens* as a case where the federal defendants' "obligations to follow relevant environmental laws were in tension with tribal interests"). Likewise, in *Klamath*, the federal government's "primary interest" was in "defending its interpretations of its obligations under the" Endangered Species Act, not in protecting tribal "reserved water and fishing rights." 48 F.4th at 944–45.

IGRA, by contrast, *requires* the Secretary to assess whether a compact comports with "the trust obligations of the United States to Indians"—and to disapprove any compact that violates those obligations. 25 U.S.C. § 2710(d)(8)(B)(iii). Thus, when the Secretary defends the legality of an IGRA tribal-state compact that the Secretary has already approved, the government's position is "'necessarily coincidental with the interest of the Tribe.'" *Dine Citizens*, 932 F.3d at 855. Maverick's argument does not depend on the fact that the competing statutory obligations in *Dine Citizens* and *Klamath* were *environmental* in nature. Instead, Maverick's

argument is that here, unlike in those cases, all of the federal defendants' statutory obligations are in harmony with the Tribe's interest in offering class III gaming pursuant to the compact that the federal defendants approved.

Indeed, the state defendants concede that "the Secretary of the Interior only has authority to disapprove compacts entered into by Indian tribes and states based on a narrow and exclusive set of statutory factors." Washington.Br.28. On each one of those three factors—compliance with IGRA, compliance with other federal law, and compliance with the federal government's trust obligation to Indian tribes, *see* 25 U.S.C. § 2710(d)(8)(B)—the Tribe and the federal defendants are completely aligned. *See* ER-80. Because there is no tension in this case, *Dine Citizens* and *Klamath* are inapposite.

Extending *Dine Citizens* and *Klamath* outside of their contexts to this case would effectively establish a *per se* rule that lawsuits implicating tribal (or any other sovereign) interests must be dismissed *even when* the federal government's interest on every issue is fully aligned. Such a ruling would be inconsistent with this Court's numerous cases holding that the federal government generally can protect the interests of absent Indian tribes in an APA challenge to federal agency action. *See, e.g.*, *Alto v. Black*, 738 F.3d 1111, 1127–29 (9th Cir. 2013); *Daley*, 173 F.3d at 1167–69; *Sw. Ctr. for Biological Diversity*, 150 F.3d at 1153–54. This Court is "required to *reconcile* prior precedents," *Danielson v. Inslee*, 945 F.3d 1096, 1099 (9th Cir. 2019) (emphasis added), not expand certain precedents to eliminate others.

The Tribe denies that its position would create a categorical rule that any APA case involving an Indian tribe would need to be dismissed under Rule 19. Tribe.Br.19 n.7. But the Tribe never gives any indication of what sort of case would escape its desired rule. The answer is that, if this action—in which the United States and the absent Tribe are in perfect accord—must be dismissed, then there is no APA claim involving an Indian tribe that could proceed to judicial review over the tribe's objection.

Such a ruling would also deepen a conflict with cases from other circuits holding that the United States is generally an adequate representative in APA challenges to federal agency action. *See, e.g.*, *Sac & Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1258–59 (10th Cir. 2001); *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1350–52 (D.C. Cir. 1996). As the federal government points out, *Dine Citizens* and *Klamath* already deviate from the law of other circuits. U.S.Br.11. This Court has a "preference for avoiding circuit splits," *United States v. Dupas*, 417 F.3d 1064, 1072 (9th Cir. 2005), and it should minimize the conflict with other courts by declining to extend those cases to this new context.

A ruling allowing tribes to veto judicial review would also have staggering real-world implications. For example, in the wake of the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the State of Oklahoma sought declaratory judgment under the APA, arguing that it retained jurisdiction to regulate surface coal mining and reclamation operations within Indian reservations. *Oklahoma v. U.S. Dep't of the Interior*, 640 F. Supp. 3d 1110, 1114 (W.D. Okla. 2022). Yet if the Tribe's

interpretation of Rule 19 were accepted, an absent tribe could prevent a federal court from ever deciding such an important question of federal-state jurisdiction by asserting its interests in the litigation, even if the federal government adequately protects those interests.

This immunization of governmental action from judicial review would not be limited to actions that implicate tribal interests. States could invoke their sovereign immunity to obtain dismissals of challenges to federal action in which they have an interest, such as joint federal-state programs. Thus, the state *amici* who supported the Affordable Care Act's Medicaid expansion—which the Supreme Court held unconstitutional, *NFIB v. Sebelius*, 567 U.S. 519, 575–85 (2012)—could have obtained dismissal of the plaintiffs' meritorious challenge out of the gate by asserting that their interest in the receipt of expanded Medicaid funding was inadequately represented under Rule 19.

Foreign states and their instrumentalities would also be able to deploy the Tribe's interpretation of Rule 19 to prevent litigants from having their day in court. An instrumentality of Hungary, for example, recently raised a Rule 19 objection to "a family's decades-long effort to recover a valuable art collection that the World War II-era Hungarian government and its Nazi collaborators seized during their wholesale plunder of Jewish property during the Holocaust." *De Csepel v. Republic of Hungary*, 27 F.4th 736, 739 (D.C. Cir. 2022). The D.C. Circuit rejected the Rule 19 argument because it found that, "[a]t bottom, both Hungary and the remaining defendants seek the

same result," so Hungary's interests were adequately represented. *Id.* at 748. But under the Tribe's view of Rule 19, such cases would have to be dismissed.

Rule 19 is meant to protect absent parties from the prejudice flowing from their absence; it is not meant to confer a veto power over a broad array of cases where a party's interests are already well-defended. The goal "is to avoid dismissal whenever possible." 7 Wright & Miller, Fed. Practice & Proc. § 1604 (3d ed.). This Court should reject the Tribe's attempt to weaponize Rule 19.

d. The federal defendants agree that they are adequate representatives for count I, and further take the position that *Dine Citizens* and *Klamath* were wrongly decided. U.S.Br.24–32. Yet they take the curious position that the two cases should be extended outside of their narrow context and should apply as a blanket rule in all cases involving an Indian tribe. But the conflict between those cases on the one hand and the position of the United States and other courts across the country on the other calls for *narrowly* construing them—not reading them for all they could possibly be worth. This Court should be skeptical of the United States' position that cases it believes were wrongly decided should nevertheless be expanded in a way that would effectively immunize the United States from suit in a wide array of APA cases.

Next, the federal defendants agree that their "shared interest with tribes in seeing agency action upheld adequately protects an absent tribe's interest in the resolution of an APA claim," but contend that the trust relationship between the federal government

and Indian tribes is not the basis for that conclusion. U.S.Br.24–28. The federal defendants acknowledge the existence of "a general trust relationship," but argue that they "ow[e] enforceable duties to a tribe" only when a treaty, statute, or regulation says so. U.S.Br.25. But *IGRA itself* requires the Secretary to disapprove any compact that "violates . . . the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B)(iii). The federal defendants note that "this provision simply provides the standards for the Secretary's review of compacts," U.S.Br.28, but that is precisely the issue in this case—IGRA itself aligns the federal defendants' interests with the Tribe's.

The federal defendants also argue that their interest is limited to approving the compact amendments and defending the Secretary's application of "IGRA's statutory standards" to those amendments. U.S.Br.29–32. These distinctions make no difference here. Maverick is challenging the validity of the compacts and compact amendments on the ground that they violate IGRA's statutory standards, which require the Secretary to disapprove a compact or amendment if it violates any "provision of Federal law" or "the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B)(ii)–(iii). Maverick is not relying on "state law" or requirements "outside the purview of IGRA." U.S.Br.31. Rather, Maverick's argument is that the compacts and amendments violate *IGRA* and *the U.S. Constitution*, grounds that statutorily required the Secretary to disapprove the compact amendments. ER-116–23. The federal defendants' interests in defending the

Secretary's approvals thus fully encompass any defenses to Maverick's claims in this case.[2]

2. One Of Maverick's Claims Does Not Implicate The Tribe's Compact At All.

Maverick's third claim does not ask for any relief that would affect the Tribe's compact. That claim asks only for "a declaration that the Defendants' continued enforcement of Washington's criminal laws" against Maverick is unconstitutional and for "an injunction prohibiting the Defendants from enforcing those laws against Maverick." ER-122; Opening.Br.47–48. Thus, even apart from the adequate-representation question, count III can proceed without the Tribe.

Neither of the Tribe's responses is persuasive.

First, the Tribe contends that the complaint "does not distinguish between the Counts with respect to the remedies it seeks in its prayer for relief." Tribe.Br.13. But the prayer simply lists *all* the relief that Maverick is seeking. ER-123. The third claim, meanwhile, specifically requests relief that would allow Maverick to offer class III games *in addition to* the Tribe. ER-121. But even if the Tribe were right, that would not make a difference because Rule 19 specifically encourages courts to "shap[e] the relief" to avoid any prejudice. Fed. R. Civ. P. 19(b)(2)(B).

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[2] Even if this Court disagreed, this argument would implicate only count II, because count I is already limited to challenging the Secretary's approval of the compact amendments and count III does not implicate tribal interests at all. *See* ER-116–18; Opening.Br.47–48.

Second, the Tribe argues that severability principles counsel in favor of striking the compacts rather than enjoining the enforcement of Washington's criminal laws against Maverick. Tribe.Br.39–44. But severability analysis in equal-protection cases provides courts with extensive discretion to shape the relief, given that the cases "can raise complex questions about whether it is appropriate to extend benefits or burdens." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2354 (2020) (plurality); Opening.Br.56–57. More fundamentally, the Tribe's reliance on this merits issue is premature. Whether or not Maverick can ultimately obtain the relief it seeks, the Rule 19 question before the court is whether *the relief Maverick seeks* in its third claim implicates tribal interests. Because it does not, that claim can proceed without the Tribe.

B. The Tribe's Joinder Is Not Required To Accord Complete Relief.

A party can also be necessary if "in [their] absence, the court cannot accord complete relief among existing parties," Fed. R. Civ. P. 19(a)(1)(A), but that rule does not apply in this case. Complete relief means relief that is "'meaningful . . . *as between the parties*.'" *Alto*, 738 F.3d at 1126. For an APA claim, that means "reversal or remand of the agency action." *Id.* at 1127. That bread-and-butter APA relief is available here, and would provide complete relief as between Maverick and the defendants. Opening.Br.48–50.

The Tribe asserts that Maverick cannot obtain complete relief in its absence because "the judgment would not be binding on the tribe, which could assert its rights under the agreement and/or under IGRA to continue the operation of Class III gaming activities." Tribe.Br.49–50. That argument fails twice over.

First, the Tribe misconceives the nature of APA relief: when agency action is vacated, it is vacated across the board. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 681 (9th Cir. 2021); Opening.Br.49. Unlike in a typical contract case—where an absent party may still have rights under a contract—relief in this case (vacating the Secretary's approval of the compact amendments) would mean that there is no compact authorizing sports betting.

Second, no matter how the Tribe might react to a decision vacating the Secretary's approval of the compact amendments, vacatur would be meaningful relief *as between Maverick and the federal defendants*—which is where Rule 19 looks to determine whether "complete relief" is available. *Alto*, 738 F.3d at 1126.

II. This Action Should Proceed In The Tribe's Absence Under Rule 19(b).

Even if this Court were to conclude that the Tribe is a "required" party under Rule 19(a), "equity and good conscience" would still mean that the suit should proceed under Rule 19(b). The Tribe's contrary position would again require a *per se* rule preventing any suit that implicates tribal interests from proceeding—even suits raising important public-law

questions of constitutional, statutory, and administrative law. Rule 19 does not compel that perverse and dangerous result.

A. All Four Rule 19(b) Factors Counsel Against Dismissal.

Each of the four Rule 19(b) factors—prejudice, the ability to lessen prejudice, adequacy of a judgment, and availability of an alternative forum—cuts in favor of allowing this suit to proceed. Opening.Br.51–60. The Tribe fails to demonstrate otherwise.

(1) Prejudice. The Tribe contends that it is prejudiced because "Maverick seeks to 'void' the Tribe's compact through which tribal opportunities and benefits from tribal governmental gaming directly flow." Tribe.Br.51. At the outset, as noted above, Maverick's third claim does not implicate the Tribe's compact at all, so there is no prejudice with regard to claim III. *See supra* at 21–23.

For claims I and II, the Tribe commits the same error as the district court by framing its prejudice in terms of how *the result* in this case could affect it rather than how *its absence* from the case could do so. But "[t]he first Rule 19(b) factor asks whether a party might suffer prejudice not simply from an adverse result, but specifically from the decision being 'rendered in [its] absence.'" *De Csepel*, 27 F.4th at 748. Because the federal government adequately represents the Tribe's interests, as explained at length above, *see supra* at 3–23, the Tribe's absence from this suit will not prejudice it. And even if this Court were to conclude that the federal government's representation would not be *fully* adequate, any

divergence of interests between the federal government and the Tribe would be minimal—so any prejudice would likewise be minimal.

(2) Extent to which prejudice could be lessened or avoided. To the extent that any prejudice exists at all, the district court could easily avoid that prejudice by allowing the Tribe to participate as an *amicus*, as 22 other nonparty tribes have done. *See* Opening.Br.53–54. The Tribe offers no response to this argument.

The nonparty *amici* tribes, meanwhile, erroneously suggest that "[t]his Court has . . . held that '[a]micus status is not sufficient' to lessen prejudice." Amicus.Br.27. But both cases that *amici* cite involved circumstances where the federal government was not a "proper representative because potential intertribal conflicts meant the United States could not represent all of them." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990); *see also Wichita & Affiliated Tribes of Okla. v. Hodel*, 788 F.2d 765, 775 (D.C. Cir. 1986). Such a conflict does not exist here. And in any event, even if *amicus* status were insufficient to cure the greater prejudice inherent in those circumstances, it would not follow that *amicus* status is insufficient to cure any minimal prejudice that might exist here.

(3) Adequacy of judgment. For the same reasons that "complete" relief is available, *see supra* at 23–24, a judgment for Maverick in this case would also necessarily be "adequate." Opening.Br.55–57. The Tribe's only response is to refer back to its arguments about (1) whether a judgment on Maverick's claim against the federal defendants

would bind the Tribe or prevent it from offering class III gaming and (2) whether a judgment on Maverick's third claim against the state defendants would entitle Maverick to an injunction against enforcement of Washington's criminal laws. Tribe.Br.51. But as explained above, the first argument ignores the nature of APA relief and the fact that vacatur would afford Maverick complete relief as between Maverick and the defendants, and the second argument turns on contested merits issues that are not before this Court. *See supra* at 23–24.

(4) Lack of alternative remedies. Confirming the breadth of its legal theory, the Tribe contends that "there is no forum for a private party's legal challenge to the legality of a tribe's gaming operation." Tribe.Br.51. That position should give this Court pause: a "decision under Rule 19 '*not* to decide' a case otherwise properly before the court is a power to be exercised only 'in rare instances,'" *Nanko Shipping, USA v. Alcoa, Inc.*, 850 F.3d 461, 465 (D.C. Cir. 2017) (alteration omitted), and "if no alternative forum is available to the plaintiff, the court should be extra cautious before dismissing the suit," *Makah*, 910 F.2d at 560 (emphasis omitted). The Tribe's sweeping legal theory flies in the face of these principles, foreclosing judicial review altogether for entire categories of legal disputes.

B. The Public-Rights Exception Applies.

Another, independent reason that this case should proceed is the "public-rights exception": the rule that courts will "refuse[] to require the joinder of all parties affected by public rights litigation—even

when those affected parties have property interests at stake—because of the tight constraints traditional joinder rules would place on litigation against the government." *Conner v. Burford*, 848 F.2d 1441, 1459 (9th Cir. 1988); Opening.Br.60–66. The Tribe and the state defendants argue that this rule does not apply because (1) Maverick has an economic stake in its action and thus is not vindicating a public right; and (2) Maverick's lawsuit would destroy the Tribe's legal entitlements. Tribe.Br.54–57. Both arguments fail.

First, the fact that Maverick has a private, economic motivation for bringing its claims does not mean that it is enforcing private rather than public rights. Private-rights cases involve "'the liability of one individual to another under the law,'" whereas "public rights" cases involve the rights and obligations "'between the Government and persons subject to its authority.'" *Stern v. Marshall*, 564 U.S. 462, 489 (2011). Accordingly, this Court has explained that public rights include "the interest in being governed by constitutional laws," *Shermoen*, 982 F.2d at 1319, and the government's obligation "to follow statutory procedures," *Makah*, 910 F.2d at 559 n.6. Maverick's action is one to enforce public rights against the government: its claims are that the state and federal defendants have violated IGRA, the Constitution's equal-protection guarantee, and the anti-commandeering doctrine. ER-116–23. And count I raises those claims under the APA, a classic font of public-rights litigation against the government.

The Tribe and state defendants are therefore wrong to rely on *American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002), which did not

challenge federal agency action. There, this Court concluded that the rights at issue were "more private than public" because the plaintiffs' interest was "in freeing themselves from the competition of Indian gaming." *Id.* at 1026. Maverick's primary interest is not in freeing itself from the competition of class III Indian gaming; Maverick seeks an *equal* competitive playing field, and would be happy to compete with the Tribes were it not criminally prohibited from doing so. Rather, and in contrast to *American Greyhound*, Maverick's primary interest is in vindicating the public right to equal treatment under the law by obtaining relief against the state and federal defendants' creation and maintenance of an unlawful class III gaming monopoly.

It makes no difference that Maverick has a private economic *motivation* for bringing its public-rights claim. The plaintiffs in *Shermoen* had an economic motivation for bringing a Takings Clause claim, but the suit still involved "public rights." 982 F.2d at 1316, 1319. Indeed, a plaintiff is constitutionally *required* to demonstrate that it has suffered a "'particularized'" injury that "'affect[s] the plaintiff in a personal and individual way'" to invoke a federal court's jurisdiction under Article III. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). The public-rights exception does not paradoxically require a plaintiff to undermine its own standing by demonstrating that it has no private interest in the suit.

Second, a judgment in Maverick's favor would not destroy the Tribe's private legal entitlements. Rather, granting Maverick's requested relief would set aside the Secretary's approval of the compact

amendments and would enjoin the state defendants from administering the compacts (or from enforcing Washington's criminal laws against Maverick) because such actions violate IGRA and the Constitution. ER-123–24. That relief involves the balance of public regulatory authority among sovereigns, not private legal entitlements.

Moreover, as the Supreme Court has explained, the public-rights doctrine applies "where the rights asserted arise independently of any contract which any adverse party may have made with another, not a party to the suit, even though their assertion may affect the ability of the former to fulfill his contract." *Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 363 (1940). Even though the adjudication of public rights may have an adverse practical impact on a nonparty's contractual entitlements, a court may nonetheless "proceed to judgment without joining other parties to the contract, shaping its decree in such manner as to preserve the rights of those not before it." *Id.* Accordingly, this Court applied the public-rights exception to an order enjoining the federal government "from permitting any surface-disturbing activity" on oil and gas leases "until they have fully complied with NEPA and ESA" because the Court "enjoin[ed] only the actions of the government; the lessees remain free to assert whatever claims they may have against the government." *Conner*, 848 F.2d at 1461. The fact that the order foreclosed the lessee's contractual "ability to get 'specific performance'" to compel the government to permit surface disturbing activity "until the government complies with NEPA and the ESA is insufficient to make the lessees indispensable to this litigation." *Id.*

So too here. Maverick seeks only to set aside the Secretary's unlawful approval of the compact amendments and to enjoin the state defendants from administering the compacts and amendments. A judgment in Maverick's favor would not prejudge any claim that the Tribe might have against the state or federal defendants. Tribe.Br.23–30. The public-rights exception therefore applies.

III. The Tribe Can Be Joined Because It Waived Its Tribal Immunity By Intervening In This Suit.

Alternatively, this suit should proceed because the Tribe waived its immunity by intervening. Opening.Br.66–68. The weight of authority holds that an immune sovereign's "voluntary appearance in federal court amount[s] to a waiver" of sovereign immunity, *Lapides v. Bd. of Regents*, 535 U.S. 613, 619 (2002), and that a "Tribe's intervention constitutes consent" to suit, *United States v. Oregon*, 657 F.2d 1009, 1014 (9th Cir. 1981). This Court should follow that reasoning here.

The Tribe and the defendants do not contest that intervention on the merits waives sovereign immunity, but they contend that this Court permits tribes to selectively invoke the jurisdiction of federal courts to obtain dismissal of cases without waiving their immunity. Tribe.Br.45–47. That is incorrect. In *Dine Citizens*, it was "undisputed" that the absent tribal entity had not waived its immunity, so there was no need for the Court to consider whether its intervention constituted a waiver. 932 F.3d at 856. The same was true in *Backcountry Against Dumps v. Bureau of Indian Affairs*: "Backcountry d[id] not

challenge the district court's determination that the Band cannot be joined because of its sovereign immunity." 2022 WL 15523095, at *1 (9th Cir. Oct. 27, 2022). In *Klamath*, the Court held only that the McCarran Amendment had not waived the Tribes' sovereign immunity; the Court did not consider whether the Tribes waived their immunity by voluntarily intervening. 48 F.4th at 945. And *Bodi v. Shingle Springs Band of Miwok Indians* held only that a Tribe that has been sued in state court does not waive its sovereign immunity by removing to federal court "to have its immunity defense heard in a federal forum." 832 F.3d 1011, 1018 (9th Cir. 2016). The case did not address whether a tribe waives its sovereign immunity by *voluntarily* intervening in an action.

To the contrary, this Court *has* held that a Tribe cannot intervene "to establish and protect its treaty fishing rights" and then turn around and "claim[] immunity" from an order enjoining fishing to conserve an endangered species. *Oregon*, 657 F.2d at 1014 (Kennedy, J.). "Otherwise, tribal immunity might be transformed into a rule that tribes may never lose a lawsuit." *Id.* That is exactly what happened here. As in *Oregon*, the Tribe intervened to "protect" its "interest in its Compact." FedSER-11. The Tribe then weaponized its sovereign immunity to obtain dismissal of Maverick's claims under Rule 19. The Tribe's weaponization of sovereign immunity and Rule 19 would result in the very trump-card that then-Judge Kennedy cautioned against in *Oregon*—namely that, whenever litigation threatens tribal interests, the Tribe must always win.

The Tribe also argues that the cases Maverick relies on involved waivers of immunity effected

through litigation conduct other than intervention. Tribe.Br.46–47. But the rule in *Lapides* does not depend on such distinctions: an immune sovereign may not "invoke federal jurisdiction" and simultaneously assert sovereign immunity. 535 U.S. at 619. Intervention, removal, and "filing an original action in federal court" are merely different "mechanism[s] for invoking the federal court's jurisdiction," and "[t]here is no reason to think" that the use of a particular mech-anism "carries [more or] less force for waiver purposes." *Bd. of Regents v. Phoenix Int'l Software, Inc.*, 653 F.3d 448, 461–62 (7th Cir. 2011). Because the Tribe voluntarily invoked the district court's jurisdiction to in-tervene in Maverick's action, it necessarily waived its sovereign immunity.

CONCLUSION

This Court should reverse and remand for the district court to consider Maverick's claims on the merits.

Dated: October 23, 2023 Respectfully submitted,

/s/ Theodore B. Olson
THEODORE B. OLSON
MATTHEW D. MCGILL
LOCHLAN F. SHELFER
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Plaintiff-Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 23-35136

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No. 23-35136

In The United States Court Of Appeals For The Ninth Circuit

MAVERICK GAMING LLC,

Plaintiff – Appellant,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants – Appellees,

SHOALWATER BAY TRIBE,

Intervenor – Defendant – Appellee.

On Appeal From the United States District Court for the Western District of Washington
Case No. 3:22-cv-05325-DGE

The Honorable David G. Estudillo

OPENING BRIEF OF PLAINTIFF-APPELLANT MAVERICK GAMING LLC

THEODORE B. OLSON
MATTHEW D. MCGILL
LOCHLAN F. SHELFER
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Phone: 202.955.8668
Email: tolson@gibsondunn.com

Counsel for Plaintiff-Appellant

RULE 26.1 STATEMENT

Maverick Gaming LLC, a nongovernmental limited liability company has no parent company, subsidiary, or affiliate that has outstanding securities in the hands of the public, and no publicly held corporation owns 10% or more of Maverick Gaming LLC's stock.

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INTRODUCTION

Maverick Gaming LLC is a casino gaming company that owns and operates cardrooms in the State of Washington. As it has in other States, Maverick would like to expand its operations to offer popular games like roulette, craps, and sports betting. Maverick, however, cannot do so because a tribal-state compact approved by the Secretary of the Interior has given Indian tribes a monopoly over lucrative casino-style gaming—preventing non-tribal entities, like Maverick, from competing with tribal casinos on an equal footing. To challenge this unlawful tribal monopoly, Maverick brought this case under the Administrative Procedure Act ("APA") and 42 U.S.C. § 1983 against the federal and state officials who have approved and maintained it in violation of the Constitution's guarantee of equal protection, the Tenth Amendment, and the Indian Gaming Regulatory Act ("IGRA").

Nine days before Maverick filed its motion for summary judgment—and only *after* the case had been transferred to this Circuit—the Shoalwater Bay Tribe moved to vacate the case schedule, intervene in the lawsuit, and dismiss the case under Federal Rule of Civil Procedure 19. The district court obliged, concluding that the Tribe was a required party who could not be joined due to sovereign immunity, and that the case should not proceed without the Tribe. The court acknowledged that Maverick would be left without any forum in which to bring its claims, but concluded that the Tribe's sovereign immunity outweighed that concern.

This stunning ruling that tribes must be joined as parties in all APA challenges to the Secretary's approvals of tribal-state gaming compacts—and that those challenges must then be dismissed based on tribal immunity—would render such APA claims entirely unreviewable, a result at odds with common sense, fundamental principles of judicial review of agency actions, and the consistent practice of federal courts. In fact, the district court's holding flies in the face of a long line of cases—in this Court and others—holding that lawsuits implicating tribal interests generally may proceed where the federal government is a defendant, because the federal government (absent some conflict of interest) will adequately represent the tribe. Indeed, courts around the country routinely invoke that rule to allow challenges to tribal-state gaming compacts to proceed under IGRA. Rule 19 exists to protect absent parties' interests—not to give those parties the power to short-circuit litigation where their interests are already well defended. And here, the Tribe could not identify a *single* merits argument it would make that the federal defendants would not. The Tribe's presence in this case would make no difference in how the litigation would unfold; the Tribe simply does not want the litigation to unfold at all. That is not what Rule 19 is for.

The result in this case breaks sharply from decades of precedent in this Circuit and others, and it would produce extreme and startling consequences. Under the logic of the decision below, an Indian tribe (or any other sovereign) that claims an interest in a case will have the power to foreclose judicial review of a vast array of federal agency action—flouting the

APA and the strong presumption favoring judicial review of executive decision-making. That cannot be, and is not, the law. This Court should reverse and remand for the district court to consider Maverick's administrative, statutory, and constitutional claims.

JURISDICTIONAL STATEMENT

Because this action arises under the Administrative Procedure Act, the Indian Gaming Regulatory Act, 42 U.S.C. § 1983, the Declaratory Judgment Act, and the U.S. Constitution, ER-91, the district court had subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1346(a)(2). This Court has jurisdiction under 28 U.S.C. § 1291 because Maverick appeals from the district court's order and judgment granting the Shoalwater Bay Tribe's motion to dismiss, which finally disposed of all claims in the action. ER-4–20. The district court entered its final order and judgment on February 21, 2023, and Maverick filed a timely notice of appeal on February 22, 2023. ER-176–78; *see* Fed. R. App. P. 4(a)(1)(B).

STATEMENT OF THE ISSUES

I. Whether an Indian tribe is a required party under Federal Rule of Civil Procedure 19(a) in an action challenging its tribal-state IGRA gaming compact when the federal government is a party.

II. Whether, if an Indian tribe is a required party in such a case and cannot be joined, the action should proceed in equity and good conscience under Rule 19(b).

III. Whether, even if an Indian tribe is a required party in such a case, the tribe waives its immunity by intervening in the case as a defendant to file a motion to dismiss.

PERTINENT AUTHORITIES

The pertinent constitutional provisions, statutes, and rules appear in this brief's addendum.

STATEMENT OF THE CASE

I. Background

A. The Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act ("IGRA") creates a framework for state regulation of gaming on Indian lands. In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Supreme Court held that California could not enforce its generally applicable gaming regulations against Indians on Indian lands within the State. Congress, the Court reasoned, had not consented to any such exercise of state jurisdiction over Indian gaming. *See id.* at 207. Dissatisfied with the uneven regulatory landscape that *Cabazon* produced, Congress enacted IGRA the next year to "foster a consistency and uniformity in the manner in which laws regulating the conduct of gaming activities are applied" and to promote "free market competition" between state-licensed gaming operators and Indian tribes. S. Rep. No. 100-446, at 6, 13 (1988).

In passing IGRA, Congress found that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter

of criminal law and public policy, prohibit such gaming activity." 25 U.S.C. § 2701(5). Congress also found that a "principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government." *Id.* § 2701(4); *see also id.* § 2702(1). In service of that goal, IGRA "provide[d] a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players." *Id.* § 2702(2). IGRA also invokes "the trust obligations of the United States to Indians" and requires the federal government to safeguard tribal interests. *Id.* § 2710(d)(8)(B)(iii).

IGRA divides gaming into three classes, and it specifies a different set of regulations for each. Class III gaming—the kind at issue in this case—includes many of the games typically found in casinos (such as blackjack, roulette, and craps), *see* 25 U.S.C. § 2703(8), and it is the most heavily regulated. Class III gaming is lawful on Indian lands only if three conditions are met. *First*, the gaming activities must be "authorized by an ordinance or resolution" that (i) "is adopted by the governing body of the Indian tribe having jurisdiction over such lands," (ii) "meets the requirements of subsection (b)"—*i.e.*, the rules governing class II gaming—and (iii) "is approved by the Chairman" of the National Indian Gaming

Commission. *Id.* § 2710(d)(1)(A).[1] *Second*, the gaming activities must be "located in a State that permits such gaming for any purpose by any person, organization, or entity." *Id.* § 2710(d)(1)(B). *Third*, the gaming activities must be "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect." *Id.* § 2710(d)(1)(C).[2]

To satisfy the third condition, an Indian tribe that wants to allow class III gaming on its land can ask "the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities." 25 U.S.C. § 2710(d)(3)(A). "Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact." *Id.* And "[i]f a state does not negotiate in good faith, the tribe may sue in federal court and obtain remedies designed to force the state to the bargaining table and get the deal done." *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1029 (9th Cir. 2022); *see* 25 U.S.C. § 2710(d)(7)(B).

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[1] The National Indian Gaming Commission is a body "established within the Department of the Interior" consisting of a Chairman appointed by the President (subject to Senate confirmation) and two associate members appointed by the Secretary of the Interior. 25 U.S.C. § 2704(a), (b).

[2] If these requirements are not met, then it is a federal crime to conduct class III gaming on Indian lands. *See* 15 U.S.C. § 1175(a); 18 U.S.C. §§ 1166(a), (c), 1955(a)–(b); 25 U.S.C. § 2710(d)(6).

Once the State and the tribe conclude a compact, the compact goes to the Secretary of the Interior for approval. *See* 25 U.S.C. § 2710(d)(3)(B), (d)(8). If the Secretary approves the compact, it goes into effect. *Id.* § 2710(d)(3)(B), (d)(8)(C). The Secretary must disapprove a tribal-state compact if "such compact violates . . . (i) any provision of [IGRA], (ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or (iii) the trust obligations of the United States to Indians." *Id.* § 2710(d)(8)(B); *see also Amador Cnty. v. Salazar*, 640 F.3d 373, 380–81 (D.C. Cir. 2011).

B. Washington State's Tribal Gaming Monopoly

Washington makes it a crime to offer most forms of gaming in the State. A person faces imprisonment or a fine (or both) if he "engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling." Wash. Rev. Code §§ 9.46.220–.222; *see also id.* § 9.46.0269 (broadly defining "professional gambling"). Washington's definition of "professional gambling" excludes activities "authorized by this chapter," *id.* § 9.46.0269(1)(a)–(c), but Washington authorizes only limited types of gaming (such as raffles, bingo, social card games, amusement games, pull-tabs, punchboards, sports pool boards, and fundraising events), *id.* §§ 9.46.0305–.0361. It is a crime to offer the vast majority of casino-style class III games, including roulette, craps, and sports betting. In addition, "[a]ll gambling devices" "are subject to seizure and forfeiture and no property right exists in them." *Id.* §§ 9.46.0241, 9.46.231(1)(a).

But Washington has exempted Indian tribes in the State from these criminal prohibitions, granting the tribes a statewide casino-gaming monopoly.

Beginning in the early 1990s, the State—purporting to act pursuant to IGRA—began entering into tribal-state compacts permitting Indian tribes to offer a wide a range of class III games that remain a crime for non-tribal entities to offer, including roulette and craps. *See, e.g.*, Tribal-State Compact for Class III Gaming Between the Tulalip Tribes of Washington and the State of Washington at 4–5 (Aug. 2, 1991).[3] Washington has executed such compacts with "[a]ll 29 federally recognized tribes in Washington." *Gaming Compacts*, Wash. State Gambling Comm'n.[4] The Secretary of the Interior approved these compacts, rendering them in effect under IGRA. ER-100, -115, -123; *see* 25 U.S.C. § 2710(d)(3)(B).

In March 2020, Washington expanded its tribal casino-gaming monopoly by enacting a law permitting Indian tribes to amend their gaming compacts "to authorize the tribe to conduct and operate sports wagering on its Indian lands." Wash. Rev. Code § 9.46.0364(1). That law expressly preserved the State's tribal monopoly, noting that it "has long been the policy of this state to prohibit all forms and means of gambling except where carefully and specifically authorized and regulated" and stating an intent to "further this policy by authorizing sports wagering on a very limited basis by restricting it to tribal casinos in the state of Washington." 2020 Wash.

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[3] https://wsgc.wa.gov/sites/default/files/public/searchable-compacts/tulalip/A-1991%20Compact%20%28s%29.pdf.

[4] https://wsgc.wa.gov/tribal-gaming/gaming-compacts.

Legis. Serv. ch. 127, § 1. So far, 20 of Washington's 29 federally recognized Indian tribes have amended their tribal-state compacts to permit them to offer sports betting. *See Gaming Compacts*, Wash. State Gambling Comm'n, *supra* at 10 n.4. The Secretary of the Interior has approved each of these compact amendments, rendering them in effect under IGRA. ER-101–03; *see* 25 U.S.C. § 2710(d)(3)(B).

C. Maverick Gaming LLC

Maverick is a non-tribal gaming company that owns and operates cardrooms in Washington. ER-112. Maverick also owns casinos in Nevada and Colorado, which offer a range of class III games (including sports betting) to patrons in those States. *Id.* Seeking to expand its Washington gaming offerings to include games like roulette, craps, and sports betting, Maverick has identified economically viable opportunities in the State. ER-112–13. But Maverick is excluded from Washington's highly lucrative class III gaming market because Washington permits only Indian tribes to offer those games, and criminalizes them for non-tribal entities like Maverick.

Washington's tribal gaming monopoly confers on tribal casinos a competitive advantage over Maverick's cardrooms because the tribal casinos can offer their patrons a more attractive suite of games. ER-113–14. Maverick has to incur increased advertising, promotional, and entertainment expenses in order to effectively compete with the tribes' expanded gaming offerings, and even given those expenses, Maverick continues to lose revenue from customers who would visit Maverick's cardrooms

if they offered the same games tribal casinos can offer. *Id.* Maverick brought this suit to level the playing field in Washington, either by expanding the games Maverick may offer or by applying Washington's general class III gaming prohibitions equally to tribal and non-tribal entities alike. ER-115–16.

II. Procedural History

A. Maverick's Complaint

Maverick filed this action in the U.S. District Court for the District of Columbia against the federal officials responsible for approving Washington's tribal-state gaming compacts, the Washington state officials responsible for executing and administering those compacts, and the Washington state officials responsible for enforcing Washington's criminal gaming prohibitions. ER-134–75. Maverick's complaint brought three claims.

First, Maverick brought an Administrative Procedure Act ("APA") claim against the federal officials, alleging that the Secretary's approvals of the sports-betting compacts were "not in accordance with law," 5 U.S.C. § 706(2)(A)—specifically, that the Secretary was required to disapprove the sports-betting compacts under IGRA itself, the constitutional equal-protection guarantee, and the Tenth Amendment's anti-commandeering principle. ER-167. Maverick sought a declaration that the sports-betting compacts themselves and the Secretary's approval of them violated federal law, vacatur of the Secretary's approval, a declaration that the tribes' sports-betting activities violated federal law, and nominal damages, costs, and attorneys' fees. ER-168.

Second, Maverick brought a claim against the Washington state officials under 42 U.S.C. § 1983, equitable principles, and the Declaratory Judgment Act, alleging that the state officials' execution and administration of the tribal-state compacts (both the original compacts from the 1990s and the recent amendments allowing sports betting) likewise violated IGRA, the constitutional equal-protection guarantee, and the Tenth Amendment's anti-commandeering principle. ER-169. Here again, Maverick sought a declaration that the compacts themselves (and the sports-betting amendments) and the state officials' execution and continued administration of them violated federal law, a declaration that the tribes' class III gaming activities violated federal law, an order enjoining the state officials from continuing to administer the compacts (and the sports-betting amendments) or entering into any new compacts that would grant a tribal class III gaming monopoly, and damages, costs, and attorneys' fees. ER-170–71.

Third, Maverick brought another claim against the Washington state officials under § 1983, equitable principles, and the Declaratory Judgment Act—this time alleging that Washington's discriminatory enforcement of its class III gaming criminal prohibitions violated the constitutional equal-protection guarantee. ER-171–72. Unlike the first two claims, this claim did not ask the court to declare the compacts, the sports-betting amendments, or the tribes' class III gaming activities unlawful. Instead, Maverick sought a declaration that the state officials' "continued enforcement of Washington's criminal laws prohibiting class III gaming—including roulette,

craps, and sports betting—violates the Constitution's guarantee of equal protection, and an injunction prohibiting the [state officials] from enforcing those laws against Maverick." ER-173. Maverick also sought nominal damages, costs, and attorneys' fees. ER-174.

B. District Court Proceedings

Shortly after Maverick filed its complaint in the District of Columbia, the state defendants moved to transfer venue to the Western District of Washington, and the district court granted that motion. Thereafter, the parties stipulated to a briefing schedule for an amended complaint and dispositive motions, and the court adopted the parties' stipulated schedule. ER-127–33. Maverick filed an amended complaint in July 2022, bringing the same claims and requesting the same relief described above. ER-84–126. Maverick also began preparing its motion for summary judgment.

Nine days before Maverick's summary judgment motion was due, the Shoalwater Bay Tribe ("Tribe") moved to intervene as a defendant in the case and asked the court to vacate the parties' stipulated schedule.[5] Maverick opposed both motions,

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[5] The Washington Indian Gaming Association (of which the Tribe is a member and has a seat on the board of directors) had issued a statement opposing Maverick's litigation on the day Maverick filed its initial complaint in January 2022. WIGA, *Washington Indian Gaming Association Statement on Maverick Gaming's Federal Lawsuit Seeking to Undermine Washington's State's System of Tribal Gaming* (Jan. 11, 2022), https://www.washingtonindiangaming.org/wp-content/up-loads/2022/01/Media-Release-1.11.2022-1-1.pdf. The Tribe, however,

and before briefing on those motions was complete, Maverick filed its summary judgment motion on the stipulated due date. The district court then granted the Tribe's motions, staying the briefing schedule and allowing the Tribe to intervene in the case and file a motion to dismiss. ER-64–79.

The Tribe filed a motion to dismiss under Federal Rules of Civil Procedure 12(b)(7) and 19. ER-29–63. It argued that it was a required party under Rule 19(a), that it could not be joined (despite its intervention) because of its tribal immunity, and that the case should not proceed without it in equity and good conscience under Rule 19(b). ER-50–61.[6] The state defendants filed a brief supporting dismissal. The federal defendants filed a brief stating: "The general position of the United States" is "that in most contexts it is the only required and indispensable party in litigation challenging final agency action under the Administrative Procedure Act." ER-22. But the federal defendants read this Court's decision in *Dine Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), to "control[] in this case and support[] dismissal pursuant to Rule 19." *Id.* The federal defendants therefore "d[id] not dispute that the Tribe's motion to dismiss should be granted under the current state of the law in the Ninth Circuit," but noted that "the United States disagrees with the ruling in *Dine*

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never participated in this litigation until it sought to intervene and vacate the stipulated schedule seven months later, after the case had been transferred to this Circuit.

[6] A group of non-party tribes filed an *amicus* brief supporting the Shoalwater Bay Tribe's motion to dismiss.

Citizens and reserves the right to assert in future proceedings that the United States is generally the only required and indispensable defendant in APA litigation challenging federal agency action." ER-26 (citation omitted).

The district court granted the Tribe's motion to dismiss, ER-4–20, and Maverick appealed.

SUMMARY OF ARGUMENT

The district court foreclosed judicial review of Maverick's administrative, statutory, and constitutional claims because it concluded that the Tribe (1) was a required party (2) that could not be joined and (3) whose absence prevented the suit from going forward in equity and good conscience. Each step of that analysis was wrong. The district court's reasoning ventured far outside established Rule 19 practice in courts around the country, and, in so doing, produced a startling result that would grant Indian tribes—or any other absent sovereign—the power to insulate a vast array of final agency actions from any judicial review. That cannot be, and is not, the law.

I. The Tribe is not a required party under Rule 19(a).

A. The Tribe's primary argument—that proceeding in its absence would leave its interests unprotected, *see* Fed. R. Civ. P. 19(a)(1)(B)—runs up against longstanding precedent that "[t]he United States can adequately represent an Indian tribe unless there exists a conflict of interest between the United States and the tribe." *Sw. Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998) (per curiam). Here, that general rule is

buttressed by three overlapping presumptions that apply where parties share the same ultimate objective, where the government defends its own action, and where the government has a duty to represent the interests of an absentee. Neither the Tribe nor the district court offered any persuasive reason to depart from those presumptions in this case.

Even without the presumptions, the traditional test for adequate representation—which asks whether the absentee would offer arguments or some other evidence that existing parties would not—shows that the Tribe is not a required party: there is no difference in how this litigation would unfold whether the Tribe is present or not. Rule 19 exists to protect the interests of absent parties; it does not give parties the power to short-circuit litigation when their interests are already well defended. The Tribe's contrary position is based on an overreading of two recent decisions by this Court, but neither one of those decisions worked the sea change in Rule 19 doctrine that the Tribe ascribes to them.

Additionally, even if the federal defendants would be inadequate representatives for the Tribe, one of Maverick's claims merely asks for an injunction preventing the state defendants from enforcing Washington's criminal gaming laws against Maverick. That claim does not implicate the Tribe's compact at all.

B. The Tribe's backup argument—that complete relief is unavailable in its absence—was not reached below, and in any event is meritless. The possibility of complete relief looks to whether relief is meaningful *as between the parties*. For an APA claim,

this Court has held that reversal or vacatur of the agency's action qualifies as meaningful relief among the parties, and does not require an absent sovereign. The same goes for the claims against the state defendants: an order declaring their execution and administration of the compacts unlawful would be meaningful as between them and Maverick, even if the Tribe were not bound directly. The Tribe's suggestion that it could continue to offer class III games even without a valid compact is both wrong as a matter of law and irrelevant to whether a court could grant meaningful relief as between Maverick and the federal and state defendants in this proceeding.

II. In any event, if the Tribe chooses not to participate in this litigation, considerations of "equity and good conscience" weigh strongly in favor of allowing this case to proceed without it under Rule 19(b).

A. Each of the Rule 19(b) factors counsels against dismissal. *First*, there is no prejudice because the Tribe has not identified any merits argument it would make that the federal defendants would not. *Second*, even if there were any prejudice, it could easily be avoided by allowing the Tribe to raise its arguments in an *amicus* brief. The district court could also tailor the relief in this case to allow Maverick to offer class III gaming, without affecting any of the Tribe's gaming activities. *Third*, Maverick can obtain complete relief against the federal and state defendants. The district court sidestepped this issue, asserting that any relief in this case would necessarily invalidate the Tribe's compact. But that is both wrong (the district court could grant relief by allowing

Maverick to offer class III gaming) and nonresponsive (even if invalidating the compacts were the only available remedy, that would also be complete relief). *Fourth*, as the district court agreed, the lack of any alternative forum for Maverick's claims weighs against dismissal—especially in light of the strong presumption favoring judicial review of administrative action.

The Tribe and the district court also relied heavily on this Court's statement that balancing the Rule 19(b) factors "almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity." *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021) (internal quotation marks omitted). But the court overread that case. If Rule 19(b) does not allow *this* case to proceed—where all factors weigh against dismissal, and there is no identifiable conflict of interest—then it would not allow *any* case with an absent sovereign to proceed. Both this Court and the Supreme Court have rejected any such *per se* rule, and the Tribe cannot win with anything less.

B. Apart from the Rule 19(b) factors, the public-rights exception allows this case to proceed. In cases "narrowly restricted to the protection and enforcement of public rights," traditional joinder rules do not apply. *Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 363 (1940). A lawsuit seeking to enforce governmental compliance with administrative and constitutional law is a classic example of public-rights litigation. The district court refused to apply this doctrine because it concluded that this case threatens the Tribe's "legal entitlements," but the tribal-state compacts at issue here do not confer the sort of private

legal entitlements that forestall application of the public-rights exception. Rather, they set the balance of public regulatory authority among sovereigns—a quintessential matter of *public* rights.

III. Finally, even if the Tribe were a required party, it can be joined to this suit because it has waived its sovereign immunity by voluntarily intervening in this case. *See Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 619 (2002). While it is an unsettled question whether a tribe may intervene for the limited purpose of filing a Rule 19 motion without waiving its immunity, the better view is that it cannot. The waiver doctrine is designed to avoid the "seriously unfair results" that flow from allowing a sovereign to inject itself into a case and then assert that the court has no power over it. *Id.* And the result here is particularly unfair: the Tribe knew about this litigation from the day it was filed, but waited until the case was transferred to this Circuit to intervene and assert its Rule 19 arguments.

LEGAL STANDARDS

A court may dismiss a complaint for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7). Rule 19 requires "three successive inquiries." *EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005).[7]

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[7] An older version of Rule 19 (and the cases interpreting it) used the words "necessary" to describe parties who should be joined under Rule 19(a) and "indispensable" to describe parties whose absence required dismissal under Rule 19(b). A 2007 amendment to the rule calls parties who should be joined under Rule 19(a) "required" and deletes the word "indispensable." The changes "were stylistic only," and "the substance and operation of the

First, the court must determine whether a party is "required" under Rule 19(a). Rule 19(a)(1) defines a person as a "[r]equired [p]arty" if, "in that person's absence, the court cannot accord complete relief among existing parties," or "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1).

Second, if a person is required under Rule 19(a), the court must determine whether that person can be joined. *Peabody*, 400 F.3d at 779.

Third, if joinder is not feasible, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). Rule 19(b) provides four factors for courts to consider: (1) "the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties"; (2) "the extent to which any prejudice could be lessened or avoided"; (3) "whether a judgment rendered in the person's absence would be adequate"; and (4) "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder." *Id.*

This Court "review[s] a district court's decision to dismiss a case for failure to join a required party under Rule 19 for abuse of discretion," but it

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Rule both pre- and post-2007 are unchanged." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 855–56 (2008); *see also Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 969 n.6 (9th Cir. 2008).

"review[s] any legal questions underlying that decision de novo." *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 943 (9th Cir. 2022).

ARGUMENT

"A decision under Rule 19 *not* to decide a case otherwise properly before the court is a power to be exercised only in rare instances." *Nanko Shipping, USA v. Alcoa, Inc.*, 850 F.3d 461, 465 (D.C. Cir. 2017) (internal quotation marks and alteration omitted). And "if no alternative forum is available to the plaintiff, the court should be extra cautious before dismissing the suit." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990) (internal quotation marks and emphasis omitted). The Tribe's position in this case would turn a rare exception into the rule *whenever* an Indian tribe (or another absent sovereign) claims an interest in a case—thereby foreclosing judicial review of a vast array of administrative, statutory, and constitutional claims.

The law does not compel such an extreme result. The Tribe is not a required party in this case. Even if it were, equity and good conscience dictate that this suit should proceed in the Tribe's absence if it chooses not to participate. Finally, the tribe's voluntary intervention in this suit means that it can be joined in any event. This Court should reverse and remand for the district court to consider Maverick's claims on the merits.

I. The Tribe Is Not A Required Party Under Rule 19(a).

A. Disposing Of This Action In The Tribe's Absence Would Not Impair The Tribe's Ability To Protect Its Interests.

Rule 19(a)(1)(B) provides that a person is a required party if "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1)(B)(i).[8] The Tribe has a legitimate interest in the legality of its tribal-state gaming compact. But disposing of this case in the Tribe's absence would not leave that interest unprotected for two independent reasons: the federal defendants will vigorously defend that interest, and a ruling in Maverick's favor could leave the Tribe's compact wholly unscathed.

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[8] Rule 19(a)(1)(B) also states that a person is a required party if disposing of the action in their absence could "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a)(1)(B)(ii). That provision is not implicated here. Moreover, the Tribe did not invoke it below, and the district court did not address it. *See Makah*, 910 F.2d at 558 (on Rule 19 motion, the "moving party has the burden of persuasion in arguing for dismissal").

1. The Federal Defendants Adequately Represent The Tribe's Interests.

a. Longstanding precedent establishes that the federal defendants adequately represent the Tribe's interests in this case.

"[A]n absent party's ability to protect its interest will not be impaired by its absence from the suit where its interest will be adequately represented by existing parties to the suit." *Alto v. Black*, 738 F.3d 1111, 1127 (9th Cir. 2013) (internal quotation marks omitted). Thus, courts routinely hold that, in light of the federal government's "trust responsibility" to Indian tribes, "Tribes are not necessary parties" when the federal government is already a party because "[t]he United States can adequately represent an Indian tribe unless there exists a conflict of interest between the United States and the tribe." *Washington v. Daley*, 173 F.3d 1158, 1167–68 (9th Cir. 1999) (internal quotation marks omitted). In light of that commonsense rule, a long line of cases—in this Court and others—recognizes that, absent a divergence of interests, the federal government's presence in a case challenging federal agency action suffices under Rule 19 to protect the interests of absent parties (including Indian tribes) who benefit from that action. *See*, *e.g.*, *Alto*, 738 F.3d at 1127–29 (tribe not a required party in suit against Bureau of Indian Affairs challenging Bureau's order upholding tribe's member-disenrollment decision); *Daley*, 173 F.3d at 1167–69 (tribes not required parties in suit against Secretary of Commerce challenging regulation allocating fish harvest to tribes); *Sw. Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152,

1153–54 (9th Cir. 1998) (per curiam) (tribe not a required party in suit against Secretary of Interior challenging government's plans for dam in which tribe had rights to store water); *see also*, *e.g.*, *Sac & Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1258–59 (10th Cir. 2001) (tribe not a required party in suit against Secretary of Interior seeking to prevent Secretary from taking land into trust for tribe and approving gaming activities thereon); *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1350–52 (D.C. Cir. 1996) (tribes not required parties in suit against Secretary of Interior challenging allocation of funds that tribes received). In short, it is settled law that "[t]he United States can adequately represent an Indian tribe unless there exists a conflict of interest between the United States and the tribe." *Sw. Ctr. for Biological Diversity*, 150 F.3d at 1154.

Accordingly, federal courts have uniformly held that the federal government adequately represents an Indian tribe when it "share[s] the Tribe's position . . . that [an IGRA] Compact is consistent with [federal law]." *W. Flagler Assocs. v. Haaland*, 573 F. Supp. 3d 260, 270–71 (D.D.C. 2021), *aff'd in relevant part on other grounds*, 2023 WL 4279219 (D.C. Cir. June 30, 2023). In fact, challenges to tribal-state gaming compacts under IGRA just like this one have regularly gone forward, in this Circuit and elsewhere, where the federal government defends the legality of a tribal-state compact under IGRA. *See, e.g.*, *Amador Cnty. v. Salazar*, 640 F.3d 373, 375 (D.C. Cir. 2011) (considering challenge to Secretary's approval of IGRA compact). As this Court noted in *Artichoke Joe's California Grand Casino v. Norton*, although a *State* cannot "adequately represent the tribes because their

interests [a]re potentially adverse and because the state owe[s] no trust responsibility to Indian tribes," an IGRA challenge brought against the Secretary of the Interior—like this one— is different because "[t]he Secretary's interests are not adverse to the tribes' interests and the Department of Interior has the primary responsibility for carrying out the federal government's trust obligation to Indian tribes." 353 F.3d 712, 719 n.10 (9th Cir. 2003); *see also*, *e.g.*, *Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084, 1118 (E.D. Cal. 2002) (tribes "are not necessary parties [to challenge to IGRA compact] because their legal interest can be adequately represented by the Secretary"), *aff'd*, 353 F.3d 712; *Knox v. U.S. Dep't of Interior*, 759 F. Supp. 2d 1223, 1235–37 (D. Idaho 2010) (Secretary adequately represents absent tribes' interests in challenge to IGRA compact because "the Secretary approved those [compacts] and hence has every incentive to zealously defend its approval" and there are "no arguments the . . . tribes could make to defend the Secretary's approvals that the Secretary himself would not make"); *Citizens Against Casino Gambling in Erie Cnty. v. Kempthorne*, 471 F. Supp. 2d 295, 314–16 (W.D.N.Y. 2007) ("the United States may adequately represent an Indian tribe [in a challenge to an IGRA compact] unless there is a conflict between the United States and the tribe"). Indeed, the tribe cannot point to a single IGRA challenge where, as here, the interests of the federal government and the absent tribe were aligned, yet the court held that the absent tribe was a required party.

The federal government, too, has repeatedly taken the position that Indian tribes are not required parties in challenges of this nature because "the

Federal Defendants adequately represent the Tribes' interest in see-ing [a compact] approval upheld." Federal Defendants' Response to Seminole Tribe of Florida's Motion to Dismiss 9, *W. Flagler*, 2021 WL 8344054 (D.D.C. Oct. 26, 2021). As the federal government explained, finding a tribe to be a necessary party in a challenge to governmental action would "undermine important public rights crafted by Congress," such as the right to "judicial review of agency action." *Id.* at 8.

Additionally, three overlapping presumptions confirm that the federal government is an adequate representative for the Tribe's interests.

First, in a case like this one, where "an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises," and "[i]f the applicant's interest is identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). When parties have the "same ultimate objective, differences in litigation strategy do not normally justify intervention." *Id.*

Second, when a "movant seeks to intervene as a defendant alongside a government entity" whose actions have been challenged, there is a "presumption that the government will defend adequately its action" that can be rebutted only by a "strong affirmative showing that the [government] is not fairly representing the applicants' interests." *Victim Rts. L. Ctr. v. Rosenfelt*, 988 F.3d 556, 561 (1st Cir. 2021) (internal quotation marks omitted). This is because

"[t]here is also an assumption of adequacy when the government is acting on behalf of a constituency that it represents," which can be defeated only by a "very compelling showing to the contrary." *Arakaki*, 324 F.3d at 1086 (internal quotation marks omitted).

Third, "a presumption of adequate representation generally arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee." *United States v. City of Los Angeles*, 288 F.3d 391, 401 (9th Cir. 2002) (internal quotation marks omitted); *see also Arakaki*, 324 F.3d at 1086.[9]

The Tribe cannot make the compelling showing needed to rebut the multiple, overlapping presumptions that it is adequately represented here. First, it shares an identical objective as the existing defendants: the dismissal of Maverick's challenges to the actions of the federal and state defendants authorizing and enforcing Washington's tribal class III gaming monopoly. Second, because Maverick is challenging the actions of state and federal governmental actors, there is a strong presumption that the defendants will adequately defend those actions. Third, the federal defendants' "trust responsibility" to Indian tribes makes them proper

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[9] These cases arose in the context of motions to intervene, *see* Fed. R. Civ. P. 24, but their analysis of when one party adequately represents another party's interest "parallels" the analysis under Rule 19. *Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992); *compare Arakaki*, 324 F.3d at 1086 (listing "three factors [for] determining the adequacy of representation" under Rule 24), *with Alto*, 738 F.3d at 1127–28 (listing same three factors for Rule 19 analysis).

representatives of the Tribe absent a clear conflict of interest in this case. *Daley*, 173 F.3d at 1167–68. This Court has "noted, with great frequency, that the federal government is the trustee of the Indian tribes' rights." *Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995); *see also, e.g.*, *Daley*, 173 F.3d at 1168. And IGRA itself turns the trust obligation into a statutory mandate by requiring the Secretary to disapprove any compact that "violates . . . the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B)(iii); *see also id.* § 2702(1)–(2) (stating IGRA's purpose of "promoting tribal economic development, self-sufficiency, and strong tribal governments," and "to ensure that the Indian tribe is the primary beneficiary of the gaming operation"); *Amador Cnty.*, 640 F.3d at 380–81. Accordingly, federal courts routinely deny motions to intervene brought by Indian tribes on the ground that the tribe is adequately represented. *McDonald v. Means*, 309 F.3d 530, 541 (9th Cir. 2002); *United States v. Alpine Land & Reservoir Co.*, 431 F.2d 763, 765 (9th Cir. 1970); *Seminole Nation of Okla. v. Norton*, 206 F.R.D. 1, 9–10 (D.D.C. 2001).

Thus, there is an overwhelming presumption in this case that the federal government will adequately represent the absent tribe's interests. To overcome that presumption, it is not enough for the Tribe to invent hypothetical future conflicts that are not "at issue" in the present suit or speculate that the federal government's "potentially inconsistent responsibilities" might result in some undetermined conflict with the Tribe. *Daley*, 173 F.3d at 1168 (internal quotation marks omitted). The Tribe must "demonstrate how such a conflict might actually

arise *in the context of this case*." *Id.* (emphasis added); *see also Sw. Ctr. for Biological Diversity*, 150 F.3d at 1154.

The Tribe has not done so. Neither the Tribe nor the district court offered anything special about this case that would justify departing from this triple-layered presumption of adequacy. The Tribe repeatedly noted below that *before* it had a gaming compact, the federal government sought to prevent it from offering class III games. *See*, *e.g.*, ER-42–45. But that was because *those offerings violated federal law*. The district court accepted that argument, finding that "conflicts" with the United States exist in light of "a documented history of the federal government acting as an adverse party to [the Tribe] *in the absence of a tribal compact* with Washington that permits Class III gaming." ER-15 (emphasis added).

This conclusion was erroneous twice over. First, the Tribe has no cognizable interest in violating federal law. If a court ends up declaring that the Secretary did not validly approve the compacts, then the Tribe has no interest in conducting illegal gambling. *See Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017) (a party has "'no interest in continuing practices' that violate" the law). The Tribe's obdurate desire to violate federal law is not an interest that is cognizable in the Rule 19 (or any other) context.

Second, the Tribe's desire to flout a court order does not establish any conflict *in this litigation*, which is where the Rule 19 inquiry looks. Rather, the Tribe must show how "a conflict might actually arise *in the context of this case*." *Daley*, 173 F.3d at 1168

(emphasis added); *see also Sw. Ctr. for Biological Diversity*, 150 F.3d at 1154 (reversing where "[n]either the district court nor any of the parties . . . explained how such a conflict might actually arise *in the context of* [*plaintiff's*] *suit*" (emphasis added)). For similar reasons, the district court's speculation that "changes in policy or personnel within the federal government may lead to changes in approach to federal litigation strategy," ER-15, is no basis for dismissal: the mere possibility that "conflicts can arise between the United States and an Indian tribe" is not enough where "no such conflict has surfaced to this point in this case." *Alto*, 738 F.3d at 1128.

Even setting aside the phalanx of presumptions, courts typically consider "three factors" to assess adequacy: (1) whether "the interests of a present party to the suit are such that it will undoubtedly make all of the absent party's arguments," (2) whether the present party "is capable of and willing to make such arguments," and (3) whether "the absent party would offer any necessary element to the proceedings that the present parties would neglect." *Alto*, 738 F.3d at 1127–28 (internal quotation marks omitted). Those factors are organized around a unifying theme: Would the litigation look any different without the absent party than with it?

The answer here is no. The Tribe has not identified a single argument in defense of the compacts that it would raise and the federal defendants would not—except its Rule 19 assertions. But this Court has emphatically rejected this "circular" argument: It "would preclude the United States from opposing frivolous motions to dismiss out of fear that its opposition would render it an

inadequate representative" and "would also create a serious risk that non-parties clothed with sovereign immunity, such as [an Indian tribe], whose interests in the underlying merits are adequately represented could defeat meritorious suits simply because the existing parties representing their interest opposed their motion to dismiss." *Sw. Ctr. for Biological Diversity*, 150 F.3d at 1154. Because the Tribe cannot show an actual conflict with the federal defendants that is likely to arise in the litigation of this case, it is not a required party under Rule 19(a).

The federal defendants are also fully capable of and willing to vigorously defend the legality of the compacts, as demonstrated in this litigation to date. And this is a case whose merits will be decided on the papers—so there is no need for the Tribe to offer or conduct any discovery. *See* ER-128 (parties stipulated that case "presents questions of law that appear to be resolvable through dispositive motions . . . without the need for factual discovery").

That puts this case on all fours with *Alto*. There, this Court held that a tribe's interest was adequately represented by the Bureau of Indian Affairs because (1) "the United States share[d] with the Tribe an interest in defending" agency action, (2) "consistent with its fiduciary responsibility to Indian tribes, the [Bureau] ha[d] repeatedly avowed its intention and ability to represent the [Tribe's] interests," and (3) review was "limited to the administrative record before the [Bureau]," so "the Tribe could not offer new evidence." 738 F.3d at 1128. So too here. There is no difference in how this case would unfold with or without the Tribe's presence as a party—except that the Tribe hopes to interpose its

immunity to prevent the case from unfolding at all. That is antithetical to the purpose of Rule 19, whose guiding "philosophy . . . is to avoid dismissal whenever possible," not to give absent parties the power to short-circuit litigation when their interests are already well defended. 7 Wright & Miller, Fed. Practice & Proc. § 1604 (3d ed.); *cf. Am. Trucking Ass'ns, Inc. v. N.Y. State Thruway Auth.*, 795 F.3d 351, 360 (2d Cir. 2015) ("Rule 19 is about protecting absent persons from unfair prejudice—it is not about giving a named defendant veto power over the plaintiff's chosen forum.").

b. The Tribe's contrary position in this case, accepted by the district court, is based on an overreading of two recent decisions by this Court: *Dine Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), and *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022). But neither case worked the sea change in Rule 19 doctrine that the Tribe ascribes to them. Moreover, this Court is "required to reconcile prior precedents if [it] can do so," *Danielson v. Inslee*, 945 F.3d 1096, 1099 (9th Cir. 2019) (quoting *Cisneros-Perez v. Gonzales*, 465 F.3d 386, 392 (9th Cir. 2006)), and so it must interpret those decisions as consonant with the Circuit's long line of cases applying the presumption that the United States is an adequate representative in cases like this one.

Dine Citizens was a suit brought by "[a] coalition of tribal, regional, and national conservation organizations" challenging "a variety of agency actions that reauthorized coal mining activities on land reserved to the Navajo Nation" under

the Endangered Species Act and the National Environmental Policy Act. 932 F.3d at 847. There were numerous government bodies involved in this process,[10] and the suit alleged that the government had erred across the board by relying on a "faulty" Biological Opinion from the Fish and Wildlife Service (and a faulty Environmental Impact Statement) to find that "the proposed action would not jeopardize the continued existence of any of the threatened and endangered species evaluated." *Id.* at 849–50. This Court held that the tribal corporation that owned the mine had an interest in its continued mining operations, and then concluded that while it was a "closer" question, the federal government did not adequately represent that interest. *Id.* at 853.

Unlike here, the circumstances in *Dine Citizens* gave concrete reasons to doubt that the government would adequately represent tribal interests. For example, there were already tribal organizations in the case as *plaintiffs*, thus pitting conflicting tribal interests against one another. *See* 932 F.3d at 847. The federal government cannot represent one tribe's interest when "whatever allegiance the government owes to the tribes as trustee[] is necessarily split

[10] The reauthorization process itself required approvals from the Office of Surface Mining Reclamation and Enforcement, the Bureau of Indian Affairs, and the Bureau of Land Management. *Dine Citizens*, 932 F.3d at 849. That, in turn, required "cooperat[ion]" with the National Park Service and the Fish and Wildlife Service, and "coordinat[ion]" with the U.S. Army Corps of Engineers and the Environmental Protection Agency. *Id.*

among . . . competing tribes." *Wichita & Affiliated Tribes of Okla. v. Hodel*, 788 F.2d 765, 775 (D.C. Cir. 1986).

Additionally, the claims were brought under two statutes—the Endangered Species Act and the National Environmental Policy Act—that required the government to prioritize environmental interests over tribal interests in the event of a conflict. *See Dine Citizens*, 932 F.3d at 855. In administering environmental statutes, the government is beholden to the general citizenry in a way that prevents it from prioritizing tribal interests. *Cf. White v. Univ. of Cal.*, 765 F.3d 1010, 1027 (9th Cir. 2014) (no adequate representation where University had "a broad obligation to serve the interests of the people of California, rather than any particular subset"); *City of Los Angeles*, 288 F.3d at 401 (presumption of adequate representation "arises *when the government is acting on behalf of a constituency that it represents*" (emphasis added)). The government's bottom-line position *happened* to align with the tribe's interest in *Dine Citizens* at the moment, but that alignment was based on a different and potentially shifting foundation—the environmental statutes, rather than any interest in furthering tribal interests—that could lead to rifts as the litigation progressed. The government had an "overriding interest . . . in complying with environmental laws," and "the environmental goals of [the National Environmental Policy Act] were 'not necessarily coincidental with the interest of the Tribe.'" 932 F.3d at 855 (quoting *Manygoats v. Kleppe*, 558 F.2d 556, 558 (10th Cir. 1977)).

Indeed, this Court has characterized *Dine Citizens* in precisely that way, noting that the outcome in that case turned on the fact that the federal defendants' "obligations to follow relevant environmental laws were in tension with tribal interests." *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 997 (9th Cir. 2020).

Here, by contrast, the interests of the federal defendants and the Tribe are perfectly aligned. Both believe that the compacts do not violate IGRA or any other provision of federal law and should continue in effect.

Unlike in *Dine Citizens*, the federal defendants' shared position here on the legality of the Tribe's gaming compact is no mere happenstance. IGRA *requires* the Secretary to assess whether a compact comports with "the trust obligations of the United States to Indians"—and to disapprove any compact that violates those obligations. 25 U.S.C. § 2710(d)(8)(B)(iii); *see also Amador Cnty.*, 640 F.3d at 380–81. Thus, when the Secretary defends the legality of an IGRA tribal-state compact that the Secretary has already approved, the government's position is *necessarily* based on a determination that the compact itself aligns with tribal interests—or, to use *Dine Citizens*'s words, the federal government's interest in defending a compact that it has already approved under IGRA is "*necessarily coincidental with the interest of the Tribe*." 932 F.3d at 855 (emphasis added; internal quotation marks omitted); *see also* ER-80 (letter from Department of Interior to Tribe confirming its view that the compact comports with "the trust obligations of the United States to Indians"). This case thus is precisely opposite to the

situation in *Dine Citizens*: here, there is no divergence of interests between the federal government and the Tribe, and the usual standard for assessing adequate representation (undergirded by three mutually reinforcing presumptions) compels the conclusion that the Tribe's interests are protected by the federal government's presence.

Klamath was similar. In that case, various water users in Oregon— irrigation districts, farmers, and landowners—sued the Bureau of Reclamation over its operating procedures for the "distribution of waters in the Klamath Water Basin," which the Bureau adopted "in consultation with other relevant federal agencies." 48 F.4th at 938. Two Indian tribes intervened because the challenge "imperil[led] the Tribes' reserved water and fishing rights." *Id.*

As in *Dine Citizens*, the government had interests that diverged from those of the tribes. The Bureau of Reclamation "has the nearly impossible task of balancing multiple competing interests in the Klamath Basin"—including not just the tribes' water and fishing rights, but also "maintain[ing] contracts with individual irrigators and the irrigation districts that represent them" and "managing the Klamath Project in a manner consistent with its obligations under the [Endangered Species Act]." 48 F.4th at 940–41 (internal quotation marks omitted); *see also Arizona v. Navajo Nation*, 599 U.S. __, __, 2023 WL 4110231 (2023) (slip op., at 10) ("Allocating water in the arid regions of the American West is often a zero-sum situation."). In fact, while *Klamath* was pending before this Court, the tribes were separately "in active litigation over the degree to which Reclamation [was] willing to protect [their] interests

in several species of fish." 48 F.4th at 945. This Court, relying on *Dine Citizens*, concluded that the interests of the Bureau of Reclamation and the tribes were "not so aligned as to make Reclamation an adequate representative" of the tribes. *Id.* at 944; *see also id.* at 945 ("Reclamation and the Tribes share an interest in the ultimate outcome of this case for very different reasons.").

Klamath differs from this case for the same reasons as *Dine Citizens*: rather than dividing the federal government's loyalty, IGRA expressly conditions the Secretary's approval of a tribal-state compact on satisfaction of "the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B)(iii). While the government in *Klamath* happened to land in the same place as the tribes, it did so for "very different reasons." 48 F.4th at 945. Here, by contrast, the federal defendants and the Tribe seek the same outcome for the same reasons: they believe that Washington's compacts are lawful, and they believe that the compacts benefit the tribes. So here, unlike in *Klamath*, there is no reason to doubt that the federal government will "make all of the same arguments that the Tribe[] would make" to defend the compacts. 48 F.4th at 945.[11]

[11] In any event, the United States' motivations need not be identical to the tribes'. *See Statewide Masonry v. Anderson*, 511 F. App'x 801, 806 (10th Cir. 2013) (presumption of adequate representation "applies if [the parties] have a common objective with respect to the suit; their motivations for pursuing that common objective are immaterial").

The Tribe's extreme position in this case would effectively immunize all manner of federal agency action from judicial review where an Indian tribe (or another sovereign) claims an interest in the outcome. *Dine Citizens* and *Klamath*, however, do not stretch Rule 19 this far. Indeed, the United States has repeatedly taken the position that it "is generally the only required and indispensable defendant in APA litigation challenging federal agency action." ER-26; *see also*, *e.g.*, Federal Defendants' Response to Seminole Tribe of Florida's Motion to Dismiss 8–10, *W. Flagler*, 2021 WL 8344054. Other circuits have followed that approach. *See*, *e.g.*, *Kansas v. United States*, 249 F.3d 1213, 1226–27 (10th Cir. 2001); *Ramah Navajo Sch. Bd.*, 87 F.3d at 1350–52 (D.C. Cir.); *Thomas v. United States*, 189 F.3d 662, 667–68 (7th Cir. 1999). Based on that general rule, the United States maintains that *Dine Citizens* was wrongly decided. ER-26. But this Court need not abrogate that case to conclude that the United States is an adequate representative in this case. *Dine Citizens* and *Klamath* hold only that the federal government's presence is not enough where the statutes at issue implicate competing interests and there are tribal interests on both sides of the issue. The Tribe asks this Court to expand those cases to cover a statute that expressly aligns the federal defendants' interests with the Tribe's and a case in which tribal interests are unified. This Court should decline the invitation. Rather, particularly in light of the long history in this Circuit of finding the United States to be an adequate representative of tribal interests and of allowing challenges to tribal-state compacts under IGRA, the

Court should "reconcile" its decisions by interpreting *Dine Citizens* and *Klamath* not to preclude judicial review in this case, *Danielson*, 945 F.3d at 1099 (internal quotation marks omitted).

2. One Of Maverick's Claims Does Not Implicate The Tribe's Compact At All.

Even if the federal defendants were not adequate representatives, Maverick's third claim would still be able to proceed because it poses no threat to any tribal interest.

Required-party status under Rule 19(a) must be assessed on a claim-by-claim basis. *See*, *e.g.*, *Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059, 1068 (9th Cir. 2010) ("Of course, the United States may be necessary as to some claims and not others."); *Alto*, 738 F.3d at 1129–31; *Makah*, 910 F.2d at 559. The first two claims in Maverick's complaint challenge (1) the Secretary's approval of Washington's sports-betting compacts and (2) the state officials' execution and administration of the tribal-state compacts (the original ones and the sports-betting amendments). ER-116–20. Those two claims seek declarations that the Tribe's compact is unlawful. *Id.* But Maverick's third claim does not challenge any compacts; instead, Maverick alleges that the state defendants' enforcement of Washington's criminal gaming prohibitions against Maverick violates the Constitution's equal-protection principles. And the only relief Maverick seeks (other than nominal damages, costs, and attorneys' fees) is a declaration that the "continued enforcement of Washington's criminal laws prohibiting class III gaming—including

roulette, craps, and sports betting—violates the Constitution's guarantee of equal protection, and an injunction prohibiting the [state officials] from enforcing those laws against Maverick." ER-122. Because that relief does not threaten the Tribe's compact or its gaming activities at all, the Tribe cannot possibly have a "legally protectable interest" in this claim. *Jamul Action Comm. v. Chaudhuri*, 200 F. Supp. 3d 1042, 1052 (E.D. Cal. 2016).

B. The Tribe's Joinder Is Not Required To Accord Complete Relief.

The Tribe contended below that "complete relief is not available where the absent party is a tribe that is a signatory to the agreement at issue because the judgment would not be binding on the tribe, which could assert its rights under the agreement." ER-51; *see* Fed. R. Civ. P. 19(a)(1)(A). The district court never addressed this backup argument, and it is meritless.

"To be 'complete,' relief must be 'meaningful relief *as between the parties*.'" *Alto*, 738 F.3d at 1126 (citation omitted). Where a party challenges federal agency action, an order vacating that action "is 'meaningful' as between the [party] and the [agency], even if it does not bind the Tribe directly." *Id.* "[C]omplete relief—that is, relief limited to that available in an APA cause of action, which is affirmation, reversal or remand of the agency action—can be provided between the parties." *Id.* at 1127; *see also Sac & Fox Nation*, 240 F.3d at 1258. As this Court has explained, "[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated" across the board. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640,

681 (9th Cir. 2021) (internal quotation marks omitted; alteration in original). The same goes for Maverick's challenge to the state officials' execution and administration of the compacts—an order declaring those actions unlawful would be meaningful as between Maverick and the state defendants, even if the Tribe were not bound directly.

The Tribe also suggested below that it could continue to offer class III gaming *even without a valid compact*. ER-15 (quoting Tribe's argument that it has "inherent authority to govern gaming activities on its Indian lands [that] predates IGRA and colonization"). That position is wrong as a matter of law: "Class III gaming is permitted on Indian lands only if, *inter alia*, a tribe and the state enter a tribal-state compact that the Secretary of the Interior then approves." *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022); *see also*, *e.g.*, 25 U.S.C. § 2710(d)(6) (waiving federal ban on gambling devices only for "gaming conducted under a Tribal-State compact that . . . is in effect"); 18 U.S.C. § 1166(c)(2) (extending state gambling prohibitions to Indian lands, but excepting "class III gaming conducted under a Tribal-State compact . . . that is in effect"); *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1552 (10th Cir. 1997). And, regardless, any actions the Tribe might take *after* Maverick obtains a favorable ruling would not vitiate the "meaningful relief *as between the parties*" that Maverick can obtain in this suit. *Alto*, 738 F.3d at 1126 (internal quotation marks omitted). A ruling in favor of Maverick would make the compacts no longer "in effect," rendering the

Tribe's class III gaming illegal under federal and state law and curing the violations alleged in Maverick's complaint.

II. This Action Should Proceed In The Tribe's Absence Under Rule 19(b).

Even if the Tribe were a required party, Rule 19(b) provides a safety valve to avoid dismissal in cases where it would be unjust: a court "must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). If the Tribe chooses not to participate in this litigation, then the case can and should proceed without it.

A. All Four Rule 19(b) Factors Counsel Against Dismissal.

Rule 19(b) directs courts to consider four factors when deciding whether to dismiss a case: (1) "the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties"; (2) "the extent to which any prejudice could be lessened or avoided"; (3) "whether a judgment rendered in the person's absence would be adequate"; and (4) "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder." Fed. R. Civ. P. 19(b). All four of those factors tilt decisively in favor of allowing this suit to proceed.

(1) Prejudice. "The first Rule 19(b) factor asks whether a party might suffer prejudice not simply from an adverse result, but specifically from the decision being 'rendered in [its] absence.'" *De Csepel v. Republic of Hungary*, 27 F.4th 736, 748 (D.C. Cir. 2022) (alteration in original); *see also W. Flagler*,

573 F. Supp. 3d at 270–71. That is why "[f]inding that other existing parties may adequately represent the absentee's interests may demonstrate a lack of prejudice"—a proposition that would make little sense if the relevant "prejudice" is an adverse decision, but good sense if the relevant "prejudice" is a party's ability to have its views fairly presented to the court. 7 Wright & Miller, Fed. Prac. & Proc. § 1608. There is no such prejudice here: again, the Tribe has not identified *any difference* in how this litigation would unfold whether it participated or not. There is no discovery—much less discovery that the Tribe would be uniquely situated to offer. And the Tribe has not even hypothesized any merits argument it would make that the federal defendants would not. *See W. Flagler*, 573 F. Supp. 3d at 271 ("[T]he Tribe's absence is not prejudicial because both the Secretary and the State of Florida have defended the Compact on its merits.").

The district found that the first factor favored dismissal because "[i]f Maverick were to prevail in seeking to invalidate the tribal compacts, the prejudice to Shoalwater would be substantial." ER-17. But that misconceives the question that the first factor asks: the question is not whether *the result* of this suit could be adverse for the Tribe, but whether *proceeding without the Tribe* is itself prejudicial. *De Csepel*, 27 F.4th at 748; *W. Flagler*, 573 F. Supp. 3d at 270–71. The district court erred in focusing on the effect of an adverse result itself. The Tribe would not be prejudiced by a decision rendered in its absence because both the state and the federal defendants are zealously defending the legality of the compacts.

(2) Extent to which prejudice could be lessened or avoided. Given the lack of prejudice, this factor does not favor dismissal because "[t]he ability to minimize prejudice . . . bears on indispensability only when there is prejudice to be minimized." *W. Flagler*, 573 F. Supp. 3d at 271. And even if there were any prejudice, it could easily be avoided by allowing the Tribe to participate as an *amicus* in the case. As a number of other non-party tribes did below, the Tribe "could have provided the Court with arguments as to [its] interests without jeopardizing sovereign immunity by appearing as amic[us] curiae." *Sch. Dist. of City of Pontiac v. Sec'y of U.S. Dep't of Educ.*, 584 F.3d 253, 266 (6th Cir. 2009) (en banc); *see also Thomas*, 189 F.3d at 669. Because there is no discovery in this case, allowing the Tribe to advance its legal arguments as an *amicus* would fully redress any prejudice that its absence could cause.

The district court's analysis of this factor fell into the same error as its analysis of the first factor. The court stated that Maverick's challenge to the compacts "threatens not only tribal revenue and contracts, but also tribal and non-tribal employment and other businesses," and concluded that "relief cannot be tailored to lessen the prejudice faced by Shoalwater or other absent tribes." ER-18. But, again, the focus must be on whether *the Tribe's absence from the litigation* is prejudicial, not whether the end result could adversely affect the Tribe.

The district court's analysis was also wrong on its own terms. As explained above, *see supra* at 47–48, Maverick's equal-protection claim could be remedied by an order enjoining the state defendants from enforcing Washington's criminal laws against

Maverick, without affecting any of the Tribe's gaming activities. *See* ER-122, -124 (requesting this relief); Fed. R. Civ. P. 19(b)(2)(B) (asking whether prejudice could be avoided by "shaping the relief").

(***3) Adequacy of judgment.*** Whether or not the Tribe participates in this case, Maverick can obtain all of the relief requested in its complaint through a judgment against the federal and state defendants who executed, approved, and administered the tribal-state compacts. *See supra* at 48–51. Because *complete* relief against the federal and state defendants is available, it necessarily follows that a judgment in favor of Maverick would be *adequate*.

The district court sidestepped this issue. It stated that, "[t]o afford Maverick the relief it seeks, the Court would not only have to find that tribal gaming violates IGRA and the Equal Protection Clause, but also that the State's criminal laws prohibiting Class III gaming are unconstitutional." ER-18. It then concluded that, "assuming the Court determined the Washington law permitting sports betting at tribal operated casinos was unconstitutional, the proper remedy would be to strike the provision, not extend intrusive injunctive relief" prohibiting Washington from enforcing its criminal laws against Maverick. *Id.*

The district court was wrong. Maverick has challenged the Secretary's approvals of the IGRA compacts under the APA, and if it prevails, its injuries will be fully redressed if the court issues the "ordinary" relief for such cases by "vacat[ing]" those

approvals. *E. Bay Sanctuary Covenant*, 993 F.3d at 681 (internal quotation marks omitted). That relief would be complete, adequate, and entirely typical.

But even if the district court were inclined instead to "strike" the law authorizing tribal sports betting, it offered no explanation for why that relief would not be adequate. It clearly would: "[W]hen the right invoked is that of equal treatment, the appropriate remedy is a mandate of *equal* treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class." *Heckler v. Mathews*, 465 U.S. 728, 740 (1984) (internal quotation marks omitted); *see also Sessions v. Morales-Santana*, 582 U.S. 47, 76 (2017) (adopting the former remedy).

The district court's analysis fails even on its own terms. If the district court were correct that a remedy invalidating the compacts would render the Tribe indispensable and require dismissal under Rule 19, then that fact itself would weigh in favor of a remedy that allowed Maverick to offer class III games (and left the compacts intact). The district court's cursory forecast that such a remedy would be unavailable was based on its severability analysis. ER-18–19. But a court's choice between "withdrawal of benefits from the favored class" and "extension of benefits to the excluded class," *Heckler*, 465 U.S. at 740, must account for any legal impediments to one of those options, *see Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2354 (2020) (plurality) (noting that "some equal-treatment cases can raise complex questions about whether it is appropriate to extend benefits or burdens," such as "due process, fair notice, or other independent

constitutional barriers"). Thus, if the district court were correct that Rule 19 foreclosed a remedy that would invalidate the compacts, that fact should have steered it toward a remedy that extended benefits to Maverick instead of withdrawing benefits from the Tribe. Indeed, Rule 19 "places the court under an obligation to seek out an alternative to dismissing the action, especially when it appears unlikely that plaintiff will be able to join all of the interested parties in an equally satisfactory forum." 7 Wright & Miller, Fed. Prac. & Proc. § 1608. The court erred in ignoring this obligation.

(4) Lack of alternative remedies. Under the Tribe's theory, there is *no* available forum to challenge the federal agency action approving the compacts or Washington state's tribal gaming monopoly—no matter whether the Secretary violated IGRA or the APA or the U.S. Constitution, and no matter whether Washington's regime unconstitutionally discriminates on the basis of race. As the district court acknowledged, ER-19, that withdrawal of judicial review weighs against dismissal. And as this Court has warned, when dismissal would deny the plaintiff any judicial forum to hear its claims, courts "should be extra cautious before dismissing the suit." *Makah*, 910 F.2d at 560 (internal quotation marks and emphasis omitted). That warning takes on even greater force here, given the "strong presumption favoring judicial review of administrative action." *Salinas v. U.S. Rr. Ret. Bd.*, 141 S. Ct. 691, 698 (2021) (internal quotation marks omitted).[12]

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[12] The Tribe contended below that Maverick could lobby Congress or the Washington legislature to amend the law in its favor, or

The district court also relied on this Court's statement that "[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity." ER-19 (quoting *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021)). But if Rule 19(b) does not allow this case to proceed without the Tribe, then it would not allow *any* case involving an absent sovereign to proceed: every factor weighs against dismissal, and the Tribe is unable to explain how it would add anything to this litigation other than to abruptly halt it. This Court has expressly rejected such a *per se* rule. *See Dine Citizens*, 932 F.3d at 857 (quoting *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002), for the proposition that "we have continued to follow the four-factor process even with immune tribes"). For good reason: a rule like that would be inconsistent with the Supreme Court's approach of extensively examining all four Rule 19(b) factors even after concluding that an absent sovereign was required but could not be joined. *See Republic of Philippines v. Pimentel*, 553 U.S. 851, 865–72 (2008). If sovereign immunity were dispositive (or nearly dispositive), as the district court assumed, there would be no need to conduct an in-depth analysis of the Rule 19(b) factors in immunity cases. But the Supreme Court has explained that the "design of

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ask the government to bring an enforcement action against the Tribe. ER-40, -54. But the Rule 19(b) inquiry addresses the lack of an "alternate forum in which *to sue*." *Dine Citizens*, 932 F.3d at 858 (emphasis added). The Tribe's argument also makes no sense: the entire basis of Maverick's lawsuit is that the law as it currently stands *already* entitles Maverick to relief.

the Rule . . . indicates that the determination whether to proceed will turn upon factors that are case specific"; there is no *per se* rule. *Id.* at 862–63.

Other courts, too, have refused to dismiss cases under Rule 19 despite the absence of an immune sovereign. *De Csepel*, 27 F.4th at 746–49 (while Hungary was a required party with sovereign immunity, suit could proceed without it because its "interests [were] so aligned with those of the remaining defendants that their participation in the litigation protects Hungary against potential prejudice"). And given the circumstances here—where the complaint presents purely legal questions teed up for decision on the papers, and the Tribe identifies no arguments it would advance in defense of the compacts that the federal defendants would neglect—the Tribe cannot win under Rule 19(b) with anything less than a *per se* rule.

B. The Public-Rights Exception Applies.

Even if Rule 19(b) counseled in favor of dismissal, the district court's ruling would still be wrong because the public-rights exception applies here.

The Supreme Court has recognized an exception to traditional joinder rules in cases "narrowly restricted to the protection and enforcement of public rights." *Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 363 (1940). In those cases, "there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights." *Id.* In applying the public-rights exception, this Court has recognized

"the potential danger of expanding joinder requirements in the public rights area," which could "sound[] the death knell for any judicial review of executive decisionmaking." *Conner v. Burford*, 848 F.2d 1441, 1460 (9th Cir. 1988).

This Court has applied the public-rights exception where two conditions are met: "the litigation must transcend the private interests of the litigants and seek to vindicate a public right," and "although the litigation may adversely affect the absent parties' interests, the litigation must not 'destroy the legal entitlements of the absent parties.'" *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996) (quoting *Conner*, 848 F.2d at 1459).

A lawsuit seeking to enforce governmental compliance with administrative and constitutional law is a classic example of public-rights litigation. *See Shermoen*, 982 F.2d at 1319 (the "interest in being governed by constitutional laws" and the "interest in an administrative process that is lawful" are public rights (internal quotation marks omitted)). This is no mere tort or contract suit; it is about more than just the "adjudication of private rights." *Nat'l Licorice*, 309 U.S. at 362.[13]

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[13] The district court suggested in a footnote that it was "not convinced this litigation is brought in the public interest" because "invalidation of the tribal compacts would 'increas[e] Maverick's commercial revenue.'" ER-20 n.2 (alteration in original). But the public-rights exception turns on the nature of the right at issue, not whether resolution of the case might benefit the party bringing it. *See Nat'l Licorice*, 309 U.S. at 362 (suit affected private contracts, but was "not for the adjudication of private rights"); *cf. S. Utah Wilderness All. v. Kempthorne*, 525 F.3d 966, 970 (10th Cir. 2008) ("[F]rom a broader perspective the

The district court refused to apply the public-rights exception, however, because it concluded that "Maverick seeks to invalidate tribal gaming compacts, an acknowledged legal entitlement." ER-20. That analysis misconceives the "legal entitlements" that this Court and others have found sufficient to forestall application of the public-rights exception. In those cases, tribes held agreements conferring *private legal entitlements—i.e.*, private rights—that the court sought not to "destroy." *See*, *e.g.*, *Dine Citizens*, 932 F.3d at 860 ("leases and rights-of-way" held by utility companies); *Kescoli*, 101 F.3d at 1311–12 ("lease agreements" held by coal company); *Shermoen*, 982 F.2d at 1316, 1319 (federal law partitioning reservation land and distributing funds from timber revenues). That accords with *National Licorice*, where the Supreme Court noted that, despite the NLRB's finding that an employer unlawfully procured certain contracts with its employees, the absent employees remained "free to assert such legal rights as they may have acquired under their contracts." 309 U.S. at 366.

Tribal-state compacts are fundamentally different: they do not confer private legal entitlements, but rather set the balance of public regulatory authority among sovereigns. "Congress passed IGRA in response to *Cabazon*"—which "held

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private interests the district court's judgment incidentally affects are not unlike the myriad of private interests affected when the protection of public lands is at stake."). Indeed, the district court's logic would paradoxically foreclose the public-rights exception for any litigant who has standing to bring the suit in the first place. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (injury "must be both concrete *and* particularized" to seek redress for statutory violations).

that California lacked the federal statutory authority required to regulate bingo halls on tribal lands"—and sought to "strike a delicate balance between the sovereignty of states and federally recognized Native American tribes." *Chicken Ranch*, 42 F.4th at 1031 (internal quotation marks omitted). IGRA thus "created a statutory basis for regulating these gaming activities" via a system of "cooperative federalism" that was meant "to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme." *Id.* at 1031–32 (internal quotation marks omitted).

In *American Greyhound Racing*, this Court declined to apply the public-rights exception in a case involving tribal-state gaming compacts. But the basis for that decision was not merely that the suit would "destroy" a private legal entitlement, but that the suit was not truly public in nature: this Court concluded that "the rights in issue between the plaintiffs in this case, the tribes and the state are more private than public," because the plaintiffs' "interest is in freeing themselves from the competition of Indian gaming, not in establishing for all the principle of separation of powers." 305 F.3d at 1026. The Supreme Court has since rejected, however, artificial distinctions between individual interests predicated on separation-of-powers principles and those principles themselves. *See Bond v. United States*, 564 U.S. 211, 222 (2011). And the claims here challenge federal agency action under the APA, the Constitution, and a federal statute (IGRA) that allocates regulatory authority among sovereigns—all paradigmatic fonts of public-rights litigation. *See Shermoen*, 982 F.2d at 1319. The

challenge to federal agency action distinguishes this case from *American Greyhound Racing*, and any broader reading of that case would contradict *Bond*, *National Licorice*, and this Court's other public-rights cases.

Tribal-state compacts establish a "regulatory scheme" by "prescrib[ing] rules for operating gaming, allocat[ing] law enforcement authority between the tribe and State, and provid[ing] remedies for breach of the agreement's terms." *Chicken Ranch*, 42 F.4th at 1032 (internal quotation marks omitted). Unlike agreements conferring private entitlements, a compact between a State and a tribe (subject to approval by the federal government) that sets the balance of regulatory authority among sovereigns is a quintessential matter of *public* rights. Indeed, courts have rightly distinguished challenges to tribal-state compacts from run-of-the-mill contract cases. *See Pueblo of Sandia v. Babbitt*, 47 F. Supp. 2d 49, 53 (D.D.C. 1999) (challenge to tribal-state compact "is not an ordinary contracts case" and "does not lie in contract"); *Citizens Against Casino Gambling*, 471 F. Supp. 2d at 314 & n.12 (similar). And when such a compact violates federal administrative, statutory, and constitutional law, a suit challenging it on those grounds is not one aimed at *private* legal entitlements. The public-rights exception applies in full force.

III. The Tribe Can Be Joined Because It Waived Its Tribal Immunity By Intervening In This Suit.

"[F]ederal courts disagree on whether a sovereign may intervene in an action while preserving its sovereign immunity." *W. Flagler*, 573 F. Supp. 3d at 269. As the Supreme Court has explained, generally "a State's voluntary appearance in federal court amount[s] to a waiver of its Eleventh Amendment immunity." *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 619 (2002); *see also*, *e.g.*, *Pettigrew v. Oklahoma ex rel. Okla. Dep't of Pub. Safety*, 722 F.3d 1209, 1213 (10th Cir. 2013) ("moving to intervene in federal-court litigation" waives sovereign immunity); *Bd. of Regents of Univ. of Wis. Sys. v. Phoenix Int'l Software, Inc.*, 653 F.3d 448, 463 (7th Cir. 2011) (same). The same goes for Indian tribes: the waiver doctrine is designed to avoid the "seriously unfair results" that flow from allowing a sovereign to inject itself into a case and then assert that the court has no power over it. *Lapides*, 535 U.S. at 619. That is why this Court and others have concluded that intervening in a case constitutes consent to the court's jurisdiction. *See, e.g.*, *United States v. Oregon*, 657 F.2d 1009, 1014 (9th Cir. 1981) (holding that "the Tribe's intervention constitutes consent"); *In re Greektown Holdings, LLC*, 917 F.3d 451, 464 (6th Cir. 2019) (noting that "two circuits have held that intervening in a lawsuit constitutes waiver" and concluding that "*[l]ike intervention*, . . . filing a lawsuit manifests a clear intent to waive tribal sovereign immunity" (emphasis added)), *abrogated on other grounds by Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct.

1689 (2023); *Wichita & Affiliated Tribes*, 788 F.2d at 773 (tribes' "voluntary intervention as party defendants was an express waiver of their right not to be joined"); *cf. Gradel v. Piranha Cap., L.P.*, 495 F.3d 729, 731 (7th Cir. 2007) (party who intervened "submitted himself to the jurisdiction of the court"); *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1248 (11th Cir. 2006) ("by filing a successful motion to intervene, [party] acquiesced to [personal] jurisdiction"). While this Court has affirmed dismissal in cases where an Indian tribe intervened to assert a Rule 19 immunity-based defense, *see*, *e.g.*, *Klamath*, 48 F.4th at 938; *Dine Citizens*, 932 F.3d at 847–48, those cases did not consider waiver.

Here, Maverick sued various federal and state officials for their actions in violation of federal law. ER-84–126. Despite knowing of the lawsuit from the day it was filed, the Tribe waited to enter the case until it was transferred to this Circuit, and then filed a motion to intervene both permissively and as of right. The Tribe's presence in this case adds nothing of substance to the litigation: no new facts (there is no discovery in this case) and no new arguments (the Tribe has not even hypothesized any merits argument that it would make that the federal government would not). The *only* intent of the Tribe's strategically timed intervention is to short-circuit the litigation entirely by denying Maverick a forum to assert its claims against the federal and state defendants. That is precisely the sort of unfairness the waiver doctrine works to avoid.

CONCLUSION

This Court should reverse and remand for the district court to consider Maverick's claims on the merits.

Dated: July 3, 2023

Respectfully submitted,

/s/ Theodore B. Olson
THEODORE B. OLSON
MATTHEW D. MCGILL
LOCHLAN F. SHELFER
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Plaintiff-Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CONSTITUTIONAL, STATUTORY, AND RULES ADDENDUM

Constitutional Provisions Add.2
U.S. Const. amend. V Add.2
U.S. Const. amend. X Add.2
U.S. Const. amend. XIV, § 1 ..... Add.2
Statutory Provisions Add.2
25 U.S.C. § 2701 ..... Add.2
25 U.S.C. § 2702 ..... Add.3
25 U.S.C. § 2710(d) Add.4
Wash. Rev. Code § 9.46.0269 ..... Add.11
Wash. Rev. Code § 9.46.0364 ..... Add.12
Wash. Rev. Code § 9.46.220 ..... Add.12
Wash. Rev. Code § 9.46.221 ..... Add.13
Wash. Rev. Code § 9.46.222 ..... Add.14
Rules Add.15
Fed. R. Civ. P. 12(b) Add.15
Fed. R. Civ. P. 19 ..... Add.15

Constitutional Provisions

U.S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions

25 U.S.C. § 2701. Findings.

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2702. Declaration of policy.

The purpose of this chapter is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

25 U.S.C. § 2710. Tribal gaming ordinances.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution

adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the

1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations

described in paragraph (3)(A) based upon the lack of au-thority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of Title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period. In determining in such an action whether a

State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

Wash. Rev. Code § 9.46.0269. "Professional gambling."

(1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any form of gambling activity; or

(b) Acting other than in a manner authorized by this chapter, the person pays a fee to participate in a card game, contest of chance, lottery, or other gambling activity; or

(c) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity; or

(d) The person engages in bookmaking; or

(e) The person conducts a lottery; or

(f) The person violates RCW 9.46.039.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be

used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED FURTHER, That the books and records of the games shall be open to public inspection.

Wash. Rev. Code § 9.46.0364. Sports wagering authorized.

(1) Upon the request of a federally recognized Indian tribe or tribes in the state of Washington, the tribe's class III gaming compact may be amended pursuant to the Indian gaming regulatory act, 25 U.S.C. Sec. 2701 et seq., and RCW 9.46.360 to authorize the tribe to conduct and operate sports wagering on its Indian lands, provided the amendment addresses: Licensing; fees associated with the gambling commission's regulation of sports wagering; how sports wagering will be conducted, operated, and regulated; issues related to criminal enforcement,

including money laundering, sport integrity, and information sharing between the commission and the tribe related to such enforcement; and responsible and problem gambling. Sports wagering conducted pursuant to the gam-ing compact is a gambling activity authorized by this chapter.

(2) Sports wagering conducted pursuant to the provisions of a class III gaming compact entered into by a tribe and the state pursuant to RCW 9.46.360 is authorized bookmaking and is not subject to civil or criminal penalties pursuant to RCW 9.46.225.

Wash. Rev. Code § 9.46.220. Professional gambling in the first degree.

(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) Acts in concert with or conspires with five or more people;

(b) Personally accepts wagers exceeding five thousand dollars during any thirty-day period on future contingent events;

(c) The operation for whom the person works, or with which the person is involved, accepts wagers exceeding five thousand dollars during any thirty-day period on future contingent events;

(d) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games,

lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission; or

(e) Engages in bookmaking as defined in RCW 9.46.0213.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021.

Wash. Rev. Code § 9.46.221. Professional gambling in the second degree.

(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) Acts in concert with or conspires with less than five people; or

(b) Accepts wagers exceeding two thousand dollars during any thirty-day period on future contingent events; or

(c) The operation for whom the person works, or with which the person is involved, accepts wagers exceeding two thousand dollars during any thirty-day period on future contingent events; or

(d) Maintains a "gambling premises" as defined in this chapter; or

(e) Maintains gambling records as defined in RCW 9.46.0253.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021.

Wash. Rev. Code § 9.46.222. Professional gambling in the third degree.

(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) His or her conduct does not constitute first or second degree professional gambling;

(b) He or she operates any of the unlicensed gambling activities authorized by this chapter in a manner other than as prescribed by this chapter; or

(c) He or she is directly employed in but not managing or directing any gambling operation.

(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.

(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021.

Rules

Fed. R. Civ. P. 12.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No

defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Fed. R. Civ. P. 19.

(a) Persons Required to Be Joined if Feasible.

(1) *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order*. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue*. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAVERICK GAMING LLC, Plaintiff, v. UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, DEB HAALAND, in her official capacity as Secretary of the Interior, BRYAN NEWLAND, in his official capacity as Assistant Secretary – Indian Affairs, JAY INSLEE, in his official capacity as the Governor of Washington,	No. 22-cv-05325 DGE **FIRST AMENDED COMPLAINT**

ROBERT FERGUSON, in his official capacity as the Attorney General of Washington,

ALICIA LEVY, in her official capacity as Chair of the Washington State Gambling Commission,

JULIA PATTERSON, in her official capacity as Vice-Chair of the Washington State Gambling Commission,

BUD SIZEMORE, in his official capacity as Commissioner of the Washington State Gambling Commission,

KRISTINE REEVES, in her official capacity as Commissioner of the Washington State Gambling Commission,

SARAH LAWSON, in her official capacity as Commissioner of the Washington State Gambling Commission,

STEVE CONWAY, in his official capacity as ex officio member of the Washington State Gambling Commission,

JEFF HOLY, in his official capacity as ex officio member of the Washington State Gambling Commission,

SHELLEY KLOBA, in her official capacity as ex officio member of the Washington State Gambling Commission,

BRANDON VICK, in his official capacity as ex officio member of the Washington State Gambling Commission,

TINA GRIFFIN, in her official capacity as Director of the Washington State Gambling Commission,

Defendants.

Plaintiff Maverick Gaming LLC, alleges as follows:

PRELIMINARY STATEMENT

1. Maverick Gaming LLC ("Maverick") owns and operates 18 cardrooms in the State of Washington. Maverick also owns casinos in Colorado and Nevada, which offer a wide variety of games, including roulette, craps, sports betting, and dealer-assisted electronic table games. Maverick seeks to expand its gaming offerings in Washington to include additional games such as roulette, craps, sports

betting, and dealer-assisted electronic table games, but it is unable to do so because Washington allows only Indian tribes to offer these forms of gaming within the State.

2. Purporting to act pursuant to the Indian Gaming Regulatory Act ("IGRA" or "the Act")—a federal statute regulating gaming on Indian lands—Washington entered into compacts (the "Compacts") with 29 Indian tribes (the "Tribes"). The Compacts grant the Tribes the exclusive right to offer most forms of casino-style gaming (known as "class III" gaming under IGRA). In 2020, Washington passed a new law giving federally recognized Indian tribes the exclusive right to offer sports betting, which had previously been omitted from the list of class III games that Indian tribes could offer. Washington has since amended its compacts with 18 Indian tribes (the "Compact Amendments") to permit them to offer sports betting at tribal casinos.

3. At the same time, Washington's criminal laws prohibit any non-tribal entities, such as Maverick, from offering most forms of class III gaming in Washington, including roulette, craps, and sports betting. The U.S. Secretary of the Interior approved this discriminatory tribal gaming monopoly by allowing the Compacts and recent Compact Amendments to go into effect.

4. With a monopoly over most forms of casino-style gaming, the Tribes have established expansive casino operations in Washington. This class III gaming monopoly has been extremely profitable for the Tribes. In 2017, even before they were permitted to offer sports betting, the Tribes' net

receipts from class III gaming totaled approximately $2.56 billion. But the monopoly prevents non-tribal entities from competing on an equal footing with the Tribes.

5. Washington's tribal monopoly is inconsistent with IGRA and federal criminal statutes, which prohibit class III gaming activity by tribal casinos on Indian lands unless a State permits the same activity by non-tribal entities. The tribal monopoly also violates the Constitution's guarantee of equal protection of the laws by irrationally and impermissibly discriminating on the basis of race and ancestry. Neither a State nor the federal government may give Indian tribes the exclusive right to engage in commercial activities that have no relation to uniquely tribal interests. And IGRA itself violates the Tenth Amendment by mandating that States enter into negotiations with Indian tribes over class III gaming compacts.

6. Maverick brings this action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551–706; IGRA; 42 U.S.C. § 1983; the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202; and the United States Constitution to challenge the validity of Washington's tribal gaming monopoly and the Compacts and Compact Amendments that purport to authorize it. For the reasons stated herein, and as set forth in greater detail below, Maverick prays that this Court: (1) declare that the Compacts and Compact Amendments violate federal law, and are therefore void; (2) vacate and set aside the Secretary of the Interior's approvals of the Compacts and Compact Amendments; (3) enjoin the state Defendants from continuing to administer the Compacts and Compact

Amendments; (4) declare that the enforcement of Washington's criminal gaming laws against Maverick violates the Constitution's guarantee of equal protection, and enjoin the same; (5) enjoin the execution of new compacts granting tribal class III gaming monopolies; and (6) award nominal damages.

PARTIES

7. Plaintiff Maverick Gaming LLC, is a Washington limited liability company with a residence at 12530 NE 114th Street, Kirkland, WA 98034. Maverick owns and operates 18 cardrooms in Washington and owns several hotel/casinos in Nevada and Colorado. Maverick's casinos in Nevada and Colorado offer a variety of games, including roulette, craps, sports betting, and dealer-assisted electronic table games. Maverick seeks to expand its gaming offerings in Washington to include the same forms of gaming that its casinos have successfully provided in Nevada and Colorado, but it is unable to proceed because of Washington's criminal prohibitions of most forms of class III gaming.

8. Defendant the United States of America is sued as a party to a claim seeking declaratory and injunctive decrees against federal officers. *See* 5 U.S.C. § 702. The U.S. Attorney's Office for the Western District of Washinton is located at 555 700 Stewart Street, Suite 5220, Seattle WA 98101.

9. Defendant the U.S. Department of the Interior is an executive department of the United States. The U.S. Department of the Interior is headquartered at 1849 C Street, NW, Washington, DC 20240.

10. Defendant Deb Haaland is the U.S. Secretary of the Interior and the official charged with approving tribal-state class III gaming compacts under IGRA. 25 U.S.C. § 2710(d)(3)(B), (8)(A)–(D). Secretary Haaland maintains an office at 1849 C Street, NW, Washington, DC 20240. Maverick is suing the Secretary in her official capacity.

11. Defendant Bryan Newland is the U.S. Assistant Secretary – Indian Affairs. The Assistant Secretary has been delegated the Secretary of the Interior's authority under IGRA to approve tribal-state class III gaming compacts. Assistant Secretary Newland maintains an office at 1849 C Street, NW, Washington, DC 20240. Maverick is suing the Assistant Secretary in his official capacity.

12. For ease of reference, Maverick refers to the Secretary of the Interior and the Assistant Secretary – Indian Affairs collectively as "the Secretary of the Interior" or "the Secretary."

13. Defendant Jay Inslee is the Governor of Washington. The Governor is authorized by state statute to review and execute tribal-state class III gaming compacts on behalf of the State once approved by the Washington State Gambling Commission. Wash. Rev. Code § 9.46.360(6). The Governor of Washington executed each of the tribal-state class III gaming Compacts and Compact Amendments at issue in this case. The Governor is also authorized by statute to request that Washington's Attorney General initiate criminal investigations and proceedings. *Id.* § 43.10.090. Governor Inslee

maintains an official address at Office of the Governor, P.O. Box 40002, Olympia, WA 98504. Maverick is suing the Governor in his official capacity.

14. Defendant Robert Ferguson is the Attorney General of Washington. The Attorney General is authorized by state statute to investigate, direct the prosecution of, and prosecute violations of state criminal laws. Wash. Rev. Code § 43.10.090. The Attorney General's office is located in Olympia, Washington. Attorney General Ferguson maintains an official address at 1125 Washington Street, SE, P.O. Box 40100, Olympia, WA 98504. Maverick is suing the Attorney General in his official capacity.

15. Defendant Alicia Levy is the Chair of the Washington State Gambling Commission (the "Commission"). The Commission is charged by state statute with implementing Washington's gaming policies. Among other things, the Commission: (1) makes licensing decisions under Washington's gaming laws; (2) serves as a law-enforcement agency for the enforcement of Washington's gaming laws; (3) appoints a director charged with negotiating tribal-state gaming compacts and transmitting such compacts to the Commission; (4) reviews tribal-state compacts and votes on whether to return a compact to the director for further negotiation or to forward it to the Governor; and (5) is empowered to enforce the provisions of any tribal-state compact. Wash. Rev. Code §§ 9.46.070, 9.46.075, 9.46.080, 9.46.140, 9.46.210, 9.46.360. The Commission is headquartered in Lacey, Washington. Chair Levy maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Ms. Levy in her official capacity.

16. Defendant Julia Patterson is the Vice-Chair of the Washington State Gambling Commission. Vice-Chair Patterson maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Ms. Patterson in her official capacity.

17. Defendant Bud Sizemore is a Commissioner of the Washington State Gambling Commission. Commissioner Sizemore maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Mr. Sizemore in his official capacity.

18. Defendant Kristine Reeves is a Commissioner of the Washington State Gambling Commission. Commissioner Reeves maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Ms. Reeves in her official capacity.

19. Defendant Sarah Lawson is a Commissioner of the Washington State Gambling Commission. Commissioner Lawson maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Ms. Lawson in her official capacity.

20. Defendant Steve Conway is an ex officio member of the Washington State Gambling Commission. The ex officio members of the Commission are "deemed voting members of the gambling commission for the sole purpose of voting on proposed [tribal-state] compacts." Wash. Rev. Code § 9.46.360(4), (6). Mr. Conway maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Mr. Conway in his official capacity.

21. Defendant Jeff Holy is an ex officio member of the Washington State Gambling Commission. Mr. Holy maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Mr. Holy in his official capacity.

22. Defendant Shelley Kloba is an ex officio member of the Washington State Gambling Commission. Ms. Kloba maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Ms. Kloba in her official capacity.

23. Defendant Brandon Vick is an ex officio member of the Washington State Gambling Commission. Mr. Vick maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Mr. Vick in his official capacity.

24. Defendant Tina Griffin is the Director of the Washington State Gambling Commission. The Director is appointed by the Commission and is tasked with carrying out the powers and duties of the Commission, issuing rules and regulations adopted by the Commission, supervising Commission employees, negotiating tribal-state gaming compacts, and transmitting proposed compacts to the Commission for a vote. Wash. Rev. Code §§ 9.46.080, 9.46.360. Ms. Griffin maintains an official address at P.O. Box 42400, Olympia, WA 98504. Maverick is suing Ms. Griffin in her official capacity.

JURISDICTION AND VENUE

25. This action arises under the APA, IGRA, 42 U.S.C. § 1983, the Declaratory Judgment Act, and the U.S. Constitution. This Court has subject-matter

jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 5 U.S.C. §§ 701–706 (review of agency action), and 28 U.S.C. § 1346(a)(2) (nominal damages).

26. Venue is proper in this Court as to the federal Defendants under 28 U.S.C. § 1391(e)(1) because this is an action against officers and agencies of the United States, the state defendants reside in this district, a substantial part of the events giving rise to the claims in this lawsuit occurred in this district, and no real property is involved in the action.

27. Venue is proper in this Court as to the state Defendants under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims in this lawsuit occurred in this district.

FACTUAL ALLEGATIONS

I. The Indian Gaming Regulatory Act

A. Background

28. The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, provides a comprehensive scheme for regulating gaming on Indian lands.

29. Congress enacted IGRA in 1988 in response to the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which held that California could not regulate gaming on Indian lands within the State.

30. IGRA established, for the first time, a federal framework governing gaming on "Indian lands"—defined principally as land "within the limits of any Indian reservation." 25 U.S.C. § 2703(4)(A).

31. IGRA divides gaming activities into three classes—class I, class II, and class III—and imposes a different regulatory framework for each.

32. Class I gaming encompasses low-stakes "social games" and "traditional forms of Indian gaming." 25 U.S.C. § 2703(6).

33. Class II gaming covers bingo and lotto games, as well as non-banked card games that are either "explicitly authorized" by state law, or "not explicitly prohibited" and legally "played at any location in the State." 25 U.S.C. § 2703(7)(A)(i)–(ii). Non-banked card games are card games where players play against one another, rather than against the house. *Id.* § 2703(7)(B).

34. Class III gaming—the type of gaming at issue here—is the most highly regulated under IGRA. It encompasses "all forms of gaming that are not class I gaming or class II gaming," including casino games (*e.g.*, craps and roulette), banked card games (*e.g.*, blackjack), pari-mutuel wagering (*e.g.*, wagering on horse races), lotteries, and sports betting. 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4.

35. IGRA allows tribes to conduct a particular class III gaming activity on Indian lands "only if " that activity: (1) is authorized by a federally approved tribal ordinance meeting certain statutory conditions; (2) is "located in a State that permits such gaming for any purpose by any person, organization, or entity"; and (3) is "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State . . . that is in effect." 25 U.S.C. § 2710(d)(1)(A)–(C).

36. "Failure to comply with any one of the three conditions" renders class III gaming on Indian lands illegal under IGRA and "subject to applicable criminal statutes," including the Johnson Act, 15 U.S.C. § 1175 (prohibiting gambling devices in Indian country); the Organized Crime Control Act, 18 U.S.C. § 1955 (prohibiting illegal gambling businesses); and IGRA, 18 U.S.C. § 1166 (incorporating state-law gaming prohibitions into federal law and applying them on Indian lands). *See Amador Cnty. v. Salazar*, 640 F.3d 373, 376–77 (D.C. Cir. 2011).

37. IGRA's second and third requirements—that the class III gaming activity be located in a State that "permits such gaming" and conducted pursuant to a valid tribal-state compact—are central to this case.

B. IGRA's State-Permission Requirement

38. Congress designed IGRA's second condition of class III gaming—the state-permission requirement—to guarantee parity between tribal and non-tribal gaming, thereby "foster[ing] a consistency and uniformity in the manner in which laws regulating the conduct of gaming activities are applied." S. Rep. No. 100-446, at 6 (1988).

39. The state-permission requirement precludes tribal class III gaming monopolies by mandating that each form of class III gaming must remain illegal on Indian lands unless the State "permits" the same activity for non-tribal entities. 25 U.S.C. § 2710(d)(1)(B). A State's purported authorization of class III gaming by Indian tribes alone does not suffice because a State cannot unilaterally "permit[ ]" class III gaming that federal

law makes illegal without a valid tribal-state compact. The state-permission requirement thus reflects Congress's express finding that Indian tribes should be able to conduct a "gaming activity" on Indian lands only if the same activity "is conducted within a State." *Id.* § 2701(5).

40. By the same token, the state-permission requirement prevents States from creating non-tribal class III gaming monopolies: If a State "permits" a form of class III gaming for non-tribal entities, IGRA gives Indian tribes within the State the right to negotiate a tribal-state compact authorizing the same form of class III gaming on Indian lands. 25 U.S.C. § 2710(d)(1)(B). IGRA thus "provides that tribes are entitled to engage in all forms of Class III gaming that a state permits for other citizens." *Keweenaw Bay Indian Cmty. v. United States*, 136 F.3d 469, 473 (6th Cir. 1998).

41. IGRA's state-permission requirement, and the parity and uniformity principles it embodies, are fundamental features of the statutory scheme.

42. Class II gaming has a materially identical state-permission requirement: Tribes cannot engage in class II gaming on Indian lands unless "such Indian gaming is located *within a State that permits such gaming*." 25 U.S.C. § 2710(b)(1)(A) (emphasis added).

43. Class II non-banked card games likewise are prohibited on Indian lands unless the games are expressly authorized elsewhere in the State or are not expressly prohibited and "played at any location in the State." 25 U.S.C. § 2703(7)(A)(ii)(II).

44. IGRA also waives application of the Johnson Act—a federal criminal statute prohibiting the possession of gambling devices in Indian country, 15 U.S.C. § 1175—only if the gambling devices are authorized under a tribal-state compact in "a State *in which gambling devices are legal*." 25 U.S.C. § 2710(d)(6)(A) (emphasis added).

45. Congress omitted the state-permission requirement only with respect to class I gaming, and only because Congress left such gaming "within the exclusive jurisdiction of the Indian tribes." 25 U.S.C. § 2710(a)(1).

C. IGRA's Compacting Process

46. IGRA requires as a further condition of class III gaming on Indian lands that the gaming at issue be "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State . . . that is in effect." 25 U.S.C. § 2710(d)(1)(C).

47. To initiate the compacting process, IGRA provides that "[a]ny Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities." 25 U.S.C. § 2710(d)(3)(A). "Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact." *Id.*

48. As Congress recognized, conditioning class III gaming on preexisting state-law permission for non-tribal entities to offer the same games allows

States and tribes to "make use of existing State regulatory systems" in their "negotiated compacts." S. Rep. No. 100-446, at 13–14 (1988).

49. A tribal-state class III gaming compact thus may include, among other things, provisions addressing "the application of the criminal and civil laws and regulations of the . . . State that are directly related to, and necessary for, the licensing and regulation of" the class III gaming activity under negotiation. 25 U.S.C. § 2710(d)(3)(C)(i).

50. IGRA's compact condition imposes two requirements: (1) the tribe must enter "a compact with the state"; and (2) "[t]he Secretary of the Interior must approve any such compact before it may become effective." *Colo. River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134, 136 (D.C. Cir. 2006).

51. To satisfy the first requirement, the State must have authority to enter into the compact. *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1556 (10th Cir. 1997).

52. To satisfy the second requirement, the Secretary of the Interior must approve the compact and provide "notice of approval" in the Federal Register. 25 U.S.C. § 2710(d)(3)(B).

53. The Secretary may either approve or disapprove the proposed compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8)(C).

54. If the Secretary does not approve or disapprove the compact within 45 days, the compact is "considered to have been approved by the Secretary,

but only to the extent the compact is consistent with the provisions of this chapter." 25 U.S.C. § 2710(d)(8)(C).

55. The Secretary must disapprove a compact if it violates: (1) any provision of IGRA, (2) "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands," or (3) "the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B); *see also Amador Cnty.*, 640 F.3d at 381 ("The Secretary must . . . disapprove a compact if it would violate any of [IGRA's] three limitations . . . .").

II. Washington Has Long Authorized Tribal Class III Gaming Monopolies

56. Since the early 1990s, despite IGRA's prohibition of class III tribal gaming monopolies, Washington has authorized Indian tribes—and only Indian Tribes—to engage in most forms of class III gaming, while subjecting non-tribal entities to criminal sanctions for the same activities. Most recently, Washington has expanded that tribal monopoly to include sports betting.

A. Limited Non-Tribal Gaming In Washington

57. It is illegal to offer most forms of gaming in Washington. Washington makes it a crime to engage in "professional gambling," *see, e.g.*, Wash. Rev. Code § 9.46.222, which Washington defines to include: (1) unless acting as a player or in a manner authorized by law, "engag[ing] in conduct which materially aids any form of gambling activity"; (2) unless acting in a manner authorized by law,

"pay[ing] a fee to participate in a card game, contest of chance, lottery, or other gambling activity"; (3) unless acting as a player or in a manner authorized by law, "knowingly accept[ing] or receiv[ing] money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity"; (4) "engag[ing] in bookmaking"; (5) "conduct[ing] a lottery"; or (6) offering wagering on greyhound races, *id.* § 9.46.0269(1).

58. Washington defines "gambling" as "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." Wash. Rev. Code § 9.46.0237.

59. Washington law specifies three degrees of illegal "professional gambling." Depending on the scale of the gaming operation, a person offering unauthorized gaming may be guilty of a gross misdemeanor, Wash. Rev. Code § 9.46.222(3), a class C felony, *id.* § 9.46.221(3), or a class B felony, *id.* § 9.46.220(3).

60. Because Washington's definition of "professional gambling" excepts from its definition activities "authorized by this chapter," Wash. Rev. Code § 9.46.0269(1)(a)–(c), a business may offer gaming only if that form of gaming is expressly authorized by Washington law. *See also Illegal Activities*, Wash. State Gambling Comm'n, *available*

at https://www.wsgc.wa.gov/regulation-enforcement/illegal-activities ("Gambling in Washington is illegal unless the activity is specifically authorized by state law.").

61. Washington permits non-tribal entities to offer only limited types of gaming, such as raffles, bingo, card games, amusement games, pull-tabs, punchboards, sports pool boards, and fundraising events. Wash. Rev. Code §§ 9.46.0305–.0361.

62. None of these statutory exceptions authorizes non-tribal entities to engage in the full range of casino-style gaming in Washington.

63. As a result, it is a crime in Washington for non-tribal entities to offer the vast majority of class III games, including roulette, craps, and sports betting.

64. The Washington State Gambling Commission warns on its website, "Gambling in Washington is illegal unless the activity is specifically authorized by state law. . . . Conducting illegal gambling activities may result in criminal charges being filed against you, your organization and/or its officers, and forfeiture of all property or money associated with the illegal gambling." *Illegal Activities*, Wash. State Gambling Comm'n, *available at* https://www.wsgc.wa.gov/regulation-enforcement/illegal-activities.

65. The Washington State Gambling Commission also provides a form for people to "submit a tip regarding illegal [gambling] activities occurring in Washington," and the form includes a field for "[b]usiness [n]ame." *Illegal Activities*, Wash. State

Gambling Comm'n, *available at* https://www.wsgc.wa.gov/regulation-enforcement/illegal-activities; *Submit a Tip*, Wash. State Gambling Comm'n, *available at* https://www.wsgc.wa.gov/regulation-enforcement/submit-tip. The Washington State Gambling Commission routinely prosecutes enforcement actions against unlawful gambling operations. *See Administrative Orders*, Wash. State Gambling Comm'n, *available at* https://www.wsgc.wa.gov/regulation-enforcement/administrative-orders (collecting administrative orders).

B. Washington's Tribal Gaming Monopoly

66. In contrast to its broad criminal prohibition of class III casino-style gaming among non-tribal entities, since the early 1990s Washington has authorized Indian tribes located within the State to conduct a wide range of class III games.

67. In 1992 Washington codified its process for negotiating tribal-state class III gaming compacts pursuant to IGRA. Wash. Rev. Code § 9.46.360.

68. The director of the Washington State Gambling Commission (or the director's designee) "shall negotiate compacts for class III gaming on behalf of the state with federally recognized Indian tribes in the state of Washington." Wash. Rev. Code § 9.46.360(2).

69. On reaching a tentative agreement with an Indian tribe on a proposed compact, "the director shall immediately transmit a copy of the proposed compact to all voting and ex officio members of the gambling commission" and to the two standing committees designated by the Washington House of

Representatives and Senate, each of which shall "forward its respective comments to the gambling commission." Wash. Rev. Code § 9.46.360(3), (5). The four ex officio members of the gambling commission are voting members of the gambling commission for the sole purpose of voting on proposed tribal-state compacts. *Id.* § 9.46.360(4).

70. Within 45 days of receiving a proposed compact from the director, the gambling commission, including the four ex officio members, "shall vote on whether to return the proposed compact to the director with instructions for further negotiation or to forward the proposed compact to the governor for review and final execution." Wash. Rev. Code § 9.46.360(6).

71. The gambling commission "is authorized and empowered to enforce the provisions of any compact between a federally recognized Indian tribe and the state of Washington." Wash. Rev. Code § 9.46.360(9).

72. In its first tribal-state compact (executed with the Tulalip Tribes of Washington on August 2, 1991), Washington authorized the Tulalip Tribes of Washington to conduct a wide range of class III games that are illegal for non-tribal entities to offer, including roulette and craps. *See* Tribal-State Compact for Class III Gaming Between the Tulalip Tribes of Washington and the State of Washington at 4–5 (Aug. 2, 1991) (hereinafter "Tulalip Compact"), *available at* https://www.wsgc.wa.gov/sites/default/files/public/searchable-compacts/tulalip/A-1991%20Compact%20%28s%29.pdf.

73. Since 1991, Washington has entered into analogous compacts with "[a]ll 29 federally recognized tribes in Washington," giving the Tribes the exclusive right to offer certain class III games such as craps and roulette. Gaming Compacts, Washington State Gambling Comm'n, *available at* https://www.wsgc.wa.gov/tribal-gaming/gaming-compacts (last visited July 1, 2022).

74. On March 25, 2020, Washington passed a new law, S.H.B. No. 2638, giving Indian tribes in the state a monopoly over sports betting. *See* 2020 Wash. Legis. Serv. ch. 127. It remains a crime for non-tribal entities to offer sports betting. *See* Wash. Rev. Code §§ 9.46.220–.222.

75. The law states:

> It has long been the policy of this state to prohibit all forms and means of gambling except where carefully and specifically authorized and regulated. The legislature intends to further this policy by authorizing sports wagering on a very limited basis by restricting it to tribal casinos in the state of Washington.

2020 Wash. Legis. Serv. ch. 127, § 1.

76. The new act states that "[u]pon the request of a federally recognized Indian tribe or tribes in the state of Washington, the tribe's class III gaming compact may be amended . . . to authorize the tribe to conduct and operate sports wagering on its Indian lands . . . . Sports wagering conducted pursuant to the gaming compact is a gambling

activity authorized by this chapter." Wash. Rev. Code § 9.46.0364(1). The statute makes clear that "[s]ports wagering conducted pursuant to the provisions of a class III gaming compact entered into by a tribe and the state pursuant to [Wash. Rev. Code § 9.46.360] is authorized bookmaking and is not subject to civil or criminal penalties pursuant to [Wash. Rev. Code § 9.46.225]." *Id.* § 9.46.0364(2).

77. On July 6, 2021, Governor Jay Inslee and 15 of the 29 federally recognized Indian tribes in Washington executed Compact Amendments to each of the Tribes' respective compacts to permit the Tribes to offer sports betting at their gaming facilities. *See, e.g.*, Third Amendment to the Tribal State Compact for Class III Gaming Between Confederated Tribes of the Colville Reservation and the State of Washington (July 6, 2021), *available at* https://www.wsgc.wa.gov/sites/default/files/public/tribal/Compacts/Colville%28D%29/2021-0706%20Colville_Amendment_3_%26_Appendix_S%28s%29.pdf.

78. These Tribes are: the Confederated Tribes of the Colville Reservation; the Cowlitz Indian Tribe; the Jamestown S'Klallam Tribe; the Kalispel Tribe; the Lummi Nation; the Muckleshoot Indian Tribe; the Puyallup Tribe of Indians; the Shoalwater Bay Indian Tribe; the Snoqualmie Indian Tribe; the Spokane Tribe; the Squaxin Island Tribe; the Stillaguamish Tribe of Indians; the Suquamish Tribe; the Swinomish Indian Tribal Community; and the Tulalip Tribes of Washington.

79. On September 1, 2021, the Secretary approved the compact amendments for the Spokane Tribe, the Cowlitz Indian Tribe, the Suquamish

Tribe, the Snoqualmie Indian Tribe, the Stillaguamish Tribe of Indians, the Squaxin Island Tribe, the Lummi Nation, the Puyallup Tribe of Indians, and the Tulalip Tribes of Washington. *See* 86 Fed. Reg. 49,046, 49,046–47, 49,049–54 (Sept. 1, 2021). On September 15, 2021, the Secretary approved the compact amendments for the Muckleshoot Indian Tribe, the Confederated Tribes of the Colville Reservation, the Shoalwater Bay Indian Tribe, and the Kalispel Tribe. *See* 86 Fed. Reg. 51,370, 51,370, 51,373–74 (Sept. 15, 2021). On October 22, 2021, the Secretary approved the compact amendment for the Swinomish Indian Tribal Community. *See* 86 Fed. Reg. 58,685 (Oct. 22, 2021). On December 28, 2021, the Secretary approved the compact amendment for the Jamestown S'Klallam Tribe. *See* 86 Fed. Reg. 73,800 (Dec. 28, 2021).

80. On September 19, 2021, a sixteenth tribe, the Port Gamble S'Klallam Tribe, amended its compact to permit it to offer sports betting. Memorandum of Incorporation of Most Favored Nation Amendments to the Tribal/State Compact Between the Port Gamble S'Klallam Tribe and the State of Washington (Sept. 19, 2021), *available at* https://www.wsgc.wa.gov/sites/default/files/public/tribal/Compacts/Port_Gamble%28X%29/Port_Gamble_Sports_Wagering_MOI_FINAL%28signed%29.pdf. Because Washington had amended compacts with other tribes to permit sports betting, the Port Gamble S'Klallam Tribe exercised its right under its compact's most-favored nation section to unilaterally amend its compact to permit sports betting as well. *Id.* at 1. On December 28, 2021, the Secretary

approved the Port Gamble S'Klallam Tribe's Memorandum of Incorporation. *See* 86 Fed. Reg. 73,800 (Dec. 28, 2021).

81. On February 28, 2022, Washington executed a sports-betting compact amendment with a seventeenth tribe, the Sauk-Suiattle Indian Tribe, which the Secretary approved on June 14, 2022. *See* 87 Fed. Reg. 35,992, 35,992 (June 14, 2022).

82. The sports-betting amendments have therefore been approved by the Secretary pursuant to IGRA, and that approval purports to authorize Washington's tribal sports-betting monopoly. *See* 25 U.S.C. § 2710(d)(3)(B), (8)(A).

83. On May 18, 2022, Washington executed a sports-betting compact with an eighteenth tribe, the Nisqually Indian Tribe, which the Secretary has not yet acted on.

84. Because the terms of each sports-betting amendment are materially identical, the compact amendment between Washington and the Confederated Tribes of the Colville Reservation is used for reference throughout this complaint. *See* Third Amendment to the Tribal-State Compact for Class III Gaming Between Confederated Tribes of the Colville Reservation and the State of Washington (July 6, 2021) (hereinafter "Colville Compact Amendment"), *available at* https://www.wsgc.wa.gov/sites/default/files/public/tribal/Compacts/Colville%28D%29/2021-0706%20Colville_Amendment_3_%26_Appendix_S%28s%29.pdf.

85. The Compact Amendments add "Sports Wagering" to the list of class III gaming activities that the Tribes are permitted to offer, subject to a new Appendix S prescribing certain conditions. Colville Compact Amendment at 2.

86. The Compact Amendments require each of the Tribes to contribute their share of a "Start-Up Costs fee," which "includes the actual costs incurred by the State Gaming Agency for negotiations, rule development, regulatory program development, training, and similar activities necessary to implement Sports Wagering." Colville Compact Amendment at 3.

87. The Compact Amendments also provide that the Tribes' sports-betting net win will be included in the Tribes' total net gaming revenues, of which the Tribes are required to pay 0.13% to Washington for "problem gambling education, awareness, and treatment in the State of Washington." Colville Compact Amendment, Appendix S, § 8.1; First Amendment to the Tribal/State Compact for Class III Gaming Between the Confederated Tribes of the Colville Reservation and the State of Washington, Appendix X2, §§ 14.4, 14.6 (Mar. 30, 2007), *available at* https://www.wsgc.wa.gov/sites/default/files/public/searchable-compacts/colville/D-2007%20Amendment%201%20%28App%20X2%29%20%28s%29.pdf.

C. The Tribes' Class III Gaming Operations

88. The Tribes currently operate 29 casinos on Indian lands in Washington. *See* Casino Locations, Washington State Gambling Comm'n,

available at https://www.wsgc.wa.gov/tribal-gaming/casino-locations. Of these 29 casinos, 23 are governed by compacts that Washington and the Tribes have amended to permit sports betting. *Id.*; Gaming Compacts, Washington State Gambling Comm'n, *available at* https://www.wsgc.wa.gov/tribal-gaming/gaming-compacts.

89. These casinos offer a range of class III games that are illegal for non-tribal entities to offer in Washington, including roulette, craps, and sports betting (among other games).

90. In 2019, the Tribes' net receipts from class III gaming were approximately $2.93 billion. Tribal Community Contributions at 11–12, Washington State Gambling Commission (May 12, 2022), *available at* https://wsgc.wa.gov/sites/default/files/public/05_2022_Tribal_Contributions.pdf?_ga=2.69626903.68622135.1656545003-700351475.1656545003. The Tribes' net receipts were approximately $2.75 billion in 2018 and approximately $2.56 billion in 2017. *See id.*

91. There are no non-tribal casinos in Washington that offer the full range of class III games that Washington permits tribal casinos to offer.

92. No non-tribal casinos in Washington offer roulette, craps, or sports betting.

III. Washington's Tribal Gaming Monopoly Violates Federal Law

A. The Federal Defendants' Approval Of Washington's Sports-Wagering Compact Amendments Violated Federal Law

93. The Secretary of the Interior's decision to approve the Compact Amendments was not in accordance with IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, or the equal-protection component of the Fifth Amendment's Due Process Clause, U.S. Const. amend. V, or the Tenth Amendment, *id.* amend. X.

94. IGRA requires the Secretary of the Interior to disapprove any tribal-state class III gaming compact that violates: (1) any provision of IGRA, (2) "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands," or (3) "the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B); *see also Amador Cnty.*, 640 F.3d at 383.

95. The Secretary of the Interior was obligated to disapprove the Compact Amendments for three independent reasons.

96. *First*, the Secretary of the Interior was obligated to disapprove the Compact Amendments because they purport to authorize tribal class III gaming that violates IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166.

97. IGRA provides that class III gaming on Indian lands is lawful "only if," among other things, the class III gaming activity is "located in a State that

permits such gaming for any purpose by any person, organization, or entity" and is conducted in conformance with a tribal-state compact "that is in effect." 25 U.S.C. § 2710(d)(1)(B)–(C).

98. Failure to comply with either condition renders class III gaming on Indian lands illegal under IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166. *See Pueblo of Santa Ana*, 104 F.3d at 1552.

99. IGRA's state-permission requirement prohibits tribal class III gaming monopolies by ensuring that each class III gaming activity remains illegal on Indian lands unless a State "permits" the same class III gaming activity by non-tribal entities.

100. IGRA's state-permission requirement has not been satisfied in Washington for sports betting because the State criminally prohibits such gaming by any non-tribal entities. *Compare* Wash. Rev. Code § 9.46.0364, *with id.* §§ 9.46.220–.222.

101. Washington's grant of a right to only "a federally recognized Indian tribe or tribes in the state of Washington" to "operate sports wagering on its Indian lands," Wash. Rev. Code § 9.46.0364, violates IGRA's state-permission requirement because Washington prohibits any non-tribal entities from offering sports betting, and thereby does not "permit[] such gaming for any purpose by any person, organization, or entity" as IGRA requires, 25 U.S.C. § 2710(d)(1)(B).

102. Neither the Compact Amendments nor any other state law can unilaterally "permit"—that is, authorize or legalize—sports betting solely on Indian

lands because IGRA makes clear that such authorization can occur only through IGRA's statutory compacting process.

103. Because Washington has not "permit[ted]" sports betting within the meaning of IGRA, 25 U.S.C. § 2710(d)(1)(B), sports betting remains illegal on Indian lands in Washington under IGRA and applicable federal criminal statutes. *See* 25 U.S.C. § 2710(d)(1); 15 U.S.C. § 1175; 18 U.S.C. § 1955; 18 U.S.C. § 1166.

104. Because the Compact Amendments purport to authorize the Tribes to offer class III gaming in Washington that federal law prohibits, the Compact Amendments violate federal law and are void.

105. Because the Compact Amendments violate federal law, the Governor of Washington had no authority to "enter[] into" them within the meaning of IGRA. 25 U.S.C. § 2710(d)(1)(C).

106. Because the Compact Amendments violate federal law and were not validly entered into, the Secretary was obligated to disapprove the Compact Amendments. 25 U.S.C. § 2710(d)(8)(B)(i).

107. By instead approving the Compact Amendments and purporting to authorize illegal tribal class III gaming, the Secretary violated IGRA. *See* 15 U.S.C. § 1175; 18 U.S.C. § 1955; 18 U.S.C. § 1166.

108. *Second*, the Secretary also was required to disapprove the Compact Amendments under IGRA because they violate the Constitution's guarantee of equal protection.

109. The Constitution's guarantee of equal protection mandates the equal treatment of people of all races and ancestries without discrimination or preference. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

110. The Compact Amendments discriminate on the basis of race and ancestry, in violation of equal-protection principles, by granting monopolies to Washington Indian tribes over sports betting.

111. By executing the Compact Amendments, Washington has purported to grant the Tribes a right to offer sports betting, an activity that Washington permits only tribal entities to offer. *See* Wash. Rev. Code § 9.46.0364.

112. At the same time, Washington criminally prohibits any entities other than those affiliated with Washington Indian tribes from offering sports betting in Washington. Wash. Rev. Code §§ 9.46.220–.222.

113. The Compact Amendments' grant of sports-betting monopolies to Washington Indian tribes is a racial and ancestral classification, as membership in a Washington Indian tribe depends on lineal descent from historical tribal rolls and often also a minimum blood quantum.

114. The Compact Amendments' race-based preference for Indian tribal sports betting is subject to strict scrutiny. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

115. The Compact Amendments' race-based preference does not fall within the narrow exception outlined in *Morton v. Mancari*, 417 U.S. 535 (1974),

because Congress has not authorized and could not authorize a State to grant Indian tribes a monopoly over a commercial activity that is unrelated to uniquely Indian interests, *see Williams v. Babbitt*, 115 F.3d 657, 665 (9th Cir. 1997).

116. The Compact Amendments' race-based preference for Indian tribal sports betting cannot survive strict scrutiny or even rational-basis review because it is unrelated to the furtherance of Congress's trust obligation to Indian tribes.

117. Thus, the Compact Amendments' race-based preference for Indian tribal sports betting violates the Constitution's guarantee of equal protection.

118. Because the Compact Amendments violate equal protection, the Governor of Washington lacked authority to "enter[] into" them within the meaning of IGRA. 25 U.S.C. § 2710(d)(1)(C).

119. Because the Compact Amendments violate equal protection and were not validly entered into, the Secretary was required to disapprove the Compact Amendments. 25 U.S.C. § 2710(d)(8)(B)(ii).

120. By instead approving the Compact Amendments and purporting to authorize a violation of equal protection, the Secretary violated IGRA.

121. In addition to violating IGRA, the Secretary's approval independently violated the equal-protection component of the Fifth Amendment's Due Process Clause because it blessed and facilitated Washington's unconstitutional race-based preference for Indian tribal sports betting.

122. *Third*, the Secretary also was required to disapprove the Compact Amendments because the process by which they were executed violated the Tenth Amendment.

123. "The legislative powers granted to Congress are sizable, but they are not unlimited." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). "[C]onspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States." *Id.*

124. IGRA's state-negotiation mandate issues a "direct order" to the States: IGRA directs that upon receiving a request from an Indian tribe to negotiate a class III gaming compact, "the State *shall* negotiate with the Indian tribe in good faith to enter into such a compact." 25 U.S.C. § 2710(d)(3)(A) (emphasis added). That sort of "direct order" violates the Constitution's anti-commandeering principle, and renders the process for entering into the Compact Amendments unlawful. *See Murphy*, 138 S. Ct. at 1476.

125. This state-negotiation mandate is not severable from the remainder of the Act. An unconstitutional provision is not severable when "the statute created in its absence is legislation that Congress would not have enacted." *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685 (1987). The compacting process is IGRA's centerpiece, and the state-negotiation mandate is what ensures that process takes place. Congress would not have enacted IGRA without this central requirement.

126. Because the Compact Amendments violated the Tenth Amendment and were not validly entered into, the Secretary was required to disapprove the Compact Amendments. 25 U.S.C. § 2710(d)(8)(B)(ii).

127. By instead approving the Compact Amendments and purporting to authorize a violation of the Tenth Amendment, the Secretary violated IGRA.

128. In addition, because the state-negotiation mandate is not severable from the remainder of the Act, none of IGRA's provisions can stand, and the Secretary lacked any authority to approve the Compact Amendments.

B. The State Defendants' Execution And Administration Of Washington's Tribal-State Class III Gaming Compacts Violates Federal Law

129. The Compact Amendments giving the Tribes a monopoly over sports betting violate IGRA, federal criminal gaming statutes, the Constitution's guarantee of equal protection, and the Tenth Amendment.

130. All of Washington's tribal-state Compacts—not just the recent Compact Amendments concerning sports betting—violate the Constitution's guarantee of equal protection because they give the Tribes a monopoly over many class III games, such as (but not limited to) roulette and craps, that non-tribal entities are criminally prohibited from offering. *See, e.g.*, Tulalip Compact at 4–5.

131. All of the tribal-state Compacts also violate the Tenth Amendment because the process for entering into them was undertaken in violation of the Constitution's anti-commandeering principle.

132. The Governor of Washington executed the Compacts and Compact Amendments, rendering them approved as a matter of state law.

133. The members of the Washington State Gambling Commission continue to administer the Compacts and Compact Amendments.

134. The Defendants' actions executing and administering the unlawful Compacts and Compact Amendments violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166, and aid and abet violations of the same, 18 U.S.C. § 2, by purporting to authorize and by facilitating tribal class III gaming that these federal statutes prohibit.

135. The Defendants' actions executing and administering the unlawful Compacts and Compact Amendments violate the Constitution's guarantee of equal protection by purporting to authorize and by facilitating Washington's race-based preference for tribal gaming.

136. The Defendants' actions executing and administering the unlawful Compacts and Compact Amendments violate the Tenth Amendment by continuing to administer agreements that were not lawfully entered into.

C. Washington's Criminal Prohibition Of Types Of Class III Gaming That It Permits Only Indian Tribes To Offer Violates Federal Law

137. Washington criminally prohibits most forms of class III gaming, including (but not limited to) roulette, craps, and sports betting. *See* Wash. Rev. Code §§ 9.46.220–.222; *id.* §§ 9.46.0305–.0361.

138. In the Compacts and Compact Amendments, however, Washington has purported to exempt the Tribes from the application of its criminal prohibitions on these forms of class III gaming. *See* Wash. Rev. Code §§ 9.46.360, 9.46.225; *see also id.* § 9.46.0364(2).

139. Because the application of Washington's criminal class III gaming prohibitions turns on the race and ancestry of the offender, Washington's continued enforcement of its class III gaming prohibitions against non-tribal entities violates the Constitution's guarantee of equal protection.

140. The Attorney General of Washington is authorized by state statute to investigate, direct the prosecution of, and prosecute violations of state criminal laws. Wash. Rev. Code § 43.10.090. The Governor of Washington is authorized to request that the Attorney General initiate criminal investigations and proceedings. *Id.* The members of the Washington State Gambling Commission are charged with investigating and enforcing Washington's criminal gaming laws. Wash. Rev. Code §§ 9.46.140, 9.46.210(3).

IV. Maverick's Injuries Caused By Washington's Tribal Gaming Monopoly

141. Maverick currently owns and operates 18 cardrooms in Washington. Maverick also owns casinos in Nevada and Colorado, which offer a range of class III gaming, including roulette, craps, sports betting, and dealer-assisted electronic table games.

142. Sports betting in the United States has seen extraordinary growth over the past several years.[1] The American Gaming Association reported that sports betting generated more than $1.5 billion in revenue in 2020, which represented a nearly 69% year-over-year growth rate.[2] Revenue from sports betting will continue to rise as consumer demand grows around the country.[3]

143. With sports betting becoming increasingly popular, Maverick would like to offer that form of gaming to the patrons of its Washington cardrooms. Maverick would also like to offer in Washington the kinds of class III games that its Nevada and Colorado casinos offer, including, but not

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[1] *See, e.g.*, David Purdum, *Sports Betting's Growth in U.S. 'Extraordinary'*, ESPN (May 14, 2020), https://www.espn.com/chalk/story/_/id/29174799/sports-betting-growth-us-extraordinary ("More than $20 billion has been bet with U.S. sportsbooks since the Supreme Court struck down the Professional and Amateur Sports Protection Act of 1992 on May 14, 2018.").

[2] *See Commercial Gaming Revenue Tracker: 2020 Fourth Quarter*, Am. Gaming Ass'n, https://www.americangaming.org/wp-content/uploads/2021/02/Q4-Email-PDF.pdf (last visited July 1, 2022).

[3] *See id.*

limited to, roulette, craps, and dealer-assisted electronic table games.[4] It would be economically viable and profitable for Maverick to offer games like roulette, craps, sports betting, and dealer-assisted electronic table games in Washington and Maverick seeks to do so, but Maverick is unable to proceed because of Washington's criminal prohibition of most forms of class III gaming unless conducted at an authorized tribal gaming facility. *See* Wash. Rev. Code §§ 9.46.0364, 9.46.0368, 9.46.220–.222.

144. Because the Tribes can offer these games (including roulette, craps, sports betting, and dealer-assisted electronic table games), but Maverick cannot, Maverick suffers competitive injury with tribal casinos. That injury includes increased advertising expenses, increased promotional expenses, and increased entertainment expenses that Maverick must undertake in order to compete with tribal casinos. It also includes lost revenue from customers who would frequent Maverick's cardrooms if they offered the class III games that they are currently prohibited from offering, but who instead frequent tribal casinos. Maverick also suffers a loss of goodwill by failing to offer the same set of products as its tribal competitors.

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[4] This Complaint often lists roulette, craps, and sports betting as examples of the types of class III games that Maverick wants to offer in Washington. In doing so, Maverick does not provide an exhaustive list of the class III games it wishes to offer but rather a few illustrative examples. In this action, Maverick seeks to vindicate its right to offer the full suite of class III games that Washington currently permits only Indian tribes to offer.

145. The Supreme Court "routinely recognizes probable economic injury resulting from [governmental actions] that alter competitive conditions as sufficient to satisfy the [Article III 'injury-in-fact' requirement] . . . . It follows logically that any . . . petitioner who is likely to suffer economic injury as a result of [governmental action] that changes market conditions satisfies this part of the standing test." *Clinton v. City of N.Y.*, 524 U.S. 417, 432–33 (1998) (alterations in original) (quoting 3 K. Davis & R. Pierce, Administrative Law Treatise 13–14 (3d ed. 1994)).

146. Maverick competes with other casinos, including tribal casinos, to offer the best and most attractive selection of games allowed by law.

147. But for Washington's tribal gaming monopoly, Maverick is able, ready, and prepared to expand its gaming offerings in Washington to include a wide variety of class III games, including (but not limited to) roulette, craps, sports betting, and dealer-assisted electronic table games.

148. Maverick has access to the capital needed to offer a wide variety of class III games in Washington, including roulette, craps, and sports betting, and to finance any additional facilities or purchase any necessary equipment.

149. As a company that predominantly operates in Washington, Maverick is familiar with the requirements of Washington's gaming laws and regulations.

150. Maverick would earn significant additional revenue if it could offer games such as craps, roulette, and sports betting, and it would also earn additional revenue if tribal casinos could *not* offer such games exclusively.

151. Maverick's successful class III gaming operations in Colorado and Nevada demonstrate that it has the necessary background and experience to offer additional class III games like roulette, craps, and sports betting in Washington.

152. Maverick is unable to take advantage of the commercial opportunities it has identified because Washington criminally prohibits most class III games if offered by non-tribal entities.

153. Due to the threat of enforcement of Washington's criminal laws, which prohibit most forms of class III gaming, Maverick is unable to offer the same forms of class III gaming as the Tribes. As a result, Maverick cannot establish or acquire gaming operations in Washington that can effectively compete with the Tribes' operations.

154. The Defendants' unlawful execution, approval, and administration of the Compacts and Compact Amendments also alters competitive conditions in a way that is unfavorable to Maverick.

155. The Secretary's unlawful approval of the Compacts and the Compact Amendments has facilitated and continues to facilitate the Tribes' unlawful class III gaming activities. Those activities harm Maverick by making it more difficult for Maverick to grow its successful gaming offerings in

Washington because Maverick cannot compete on an equal footing with the Tribes' much broader gaming offerings.

156. The Secretary's unlawful approval of the Compacts and the Compact Amendments has resulted in the deprivation of Maverick's substantive rights under constitutional equal-protection principles and IGRA to compete on equal terms with the Tribes to offer class III gaming in Washington free from discrimination on the basis of race and ancestry.

157. If Washington did not limit most forms of class III gaming to tribal casinos, Maverick would offer a wide range of class III games (including roulette, craps, and sports betting) at its Washington cardrooms and increase its commercial casino revenue, and it would no longer suffer the violation of its equal-protection rights.

158. If Washington applied its prohibition of most forms of class III gaming to the Tribes and non-tribal entities alike, many patrons of Washington's tribal casinos would instead frequent Maverick's Washington cardrooms, increasing Maverick's commercial casino revenue.

159. This discrimination, on its own, is a cognizable injury in fact. As the Supreme Court has explained, discrimination that results in an "inability to compete on an equal footing" itself is an injury in fact. *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993).

160. Enjoining Washington from enforcing its tribal class III gaming monopoly would either permit Maverick to expand its operations in Washington or would increase the number of patrons at Maverick's existing Washington cardrooms.

161. Washington's tribal class III gaming monopoly exists only because the Secretary unlawfully approved the Compacts and Compact Amendments.

162. If the Secretary had disapproved the Compacts and Compact Amendments, Washington would not be able to enforce its tribal class III gaming monopoly.

163. Vacating the Secretary's approval would make Washington's tribal class III gaming monopoly unlawful, allowing Maverick to increase its commercial casino revenue either by expanding its gaming offerings in Washington or by benefitting from increased patronage at its Washington cardrooms due to the elimination of the Tribes' competitive advantage.

COUNT ONE:

The Administrative Procedure Act (Not in Accordance with Law – IGRA, Equal Protection, and the Tenth Amendment)

164. Maverick incorporates all preceding paragraphs by reference.

165. The Department of the Interior and the Secretary of the Interior are "agencies" under the APA. 5 U.S.C. § 551(1).

166. The APA prohibits agency actions that are "not in accordance with law." 5 U.S.C. § 706(2)(A).

167. Federal law obligated the Secretary of the Interior to disapprove Washington's sports-betting Compact Amendments.

168. *First*, the Secretary of the Interior was obligated to disapprove the Compact Amendments because they purport to authorize tribal class III gaming that violates IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166.

169. *Second*, the Secretary also was required to disapprove the Compact Amendments under IGRA and the equal-protection component of the Fifth Amendment's Due Process Clause because they violate the Constitution's guarantee of equal protection.

170. *Third*, the Secretary also was required to disapprove the Compact Amendments because the process by which they were executed violated the Tenth Amendment.

171. The Secretary's approval of the Compact Amendments constitutes "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704.

172. Maverick has suffered a legal wrong or has been adversely affected or aggrieved by the Secretary's approval of the Compact Amendments. 5 U.S.C. § 702.

173. The Secretary's approval of the Compact Amendments has resulted in the deprivation of Maverick's substantive rights under equal-protection

principles and IGRA to compete on equal terms with the Tribes to offer sports betting in Washington free from discrimination on the basis of race or ancestry.

174. It would be economically viable for Maverick to offer sports betting in Washington and Maverick seeks to do so, but Maverick cannot offer sports betting because of Washington's tribal sports-betting monopoly.

175. The Secretary's approval of the Compact Amendments also has facilitated and continues to facilitate the Tribes' unlawful sports-betting offerings. Those activities harm Maverick by making it more difficult for Maverick to effectively compete with the Tribes' much broader gaming offerings.

176. Maverick therefore is entitled to an order: (1) declaring that the Compact Amendments violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment, and therefore were not validly entered into and are not in effect; (2) declaring that the Secretary's approval of the Compact Amendments violated IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment; (3) setting aside and vacating the Secretary's approval of the Compact Amendments; (4) declaring that the Tribes' sports-betting activities violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166; and (5) awarding nominal damages, reasonable costs (including attorneys' fees), and any other relief this Court deems just and proper.

COUNT TWO:

42 U.S.C. § 1983, Equity, Declaratory Judgment Act (Violation of IGRA, Equal Protection, and the Tenth Amendment)

177. Maverick incorporates all preceding paragraphs by reference.

178. 42 U.S.C. § 1983 provides private parties a cause of action for declaratory and injunctive relief against any person who, under color of state law, deprives them of rights guaranteed by the U.S. Constitution or a federal statute.

179. Courts of equity likewise provide private parties a cause of action to seek declaratory and injunctive relief against state officials that violate federal law. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015); *Ex parte Young*, 209 U.S. 123, 127 (1908).

180. The Declaratory Judgment Act provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

181. The Defendants' actions executing and administering the unlawful Compacts and Compact Amendments violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166, and aid and abet violations of the same, 18 U.S.C. § 2, by purporting to authorize and by facilitating tribal class III gaming that these federal statutes prohibit.

182. The Defendants' actions executing and administering the unlawful Compacts and Compact Amendments violate the Constitution's guarantee of equal protection by purporting to authorize and by facilitating Washington's race-based preference for tribal gaming.

183. The Defendants' actions executing and administering the unlawful Compacts and Compact Amendments violate the Tenth Amendment by continuing to administer agreements that were not lawfully entered into.

184. The Defendants' unlawful actions executing and administering the Compacts and Compact Amendments have directly, personally, and substantially injured Maverick.

185. The Defendants' actions have deprived and continue to deprive Maverick of its substantive rights under the Constitution's guarantee of equal protection and IGRA to compete on equal terms with the Tribes to offer class III gaming in Washington free from discrimination on the basis of race or ancestry.

186. As detailed above, but for Washington's tribal monopoly, Maverick is able, ready, and prepared to expand its class III gaming offerings in Washington to include games such as roulette, craps, and sports betting.

187. The Defendants' actions also have facilitated and continue to facilitate the Tribes' unlawful class III gaming activities. Those activities harm Maverick by making it more difficult for Maverick to compete with the Tribes' much broader gaming offerings in Washington. Declaring that the

Compacts and Compact Amendments are illegal and void and enjoining Defendants from enforcing them would eliminate the Tribes' class III gaming monopoly, prohibit the Tribes from offering class III gaming that Washington does not permit non-tribal entities to offer, and redress Maverick's injuries by ensuring that it can compete with the Tribes on equal footing.

188. These injuries give rise to a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

189. Maverick therefore seeks a declaration: (1) that the Compacts and Compact Amendments violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment, and therefore were not validly entered into and are not in effect; (2) that the Governor's execution of the Compacts and Compact Amendments violated IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment, and the Compacts and Compact Amendments are therefore void; (3) that the continued administration of the Compacts and Compact Amendments by the members of the Washington State Gambling Commission violates IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment; and (4) that the Tribes' class III gaming activities violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166.

190. Maverick also seeks an injunction: (1) prohibiting the members of the Washington State Gambling Commission from continuing to administer the Compacts and Compact Amendments; and (2) prohibiting the Governor from entering into any new class III gaming compacts with the Tribes granting them exclusive rights to engage in any form of class III gaming.

191. Maverick also seeks an award of nominal damages, reasonable costs (including attorneys' fees), and any other relief this Court deems just and proper.

COUNT THREE:

42 U.S.C. § 1983, Equity, Declaratory Judgment Act (Violation of Equal Protection)

192. Maverick incorporates all preceding paragraphs by reference.

193. 42 U.S.C. § 1983 provides private parties a cause of action for declaratory and injunctive relief against any person who, under color of state law, deprives them of rights guaranteed by the U.S. Constitution or a federal statute.

194. Courts of equity likewise provide private parties a cause of action to seek declaratory and injunctive relief against state officials that violate federal law. *See Armstrong*, 575 U.S. at 326; *Ex parte Young*, 209 U.S. at 127.

195. The Declaratory Judgment Act provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any

interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

196. The Constitution's guarantee of equal protection mandates the equal treatment of people of all races and ancestries without discrimination or preference.

197. Washington criminally prohibits most forms of class III gaming, including roulette, craps, and sports betting. *See* Wash. Rev. Code §§ 9.46.220–.222; *id.* §§ 9.46.0305–.0361.

198. In the Compacts and Compact Amendments, however, Washington has purported to exempt the Tribes from the application of its criminal prohibitions on these forms of class III gaming. *See* Wash. Rev. Code §§ 9.46.360, 9.46.225; *see also id.* § 9.46.0364(2).

199. Because the application of Washington's criminal class III gaming prohibitions turns on the race and ancestry of the offender, Washington's continued enforcement of its class III gaming prohibitions against non-tribal entities violates the Constitution's guarantee of equal protection.

200. The Defendants' potential enforcement of Washington's racially discriminatory criminal gaming laws has directly, personally, and substantially injured Maverick.

201. The Defendants' discriminatory application and enforcement of Washington's criminal laws prohibiting these forms of class III gaming deprives Maverick of its right under the Constitution's guarantee of equal protection to compete on equal

terms with the Tribes to offer class III gaming in Washington free from discrimination on the basis of race or ancestry.

202. As detailed above, but for Washington's tribal monopoly, Maverick is able, ready, and prepared to expand its gaming offerings in Washington to include games such as roulette, craps, and sports betting.

203. Due to the threat of enforcement of Washington's criminal laws, which prohibit most forms of class III gaming, Maverick is unable to offer the same forms of class III gaming as the Tribes. As a result, Maverick cannot establish or acquire gaming operations in Washington that can effectively compete with the Tribes' operations.

204. These injuries give rise to a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

205. Maverick therefore seeks a declaration that the Defendants' continued enforcement of Washington's criminal laws prohibiting class III gaming—including roulette, craps, and sports betting—violates the Constitution's guarantee of equal protection, and an injunction prohibiting the Defendants from enforcing those laws against Maverick.

206. Maverick also seeks an award of nominal damages, reasonable costs (including attorneys' fees), and any other relief this Court deems just and proper.

PRAYER FOR RELIEF

207. Maverick demands a judgment against the Defendants as follows:

1. Declaring that the Compacts and Compact Amendments violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment, and therefore are void, were not validly entered into, and are not in effect;

2. Declaring that the Secretary of the Interior's approval of the Compacts and Compact Amendments; the Governor's execution of the Compacts and Compact Amendments; and the continued administration of the Compacts and Compact Amendments by the members of the Washington State Gambling Commission violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, 18 U.S.C. § 1166, the Constitution's guarantee of equal protection, and the Tenth Amendment;

3. Declaring that the continued enforcement of Washington's criminal laws prohibiting class III gaming against Maverick violates the Constitution's guarantee of equal protection;

4. Declaring that the Tribes' class III gaming activities violate IGRA, 15 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166;

5. Vacating and setting aside the Secretary of the Interior's approval of the Compacts and Compact Amendments;

6. Enjoining the continued administration of the Compacts and Compact Amendments by the members of the Washington State Gambling Commission;

7. Enjoining the Governor, the Attorney General, and the members of the Washington State Gambling Commission from enforcing against Maverick Washington's criminal laws prohibiting class III gaming;

8. Issuing all process necessary and appropriate to postpone further administration of the Compacts and Compact Amendments and prevent enforcement against Maverick of Washington's criminal laws prohibiting class III gaming pending the conclusion of this case;

9. Awarding Maverick its reasonable costs, including attorneys' fees, incurred in bringing this action;

10. Awarding Maverick nominal damages; and

11. Granting such other and further relief as this Court deems just and proper.

DATED July 5, 2022

BRENNAN LEGAL, PLLC

By: *s/ Thomas M. Brennan*
Thomas M. Brennan, WSBA No. 30662
P.O. Box 1384
144 Railroad Ave. S., Suite 308
Edmonds, WA 98020
Phone: (425) 967-3550
Email: tom@brennanlegalpllc.com

GIBSON, DUNN & CRUTCHER LLP

By: *s/ Theodore B. Olson*
By: *s/ Matthew D. McGill*
By: *s/ Lochlan F. Shelfer*
Theodore B. Olson, D.C. Bar No. 367456
Matthew D. McGill, D.C. Bar No. 481430
Lochlan F. Shelfer, D.C. Bar No. 1029799
1050 Connecticut Avenue, N.W., Suite 900
Washington, D.C. 20036-5303
Phone: (202) 955-8668
Email: tolson@gibsondunn.com
Email: mmcgill@gibsondunn.com
Email: lshelfer@gibsondunn.com

Attorneys for Plaintiff Maverick Gaming LLC

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which sends notification of the filing to all counsel of record.

DATED July 5, 2022.

/s/ Thomas M. Brennan
Thomas M. Brennan