No. 24-1161

In the Supreme Court of the United States

MAVERICK GAMING LLC, PETITIONER,

v.

UNITED STATES OF AMERICA, ET AL.,

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, an Indian tribe may engage in certain forms of gaming on Indian lands only if, among other things, the tribe and the State in which the gaming occurs enter into a compact that is approved by the Secretary of the Interior. Petitioner brought this suit against the Secretary and others after the Secretary approved a series of recent amendments to IGRA compacts between the State of Washington and various Indian tribes, addressing sports gambling. As relevant here, petitioner contended that the Secretary's approvals were unlawful and should be vacated under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* The Shoalwater Bay Indian Tribe, which was a party to one of the compacts at issue, intervened for the limited purpose of asserting that petitioner's suit should be dismissed under Rule 19 of the Federal Rules of Civil Procedure. The district court agreed, concluding that the Tribe was a necessary and indispensable party under Rule 19 and that the Tribe could not be joined (without its consent) because of tribal sovereign immunity. The court of appeals affirmed. The question presented is:

Whether and in what circumstances Rule 19 requires the dismissal of an APA claim against a federal officer or agency for failure to join an Indian tribe that claims an interest in the subject of the claim.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 123 F.4th 960. The opinion of the district court (Pet. App. 50a-67a) is reported at 658 F. Supp. 3d 966.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 2024. On February 19, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including May 12, 2025, and the petition was filed on May 9, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The question presented in this case concerns the application of Rule 19 of the Federal Rules of Civil Proce-

dure in the context of a suit challenging federal agency action under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq*. The APA authorizes judicial review of final agency action at the behest of a person "adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. 702. In a series of recent cases, the Ninth Circuit has upheld the dismissal of APA claims on the theory that, under Rule 19, an Indian tribe asserting an interest in the subject of the litigation is a necessary and indispensable party that cannot be joined because of tribal sovereign immunity. Here, the district court applied those precedents to dismiss petitioner's APA challenge to an action by the Secretary of the Interior under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, and the court of appeals affirmed.

1. In 1988, "Congress adopted IGRA in response to this Court's decision in *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 221-222 (1987), which held that States lacked any regulatory authority over gaming on Indian lands." *Michigan* v. *Bay Mills Indian Community*, 572 U.S. 782, 794 (2014). IGRA establishes a nationwide regulatory framework for tribal gaming "on Indian lands." *Id.* at 795.

IGRA divides gaming activities into three classes. 25 U.S.C. 2703(6)-(8). This case concerns Class III gaming, which "includes such things as slot machines, casino games, banking card games, dog racing, and lotteries," *Seminole Tribe* v. *Florida*, 517 U.S. 44, 48, (1996), as well as certain forms of sports gambling, see 25 C.F.R. 502.4(c). Class III gaming activities are generally "lawful on Indian lands only if such activities" are conducted pursuant to a "compact entered into by the Indian tribe

and the State" in which the Indian lands are located. 25 U.S.C. 2710(d)(1)(C).

IGRA sets forth a list of topics that such a compact "may include." 25 U.S.C. 2710(d)(3)(C). The statute otherwise largely leaves the substance of gaming compacts to be determined by the tribes and States that enter into them, and it provides no direct role for the federal government in the compact negotiation process. But after a tribe and a State enter into a "compact governing gaming activities on the Indian lands of the Indian tribe," the compact may not take effect unless it is approved by the Secretary of the Interior. 25 U.S.C. 2710(d)(3)(B).

The Secretary's role in reviewing IGRA gaming compacts is limited. IGRA specifies that the Secretary may disapprove a gaming compact "only if" the 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 obligation of the United States to Indians." 25 U.S.C. 2710(d)(8)(B). If the Secretary does not approve or disapprove a compact within 45 days of its submission, the compact "shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with" IGRA. 25 U.S.C. 2710(d)(8)(C).

2. After IGRA took effect, the State of Washington enacted legislation directing the State's gambling commission to negotiate "compacts for class III gaming on behalf of the state with federally recognized Indian tribes in the state." Wash. Rev. Code § 9.46.360(2) (1992); see Pet. App. 11a. Washington has since entered into Class III gaming compacts with 29 federally recognized Indian tribes in the State, and the Secretary has approved those compacts. Pet. App. 11a-12a. "Class III

gaming has been a source of great economic value to the tribes." *Id.* at 12a.

Those initial IGRA compacts did not authorize any of the compacting tribes to offer commercial sports gambling. Pet. App. 12a-13a. At the time, a separate federal statute was understood to prohibit States from authorizing most forms of commercial sports gambling, subject to a grandfathering exception not applicable to Washington. See *Murphy* v. *National Collegiate Athletic Ass'n*, 584 U.S. 453, 461-462 (2018). In 2018, however, this Court held that the federal statute prohibiting States from authorizing commercial sports gambling was unconstitutional under the anticommandeering doctrine. *Id.* at 474.

Washington then reconsidered whether and to what extent to permit sports gambling in the State, including on Indian lands. Pet. App. 12a. The State's legislature ultimately chose a middle ground: amending state law in 2020 to permit Indian tribes to seek amendments to their existing IGRA compacts to authorize sports gambling on Indian lands, but declining to adopt proposals that would have allowed similar activities at cardrooms and racetracks located outside Indian lands. See *id.* at 12a-13a; Wash. Rev. Code § 9.46.0364 (2020).

"Since then, twenty of Washington's federally recognized tribes" have entered into IGRA compact amendments with the State to authorize sports gambling, and the Secretary has approved those amendments. Pet. App. 13a. As particularly relevant here, the Shoalwater Bay Indian Tribe (Tribe), entered into such an amendment, which the Secretary approved in 2021, to authorize sports gambling at the Tribe's casino on its reservation in western Washington. 86 Fed. Reg. 51,373 (Sept. 15, 2021).

3. a. Petitioner "is a casino gaming company" that "owns several hotels and casinos in Nevada and Colorado." Pet. App. 6a. In 2019, petitioner "acquired nineteen cardrooms in the State of Washington," and petitioner participated in the State's post-*Murphy* legislative process to advocate that commercial sports gambling be authorized "at licensed cardrooms in addition to tribal casinos." *Id.* at 6a, 12a-13a. In 2022, after the State chose instead to authorize sports gambling only on Indian lands under the IGRA framework, petitioner brought this suit in the United States District Court for the District of Columbia. *Id.* at 16a.

Petitioner's operative complaint contained three counts. Pet. App. 16a. In the first count, petitioner alleged that the Secretary's approval of the compact amendments relating to sports gambling in Washington was "not in accordance with law" and should be vacated or set aside under the APA. Am. Compl. ¶ 166 (quoting 5 U.S.C. 706(2)(A)). As relevant here, petitioner maintained that the compact amendments violated both IGRA and constitutional equal-protection principles by authorizing Indian tribes but no one else to engage in Class III gaming. *Id.* ¶¶ 168-170. In counts two and three, petitioner invoked 42 U.S.C. 1983 and asserted that state officials had likewise violated IGRA and equal protection in authorizing casino-style gambling only by Indian tribes. *Id.* ¶¶ 177-206. The complaint named as defendants the United States, the Department of the Interior, and various federal and state officials—but not any of the compacting tribes or any tribal officials. *Id.* ¶¶ 8-24; see Pet. App. 16a.

b. The state officials successfully moved to transfer the case from the District of Columbia to the Western District of Washington. Pet. App. 17a. After the trans-

fer, the Tribe "intervene[d] for the limited purpose of filing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(7) contending that [the Tribe] is a required party under Federal Rule of Civil Procedure 19." *Id.* at 18a.

Rule 19(a), entitled "Persons required to be joined if feasible," provides that "[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" certain conditions are satisfied. Fed. R. Civ. P. 19(a)(1) (capitalization altered). As relevant here, such 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).

Rule 19(b) provides that "[i]f 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." Fed. R. Civ. P. 19(b). Rule 19(b) further provides that "[t]he factors for the court to consider" in making that determination 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.

Ibid.

c. The district court granted the Tribe's motion to dismiss. Pet. App. 50a-67a. The court observed that "the Ninth Circuit has repeatedly held that tribes are necessary parties in third party suits challenging federal agency actions where the suits may negatively implicate tribal economic or sovereign interests." *Id.* at 55a; see *id.* at 55a-56a (citing examples). The court viewed those precedents as controlling here. In particular, the court found that "none of the [other] parties," including the United States, could adequately represent the absent Tribe's interests, *id.* at 57a, and that involuntary joinder of the Tribe was not feasible in light of the Tribe's sovereign immunity, *id.* at 62a-63a. After considering the factors listed in Rule 19(b), the court concluded that dismissal was warranted. *Id.* at 63a-66a.[1]

4. a. The court of appeals affirmed. Pet. App. 1a-49a. The court began from the premise that the Tribe has a "legally protected interest" in the subject of the suit, *id.* at 21a (citation omitted), given "the importance of tribal gaming compacts and the revenue that these compacts provide to Washington's federally recognized tribes, as well as the long history of tribal gaming and

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[1] In both the district court and in the subsequent appeal, the federal defendants took the position that controlling Ninth Circuit precedents on Rule 19 required dismissal of petitioner's complaint, while also explaining that the United States disagrees with those precedents. See Pet. App. 55a; Gov't C.A. Br. 2.

its associated benefits for the tribes and their surrounding communities," *ibid.* Indeed, the court found that petitioner had conceded that the Tribe has a "legitimate interest in the legality of its gaming compact and sports betting amendment." *Ibid.*

The court of appeals also agreed with the district court that the federal defendants could not adequately represent the interests of the Tribe. Pet. App. 22a-32a. The court of appeals viewed that issue as largely controlled by its prior decisions in *Diné Citizens Against Ruining our Environment* v. *Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), cert. denied, 141 S. Ct. 161 (2020), and *Klamath Irrigation District* v. *United States Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022), cert. denied, 144 S. Ct. 342 (2023). As the court explained, it had concluded in each of those cases that an absent tribe was a required party under Rule 19, notwithstanding the federal government's argument that its own interest in defending the challenged agency action would adequately protect any tribal interest. See Pet. App. 24a-25a. The court saw no reason for a different result here. *Id.* at 26a.

The court of appeals acknowledged that the "federal government and the Tribe undoubtedly 'share an interest in the ultimate outcome of this case,'" in that "they both seek to defend the Secretary's approval of the compacts and sports betting compact amendments." Pet. App. 26a (quoting *Klamath Irrigation*, 48 F.4th at 945). But the court understood its precedent to require treating the Tribe's interest as "meaningfully distinct" because the Tribe would defend the lawfulness of the Secretary's action in order to safeguard the Tribe's own economic and sovereign interests. *Ibid.*; see *id.* at 27a-29a. The court also identified two specific reasons to

conclude that the United States could not adequately represent the Tribe's interests. First, the United States would be unwilling to make one argument in defense of the lawfulness of the Tribe's gaming activities that the Tribe itself would raise—namely, that "the Tribe can lawfully offer class III gaming even without a compact." *Id.* at 30a-31a.[2] Second, the court accepted the Tribe's view that an actual conflict of interest exists between the Tribe and the federal government because, "in the late 1990s," the government took steps to prevent the Tribe from engaging in unlawful Class III gaming in the absence of an approved IGRA compact. *Id.* at 31a.

The court of appeals further concluded that the Tribe could not be involuntarily joined in light of tribal sovereign immunity, Pet. App. 32a-37a, and that the litigation could not proceed "in equity and good conscience" without the Tribe, *id.* at 37a (quoting Fed. R. Civ. P. 19(b)). Petitioner had offered on appeal to proceed only with its APA claim against the federal defendants as a way of lessening any potential prejudice to the absent Tribe. *Id.* at 39a. The court recognized that "a judgment invalidating [the Secretary's] approval" of the compact amendments would "provide adequate relief as between the Federal Defendants" and petitioner. *Id.* at 40a. But the court found that other factors nonetheless tip in favor of dismissal. *Id.* at 38a-39a.

b. Judge Miller joined the court's opinion in full and also issued a concurring opinion. Pet. App. 44a-49a. In his view, the panel's decision is a correct application of circuit precedent, but that body of precedent "has not

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[2] The court of appeals "offer[ed] no view as to the merits" of that argument, even while explaining that the federal government is unlikely to endorse it because it "is contrary to federal law." Pet. App. 31a n.17 (citing 25 U.S.C. 2710(d)(1)(C)).

adequately considered the distinctive character of litigation under the [APA]." *Id.* at 44a. He explained that, "[i]n an APA case, the only question to be decided is whether the agency's action should be set aside," and the agency's action must generally rise or fall based on "the rationale articulated by the agency itself." *Id.* at 46a. He also explained that the APA "does not authorize relief against any party other than the agency." *Ibid.* Judge Miller acknowledged that an adverse judgment against a federal agency in an APA suit may have "collateral consequences" for other persons and entities beyond the agency itself, including Indian tribes. *Ibid.* But he viewed the interests of any such third parties as subsidiary to the "federal government's primary interest in seeing its own actions upheld." *Id.* at 47a.

Judge Miller thus questioned the "required-parties approach" that the circuit adopted in *Diné Citizens* and has applied in later cases involving Indian tribes. Pet. App. 47a. He noted that one "'anomalous result'" of the circuit's approach has been to foreclose judicial review under the APA except when the relevant tribe consents, which contravenes "Congress's directive that a person 'adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof.'" *Ibid.* (citations omitted). He also stated that the court of appeals had "created a circuit conflict," citing decisions by other courts declining to treat particular tribes as indispensable parties. *Ibid.*; see *id.* at 47a-48a (discussing *Sac & Fox Nation of Mo.* v. *Norton*, 240 F.3d 1250, 1259-1260 (10th Cir. 2001), cert. denied, 534 U.S. 1078 (2002), and *Ramah Navajo Sch. Bd., Inc.* v. *Babbitt*, 87 F.3d 1338, 1350-1352 (D.C. Cir. 1996)).

Finally, Judge Miller expressed the view that circuit precedent on Rule 19 would not require the dismissal of

count three of petitioner's complaint, which asserts an equal-protection violation by state officials, but petitioner failed to preserve any argument for distinguishing that count from its APA claim. Pet. App. 48a-49a.

ARGUMENT

Petitioner contends (Pet. 17-31) that the court of appeals erred in affirming the dismissal of petitioner's APA claim on Rule 19 grounds, and that the court's approach to Rule 19 in recent APA cases involving Indian tribes conflicts with the approach of other courts of appeals. Petitioner is correct that the Ninth Circuit has adopted an erroneous understanding of Rule 19 that no other court of appeals has endorsed. As the government has consistently maintained, the Ninth Circuit's approach fails to take proper account of "the distinctive character of litigation under the" APA. Pet. App. 44a (Miller, J., concurring); see Pet. 23 (citing prior briefs). When a proper plaintiff aggrieved by a federal agency's final action brings suit under the APA seeking judicial review of that action, the relevant federal agency or officer is generally the only required party under Rule 19.

The contrary approach to Rule 19 reflected in recent decisions of the Ninth Circuit is troubling and may warrant this Court's review in an appropriate case. But this case would be a flawed vehicle for addressing the issue for several reasons, including petitioner's concessions in the litigation below and petitioner's recent filing for Chapter 11 bankruptcy. The Rule 19 question continues to arise in other pending cases and is therefore reasonably likely to come before this Court again in a superior vehicle. Accordingly, the petition for a writ of certiorari should be denied.

A. The Ninth Circuit has adopted an incorrect understanding of Rule 19 as applied to APA litigation.

Rule 19 generally does not require the joinder of any non-federal third parties when a plaintiff brings an APA claim against a federal officer or agency seeking review of federal agency action. The federal government itself is ordinarily the only necessary and indispensable party to defend an APA claim

1. a. Rule 19(a) provides in relevant part that a person who can be feasibly joined to a civil action in federal court is required to be joined 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). In many APA cases, no third party will meet that standard.

The APA authorizes litigation only against the "Government of the United States," 5 U.S.C. 701(b)(1) (defining "agency"), and only for the limited purpose of seeking equitable relief with respect to final agency action. Specifically, a person "adversely affected or aggrieved by agency action within the meaning of a relevant statute" may invoke the APA's cause of action to seek judicial review of that action, as long as the person is "seeking relief other than money damages." 5 U.S.C. 702. The proper defendant in the action is the relevant federal agency or officer, or the United States itself. *Ibid.*; see 5 U.S.C. 703 ("If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer."). The APA "does not authorize relief against any party other than the agency." Pet. App. 46a (Miller, J., concurring).

Given the limited nature of the APA's cause of action, many APA challenges will occur in which no third party

has any cognizable "interest relating to the subject of the action." Fed. R. Civ. P. 19(a)(1)(B). As the court of appeals recognized, "the interest of the absent party must be a *legally protected* interest and not merely some stake in the outcome of the litigation." Pet. App. 21a (emphasis added; citation omitted). Regulated parties and members of the public may care deeply about whether a given agency action is upheld on judicial review, but such a rooting interest is not, standing alone, sufficient to confer required-party status.

Even assuming some cognizable third-party interest in a given APA suit, the government's own interest in defending the action will generally ensure that any such third-party interest is protected. See, *e.g.*, *Ramah Navajo Sch. Bd., Inc.* v. *Babbitt*, 87 F.3d 1338, 1351 (D.C. Cir. 1996); *Sac & Fox Nation of Mo.* v. *Norton*, 240 F.3d 1250, 1258-1259 (10th Cir. 2001), cert. denied, 534 U.S. 1078 (2002). That is particularly true in light of the background principle of administrative law that an agency's action may be sustained only on the grounds "upon which the record discloses that its action was based." *SEC* v. *Chenery Corp.*, 318 U.S. 80, 87 (1943). In an APA suit, the United States is typically defending the actions of one of its officers or agencies on the same grounds that the officer or agency already articulated on the record in taking official action under federal law. When the government undertakes that defense, it necessarily also protects the interests any third parties may have in seeing the same agency action upheld.

b. Rule 19(b) further militates against dismissing an APA suit for failure to join an absent non-federal third party. If an absent third party satisfies the standard for required-party status in Rule 19(a) and cannot be feasibly joined, then Rule 19(b) instructs the court to

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). That equitable inquiry must take into account that "[t]he APA establishes a basic presumption of judicial review for one suffering legal wrong because of agency action." *Department of Homeland Sec.* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 16-17 (2020) (brackets, citation, and internal quotation marks omitted). Applying Rule 19 to dismiss an otherwise proper APA claim for failure to join a non-federal third party undermines Congress's judgment that a person aggrieved by final agency action "should have access to judicial review." *Corner Post, Inc.* v. *Board of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 824 (2024).

The illustrative factors listed in Rule 19(b) point in the same direction. First, in the APA context, a "judgment rendered in the [third party's] absence" would not materially "prejudice that person." Fed. R. Civ. P. 19(b)(1). When a third party claims an interest in seeing an agency's action upheld, a judgment vacating the action could eliminate any benefit that the action would have provided to that third party. But any such benefit would have been contingent, as a practical matter, while the agency action was subject to APA judicial review. And because APA relief runs only against the government, a judgment holding the agency action unlawful would not of its own force make the third party any worse off than if the agency had never taken the action in the first place. Second, "a judgment rendered in the person's absence would be adequate," Fed. R. Civ. P. 19(b)(3), in an APA action because such a judgment would "settl[e] [the] dispute[]" as between the parties in suit, *Provident Tradesmens Bank & Trust Co.* v. *Pat-*

terson, 390 U.S. 102, 111 (1968). And third, an APA plaintiff would not typically "have an adequate remedy if the action were dismissed for nonjoinder," Fed. R. Civ. P. 19(b)(4), because often no "satisfactory alternative forum exists," *Provident Tradesmens Bank*, 390 U.S. at 109.

c. This Court's traditional equitable practices also counsel against dismissing an APA suit on Rule 19 grounds. Rule 19's "terminology and practice relating to joinder developed from equity and equitable doctrines." 7 Charles Alan Wright et al., *Federal Practice and Procedure* § 1601, at 5 (4th ed. 2019). In an early and influential formulation, this Court stated in *Shields* v. *Barrow*, 58 U.S. (17 How.) 130 (1855), that an absent party is indispensable to a proceeding in equity if the person has "an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience," *id.* at 139; see, *e.g.*, *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U.S. 77, 80 (1920) (applying *Shields*). The rule's reference to "equity and good conscience," Fed. R. Civ. P. 19(b), was drawn from that historical tradition.

That same tradition makes clear that the equitable calculus is different for joinder disputes involving "public rights," as opposed to purely "private rights." *National Licorice Co.* v. *NLRB*, 309 U.S. 350, 363 (1940). Thus, in *National Licorice*, the Court held that the National Labor Relations Board could adjudicate the lawfulness of an employment contract in an agency proceeding involving only the employer, notwithstanding the principle that a court will "refuse to adjudicate the rights of some of the parties to [a] contract if the others

are not before it." *Ibid.* The Court explained that the Board's proceeding against the employer sought in part to "vindicate[]" a "public right," created by statute. *Id.* at 366. To allow joinder rules to defeat the agency's efforts to vindicate a public right would be inequitable. See *ibid.*

The public-rights doctrine also generally applies in suits for judicial review of agency action under the APA, when it is not feasible to join third parties who benefit from the agency action. See, *e.g.*, *Southern Utah Wilderness Alliance* v. *Kempthorne*, 525 F.3d 966, 967, 969 n.2 (10th Cir. 2008) (private lessees are not indispensable parties in APA challenge to agency decision to issue the leases); *Jeffries* v. *Georgia Residential Fin. Auth.*, 678 F.2d 919, 929 (11th Cir.) ("[W]hen litigation seeks vindication of a public right, third persons who could be adversely affected by a decision favorable to the plaintiff do not thereby become indispensable parties."), cert. denied, 459 U.S. 971 (1982).

None of that is to say that the APA categorically forbids dismissal on Rule 19 grounds. Cf. 5 U.S.C. 702 ("Nothing herein * * * affects * * * the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground[.]"). But, given the APA's general purposes and its public-rights underpinnings, permitting a suit against the federal government to proceed on a claim for APA review without an absent person who cannot be joined as a defendant would ordinarily be consistent with "equity and good conscience." Fed. R. Civ. P. 19(b).

2. Beginning with *Diné Citizens Against Ruining our Environment* v. *Bureau of Indian Affairs*, 932 F.3d 843 (2019), cert. denied, 141 S. Ct. 161 (2020), the Ninth Circuit has wrongly concluded in a series of cases that

the United States cannot adequately represent the interests of an absent Indian tribe in APA litigation in which the tribe claims an interest. Those decisions do not reflect a sound understanding of Rule 19.

a. In *Diné Citizens*, the plaintiff sought APA review of various agency actions taken in connection with the reauthorization of "coal mining activities on land reserved to the Navajo Nation." 932 F.3d at 847. The Navajo Nation, acting through a wholly owned corporation that operated the mine in question, intervened to assert that the plaintiff's APA challenge must be dismissed on Rule 19 grounds, and the Ninth Circuit agreed. *Id.* at 847-848. The court accepted the Navajo Nation's view that the United States could not "be counted on to adequately represent [tribal] interests," on the theory that the United States' "overriding interest * * * must be in complying with" the federal environmental laws at issue, rather than in ensuring the continued operation of the mine. *Id.* at 855; cf. Pet. App. 24a-25a (adhering to *Diné Citizens*); *Klamath Irrigation Dist.* v. *United States Bureau of Reclamation*, 48 F.4th 934, 944-945 (9th Cir. 2022) (same), cert. denied, 144 S. Ct. 342 (2023).

It may well be that a given tribe wishes to see federal agency action upheld in an APA suit for reasons not necessarily shared by the federal government, such as to protect the tribe's economic interests. But the motivations of the parties are not the proper focus under Rule 19(a)(1)(B), which instead requires a court to determine whether "as a practical matter" the government's defense of agency action in the APA suit would adequately "protect" an absent tribe's interest in seeing the action upheld. Fed. R. Civ. P. 19(a)(1)(B)(i). The court of appeals did not identify any practical reason to think that

the federal government's defense of the challenged agency actions in *Diné Citizens* would be insufficient to protect the absent tribe's claimed interests.

Nor did the court of appeals identify any such practical reasons here. The court stated that the Tribe would be willing to make at least one argument in support of the lawfulness of Class III gaming on its lands that the federal government would not make—namely, that such gaming may occur even in the absence of an approved IGRA compact. See Pet. App. 30a-31a. But at least with respect to petitioner's APA claim, the only question for the reviewing court is whether to sustain the Secretary's approval of the compact amendments, and the Tribe's proffered argument about lawful Class III gaming *in the absence of a compact* is irrelevant to that question.

The court of appeals also reasoned that the federal government and the Tribe have a conflict of interest, deriving from the government's decades-old enforcement actions to prevent unlawful gaming on the Tribe's lands. Pet. App. 31a-32a. A bona fide conflict of interest can be relevant to the Rule 19(a) inquiry. See, *e.g.*, *Ramah Navajo Sch. Bd.*, 87 F.3d at 1350-1351. But here, the court identified no such conflict with respect to petitioner's APA claim, at least as that claim was clarified on appeal.[3] The federal government and the Tribe

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[3] The APA count in petitioner's operative complaint requested a declaratory judgment that the sports-betting activities of Washington's Indian tribes are unlawful. See Am. Compl. ¶ 176. On appeal, however, petitioner offered to limit any relief under the APA to "a judgment declaring the Secretary's approval of the sports betting compact amendments invalid." Pet. App. 39a. The court of appeals decided the case on the premise that petitioner is seeking only that limited relief. See *ibid.*

have no apparent conflict of interest in their shared desire to see the Secretary's actions upheld.

b. The court of appeals' analysis of Rule 19(b) was also flawed. See Pet. App. 37a-43a. The court acknowledged that a judgment entered between petitioner and the federal defendants would be "adequate" as between those parties, *id.* at 39a-40a, and that dismissal of the APA claim would leave petitioner with "no alternative judicial forum" to test the lawfulness of the Secretary's actions, *id.* at 40a. In nonetheless concluding that the other illustrative factors listed in Rule 19(b) tip in favor of dismissal, the court emphasized the Tribe's asserted "interest in the legality of its tribal-state gaming compact and its amendments." *Id.* at 38a. For the reasons set forth above, the federal government's own defense of the Secretary's actions will generally ensure that the Tribe suffers no prejudice to any such interest. And to the extent the Tribe believes that its interests and perspectives will not be sufficiently placed before the court, it may seek to file an amicus brief or intervene in the case to set forth its position and supporting arguments.

The court of appeals also declined to apply what it called the "public rights exception." Pet. App. 41a (quoting *Diné Citizens*, 932 F.3d at 858). The court again emphasized the Tribe's asserted interest in the lawfulness of Class III gaming on its lands, as well as the dire potential consequences to the Tribe of adopting petitioner's theory that authorizing only Indian tribes to offer a form of Class III gaming deprives non-Indians of the equal protection of the laws. See *id.* at 41a-42a. As explained above, however, the APA limits the relief available to a prevailing party. Here, petitioner's APA claim could at most result in vacatur of the Secretary's recent approvals of the IGRA compact amendments

relating to sports betting. The APA count could not be a basis for declaring all Class III gaming on the Tribe's lands unlawful, or for invalidating the Secretary's approval of the underlying compacts.

Petitioner contends that the Secretary's approvals of the recent sports-related IGRA compact amendments in the State of Washington were "not in accordance with law," 5 U.S.C. 706(2)(A), the APA affords petitioner a cause of action to test that proposition in an appropriate federal court, and the public-rights doctrine weighs against applying Rule 19 to close the courthouse doors.

c. The Ninth Circuit's decisions in *Diné Citizens* and its progeny have all involved sovereign Indian tribes, who cannot be joined as parties without their consent. But the logic of the court of appeals' approach is not limited to sovereign tribes and could apply equally to non-sovereign third parties who *can* be joined. Were the court's approach to be extended in that manner to its logical conclusion, the result could be significant disruption in APA litigation.

If it were true that an absent third party is required to be joined to an APA suit whenever the party has a distinct motivation or economic interest in seeing the relevant agency action upheld, then Rule 19(a) would dictate that the party "must be joined." Fed. R. Civ. P. 19(a)(1). Because the motivations of private entities that benefit from federal agency action very frequently are different than the agency's motivation for defending its own action, the Ninth Circuit's approach could lead to a practice under which the (potentially numerous) private entities that benefit from a federal agency action must generally be joined as required parties in an APA suit for judicial review of that action. See Fed. R. Civ. P. 19(a)(2) (providing that "the court must order

that the person be made a party"). Indeed, under the logic of the decision below, if applied more generally, a plaintiff seeking APA review apparently would be required to plead in its complaint the names (if known) of such persons, presumably by identifying them based on the agency proceedings, and then plead the plaintiff's "reasons for not joining [them]." Fed. R. Civ. P. 19(c).

B. Although the decision below is incorrect, the question presented does not warrant the Court's review in this particular case. This case would be a flawed vehicle to address the question—including because petitioner has filed a petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1101 *et seq.*—and the question is reasonably likely to come before this Court again in the future in a superior vehicle. The present petition should be denied.

1. Petitioner contends (Pet. 17-23) that the Ninth Circuit's recent applications of Rule 19 to dismiss APA suits at the behest of sovereign tribes are inconsistent with the approach other courts of appeals have taken to the same issues. Petitioner further contends (Pet. 31-33) that the question presented is practically significant and likely to recur.

The United States agrees that the Ninth Circuit has adopted an unsound approach to Rule 19 that no other court of appeals has endorsed. In particular, if this case had remained in the District of Columbia, where it was first filed, circuit precedent would not have supported dismissing petitioner's APA claim on Rule 19 grounds. Cf. Pet. 18-19 (discussing *Ramah Navajo Sch. Bd.*, *supra*, and *De Csepel* v. *Republic of Hungary*, 27 F.4th 736, 746 (D.C. Cir. 2022), cert. denied, 143 S. Ct. 630 (2023)). And because the District of Columbia is a permissible venue for APA suits seeking review of action

by agencies located there, see 28 U.S.C. 1391(e)(1), the differing approach of the D.C. Circuit can create incentives for forum shopping. That dynamic may counsel in favor of granting further review of the question presented in an appropriate case. See Sup. Ct. R. 10(a).

2. Petitioner is mistaken, however, in asserting (Pet. 34) that this case would provide "a perfect opportunity" to address the question presented. For several reasons, this case is a decidedly imperfect vehicle.

First, petitioner conceded what should otherwise have been a central question under Rule 19(a)(1)(B): whether the Tribe has any "legally protected interest" in the subject of petitioner's APA claim. Pet. App. 21a (citation omitted). The district court observed that petitioner "does not directly dispute" that the Tribe "has a legally protected interest that could be impaired by the instant litigation." *Id.* at 56a. The court of appeals likewise understood that petitioner "concedes that the Tribe has a legitimate interest in the legality of its gaming compact and sports betting amendment." *Id.* at 21a; accord Gov't C.A. Br. 21. As a result, the court treated the Tribe's interest in the suit as self-evident, devoting only a single paragraph to the issue. Pet. App. 21a-22a. If this Court were to grant review, it would, in light of petitioner's litigation choices, lack any significant analysis from the court of appeals on an important issue.

Second, Rule 19(b) directs a court to consider the extent to which dismissal of an action would deprive the plaintiff of "an adequate remedy," including in another forum. Fed. R. Civ. P. 19(b)(4). The dismissal of petitioner's APA action deprived petitioner of any forum for seeking judicial review of the Secretary's approval of the relevant compact amendments. But, as explained in Judge Miller's concurring opinion, that did not preclude

petitioner from obtaining judicial review of its legal contention that authorizing casino-style gaming only by Indian tribes violates equal-protection principles. See Pet. App. 48a-49a. Even under existing Ninth Circuit precedent, petitioner could have sought to argue that the Tribe is not a required party to a claim seeking to invalidate the State's criminal prohibition on Class III gaming *outside* of Indian lands, because the Tribe lacks any cognizable interest in whether other parties can engage in that activity. See *ibid.* But, Judge Miller noted, petitioner "did not preserve this issue below." *Id.* at 49a; see *id.* at 22a (opinion of the court) (finding that petitioner failed to "preserve[] for appellate review" any argument for distinguishing count three).

Required-party status under Rule 19 is assessed on a claim-by-claim basis, see Gov't C.A. Br. 20 n.2 (collecting cases), such that the availability of a promising but forfeited avenue for judicial review of petitioner's claim against state officials would not directly bear on the Rule 19 analysis for petitioner's APA claim. Nonetheless, the availability of alternative avenues to obtain review of petitioner's equal-protection theory at least diminishes the practical harm to petitioner that can be ascribed to circuit precedent. Petitioner's own litigation choices were partly responsible for the result below.

Third, on July 14, 2025, petitioner and its corporate affiliates initiated voluntary reorganization proceedings under Chapter 11 of the Bankruptcy Code. See *In re RunItOneTime LLC f/k/a Maverick Gaming LLC*, No. 25-bk-90191 (Bankr. S.D. Tex.). Chapter 11 provides a framework for a debtor to seek to negotiate a plan with its creditors "that will govern the distribution of valuable assets from the debtor's estate and often keep the business operating as a going concern."

Czyzewski v. *Jevic Holding Corp.*, 580 U.S. 451, 455 (2017). If the Chapter 11 process does not result in the confirmation of a plan of reorganization, the Code also provides for the bankruptcy to be converted into a proceeding for liquidation under Chapter 7, 11 U.S.C. 701 *et seq.*, or to be dismissed. See 11 U.S.C. 1112(a) and (b); *Czyzewski*, 580 U.S. at 456.

As a general matter, the pendency of a Chapter 11 proceeding would not preclude this Court from granting the petition. This case does not, for example, implicate the automatic stay applicable to certain prepetition "efforts to collect from the debtor outside of the bankruptcy forum." *City of Chi.* v. *Fulton*, 592 U.S. 154, 156 (2021). But the Chapter 11 proceeding at least calls into question whether petitioner will remain a going concern in the future and thus whether petitioner would actually benefit if this Court were to grant review and resolve the question presented in petitioner's favor. And because questions about petitioner's ability to obtain any "effectual relief" from a judgment in its favor would go to mootness, *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (citation omitted), the Court could be required to address developments in the ongoing bankruptcy before reaching the merits of the question presented.

Fourth, the Rule 19 question arises in this case in the arguably idiosyncratic context of APA review of the Secretary's approval of a compact between a State and an Indian tribe. As explained above (see p. 3, *supra*), IGRA does not provide the Secretary with any express role in the process of negotiating a compact for Class III gaming activities on Indian lands. The Secretary's role under the statute is instead limited to considering whether to approve such a compact after a State and an Indian tribe have already entered into it. See 25 U.S.C.

2710(d)(3)(B) and (8). In ordinary disputes between private parties, the established rule is that all parties to a contract must be joined to any action seeking to invalidate the contract. See *National Licorice*, 309 U.S. at 363; see also, *e.g.*, *Lomayaktewa* v. *Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975), cert. denied, 425 U.S. 903 (1976). The Ninth Circuit did not rest its decision here on that background principle. But if this Court were to grant review, the Court may need to consider whether and to what extent the contractual nature of an IGRA compact bears on the Rule 19 analysis. Awaiting an alternative vehicle could avoid that complication.

3. Petitioner is correct (Pet. 33) that the Rule 19 question continues to recur in APA suits. The government is aware of several pending cases in which tribes have invoked Rule 19 to seek dismissal of claims challenging federal agency action. See, *e.g.*, *Holl* v. *Avery*, No. 24-cv-273, 2025 WL 1785887, at *6 (D. Alaska June 27, 2025) (granting motion to dismiss on Rule 19 grounds), appeal pending, No. 25-4618 (9th Cir. filed July 24, 2025); *Federated Indians of Graton Rancheria* v. *United States Dep't of the Interior*, No. 24-cv-8582, 2025 WL 2096171, at *6-*10 (N.D. Cal. July 18, 2025) (denying motion to dismiss on Rule 19 grounds), appeal pending, No. 25-4604 (9th Cir. filed July 24, 2025); *Protect the Peninsula's Future* v. *Haaland*, No. 23-cv-5737, 2025 WL 1413734, at *8 (W.D. Wash. May 15, 2025) (same), appeal pending, No. 25-4692 (9th Cir. filed July 28, 2025). Whether any of those cases might ultimately satisfy this Court's criteria for granting certiorari remains to be seen. But the pendency of multiple cases raising analogous issues suggests that the question presented is reasonably likely to come before this Court again in a superior vehicle.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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