Heidi McNeil Staudenmaier (010387)
Brett W. Johnson (021527)
Sara J. Agne (026950)
Thomas Clees (031638)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
Telephone: 602.382.6000
Facsimile: 602.382.6070
E-Mail: hstaudenmaier@swlaw.com
bwjohnson@swlaw.com
sagne@swlaw.com
tclees@swlaw.com
Attorneys for Defendant Doug Ducey, Governor of Arizona

MARK BRNOVICH
Attorney General
Firm Bar No. 14000
Thomas K. Chenal (006070)
Karen J. Hartman-Tellez (021121)
Assistant Attorneys General
1275 W. Washington Street
Phoenix, AZ 85007
Telephone (602) 542-4951
Facsimile (602) 542-4385
adminlaw@azag.gov
Attorneys for Defendant Mark Brnovich

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Tohono O'odham Nation, Plaintiff, v. Douglas Ducey, Governor of Arizona; Mark Brnovich, Arizona Attorney General; and Daniel Bergin, Director, Arizona Department of Gaming, in their official capacities. Defendants.	Case No. CV-15-01135-DGC **REPLY IN SUPPORT OF DEFENDANTS DUCEY AND BRNOVICH'S MOTION TO DISMISS** **(Oral Argument Requested)**

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

Governor Ducey and Attorney General Brnovich's Motion to Dismiss (Doc. 49) explains that (i) this Court lacks subject matter jurisdiction over the Tohono O'odham Nation's ("the Nation") Complaint (Doc. 1) under the Eleventh Amendment, and (ii) the Complaint fails to state a viable claim for relief for a variety of reasons.

The Nation's opposition brief (Doc. 60) offers little more than double-negative logic to back up its dubious legal theories. As explained in detail below and in the Governor and Attorney General's Motion, the Complaint should be dismissed with prejudice.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE WEIGHT OF CONTROLLING AUTHORITY SHOWS THESE DEFENDANTS LACK CONNECTION TO THE ENFORCEMENT OF A.R.S. § 5-602 SUFFICIENT TO INVOKE *EX PARTE YOUNG*.

Despite conceding that the Eleventh Amendment and the doctrine of sovereign immunity bar claims asserted directly against the State, the Nation contends that its claims fall within an *Ex parte Young* exception. (Resp., Doc. 60, at 11, 14.) Yet, the Nation has not overcome the most basic hurdle to show this exception applies—it has not demonstrated the required connection between either the Governor or the Attorney General and the enforcement of A.R.S. § 5-602, which is the statute vesting all enforcement authority with the Director of Gaming. *See Ex parte Young*, 209 U.S. 123, 157 (1908). The Nation instead asserts that the Governor and Attorney General "engaged in a calculated and coordinated effort" to direct the Arizona Department of Gaming ("ADG") to deny all the Nation's regulatory certifications, "the very legal position that is the centerpiece of the lawsuit," through two short letters to ADG. (Resp., Doc. 60, at 12.) These attempts to demonstrate the necessary connection fail.

A. Neither the Governor Nor the Attorney General "Chose to Intervene."

The Nation's invocation of *Ex parte Young* here is against the weight of authority in federal courts, including cases cited by the Nation. Its principal argument is that the Governor and Attorney General are proper defendants because they "chose" to intervene in the matter. (Resp., Doc. 60, at 12-13.) The Nation's cited authority for this point all

involved substantially more state-actor involvement than occurred here. The state actors in the Nation's cited authority:

- threatened criminal prosecution (*Culinary Workers Union, Local 226 v. Del Papa*, 200 F.3d 614, 618-19 (9th Cir. 1999));
- provided specific directions to cabinet members on how to enforce the challenged law (*Kitchen v. Herbert*, 755 F.3d 1193, 1203 (10th Cir. 2014));
- wrote numerous letters to a tribe explaining it was in violation of state law, and threatening administrative and/or criminal action, while publishing several law enforcement advisories and letters on the issue (*Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084, 1106 (E.D. Cal. 2002)); and
- actually enforced the challenged law (*Gay Lesbian Bisexual Alliance v. Evans*, 843 F. Supp. 1424, 1426 (M.D. Ala. 1993)).

The facts alleged in the Complaint—that the Governor and Attorney General merely sent advisory letters to ADG—have no resemblance to the control exercised by the state officials in cases cited in the Nation's opposition brief. (*See* Compl., Doc. 1, at ¶¶ 78-79.)

Indeed, the two Ninth Circuit cases cited by the Nation where the appellate court concluded that a governor or attorney general was a proper defendant in an action challenging enforcement of a state law have distinguishable facts. In *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992), the court concluded that California's governor and secretary of state could be sued under *Ex parte Young* because they had duties under the challenged statute. The court concluded that—because the governor appointed judges under the challenged statute, and the secretary of state certified subsequent elections of those judges—those officials were proper defendants. *Id.* Here, in contrast, A.R.S. § 5-602 confers no authority on either the Governor or the Attorney General.

The other Ninth Circuit case cited by the Nation, *Culinary Workers Union, Local 226*, 200 F.3d at 618-19, is also inapposite. There, the Nevada Attorney General had sent

Snell & Wilmer L.L.P. LAW OFFICES One Arizona Center, 400 E. Van Buren, Suite 1900 Phoenix, Arizona 85004-2202 602.382.6000

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

letters *to the plaintiff* threatening to prosecute the union for distribution of a pamphlet that arguably violated the statute, or to refer the matter to local prosecutors. *Id.* at 619. The court rejected the attorney general's *post hoc* denial of her authority to prosecute the plaintiff. *Id.*; *see also Artichoke Joe's*, 216 F. Supp. 2d at 1111 (resting *Ex parte Young* jurisdiction on attorney general's letters *to plaintiffs* threatening enforcement). Here, neither the Governor nor the Attorney General ever sent letters *to the Nation* or asserted authority under A.R.S. § 5-602.

The circumstances here are far more similar to those presented by the cases that the Governor and the Attorney General cited in their Motion to Dismiss. For example, in *Snoeck v. Brussa*, 153 F.3d 984 (9th Cir. 1998), the plaintiffs feared contempt sanctions for violating rules of the Nevada Commission on Judicial Discipline and sought to sue the Commission and its Executive Director. The court concluded that the Commission was not a proper defendant because it "has no enforcement power, and therefore, it has no connection to the enforcement of the challenged law as required by *Ex Parte Young*." *Id.* at 987. The court ruled that way even though "the Commission might advise the Supreme Court [which has enforcement authority] whenever contempt appears to be in order." *Id.*

Here, the Governor and Attorney General may advise ADG as to State policy and law, but they have no authority under the challenged law, A.R.S. § 5-602. *See also Confed. Tribes & Bands of the Yakama Indian Nation v. Locke*, 176 F.3d 467, 470-71 (9th Cir. 1999) (dismissing complaint against governor because state lottery agency—not the governor—decided the challenged matter, where lottery tickets were sold); *Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist.*, 714 F.2d 946, 953 (9th Cir. 1983) (holding that the governor's powers to make policy and budget recommendations and administrative appointments did not justify invoking the *Ex parte Young* exception); *So. Pac. Transp. Co. v. Brown*, 651 F.2d 613, 614-15 (9th Cir. 1980) (dismissing complaint

against attorney general who had expressed intent to advise and direct district attorneys to prosecute because the attorney general's advice to those prosecutors was not binding).

Additionally, the Nation's response mistakenly implies that the Governor and Attorney General opted to be involved in this matter. In reality, the Attorney General wrote the letter in response to ADG's request for guidance ("You have asked whether the Arizona Department of Gaming . . . has authority to issue affirmative certifications . . ."). (Compl., Doc. 1, Ex. F, at 5.) Similarly, the Governor's letter was drafted to explain the State's overall policy position. (Compl., Doc. 1, Ex. F, at 6.)

The Nation has not shown a direct connection between either the Governor or Attorney General and the enforcement of A.R.S. § 5-602. Nor can it—two brief letters explaining State policy and law do not equate to that. All the Nation might show is that the Governor and Attorney General have "a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision[; this] will not subject an official to suit." *Los Angeles Cnty. Bar Ass'n*, 979 F.2d at 704. The Nation has not alleged facts sufficient to permit application of an *Ex parte Young* exception to conduct of the Governor and the Attorney General

B. <u>The Governor and Attorney General Did Not "Instruct" ADG.</u>

The Nation's response attempts to imbue the letters from the Governor and the Attorney General with much greater impact than the law allows, than it alleged in its Complaint, and than they actually could impart. Unlike the letters discussed in *Culinary Workers* and *Artichoke Joe's*, the letters here were from one State official to another—not to the target of any enforcement. Moreover, in the Complaint, the Nation recognized that the Attorney General's letter was "advis[ory]" and that the Governor's letter gave Director Bergin the option of agreeing with its position. (Compl., Doc. 1, at ¶¶ 78-79.) Yet the response labels the letters "directives" that were the product of "coordinated efforts" by the Governor and Attorney General to "instruct[ ] ADG to deny regulatory certifications and approvals." (Resp., Doc. 60, at 2, 5-6.) There is simply no evidence to support the Nation's new allegations of concerted action. Moreover, the law does not support the

Snell & Wilmer L.L.P. LAW OFFICES One Arizona Center, 400 E. Van Buren, Suite 1900 Phoenix, Arizona 85004-2202 602.382.6000

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

Nation's position. Because Arizona law entrusts ADG alone with the authority to act under A.R.S. § 5-602, neither letter did—nor could—compel the Director to act.

Neither letter can be construed as commanding ADG to deny any requested certifications for the West Valley casino or even take any specific action. The Governor's letter identifies issues for ADG to "duly consider . . . in any deliberations," and notes that "*if* in the course of your duties you agree with me," then there would be grounds for denial of the necessary regulatory approvals. (Compl., Doc. 1, Ex. F, at 7-8 (emphasis added)). The Attorney General's letter itself explains ADG's inherent power over the approvals: "In determining whether to certify the proposed casino, [ADG] is vested with the statutory discretion to determine whether the application is at odds with the public welfare and safety and/or is consistent with the thorough and fair regulation of gaming in Arizona." (Compl., Doc. 1, Ex. F, at 6.) Under Arizona law, neither the Governor nor the Attorney General could grant or deny these certifications. *See generally* A.R.S. Title 5, Ch. 6; *see also Los Angeles Branch NAACP*, 714 F.2d at 953 (noting that *Ex parte Young* exception was unavailable because state's Eleventh Amendment immunity could not be evaded via attempt to use the governor as a surrogate for the state). The moving officials here have no authority to make these decisions and none of the connection to the enforcement of A.R.S. § 5-602 needed for application of an *Ex parte Young* exception.

II. THE NATION SEEKS UNCONSTITUTIONAL MANDATORY RELIEF.

A. The Nation's Requested Relief Would Force State Officers to Perform Discretionary Duties Under State Law.

The Nation mischaracterizes the affirmative, mandatory nature of the relief it seeks—contending that it seeks "only to prohibit state officials . . . from improperly *refusing* to engage in the regulatory approval process . . . ." (Resp., Doc. 60, at 10.) There is no difference between ordering State officials to act and prohibiting State officials from refusing to act. *See Lester v. Parker*, 235 F.2d 787, 790 n.5 (9th Cir. 1956) ("[T]here is no difference between a double negative and a positive. 'Desist from refusing to pay money orders' in substance means 'pay money orders'."); *Vaughan v. John C. Winston Co.*, 83 F.2d 370, 374 (10th Cir. 1936) ("The order . . . is couched in the form of a double

negative . . . . If the court is without power in a particular case to require the doing of an affirmative act, it does not acquire that power by the form of words in which the command is couched."); *see also Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208, 232 (3d Cir. 2013) (noting laws may not "permit Congress to accomplish exactly what the commandeering doctrine prohibits by stopping the states from repealing an existing law.") (internal quotation marks omitted).

The Nation does not contest that neither this Court, nor any other, could order Defendants to issue regulatory approvals pursuant to Section 5 of the Nation's 2002 Compact with the State ("Compact") and A.R.S. § 5-602. (*See* Motion, Doc. 49, at 8-9.) Rather, the Nation contends—without supporting authority—that the Indian Gaming Regulatory Act ("IGRA") divests State officers of all statutory discretion to refuse to issue such approvals, even when the right to refuse certification is explicit in Section 5 of the Compact. (*See* Resp., Doc. 60, at 10.) The Nation's argument is legally and logically flawed.

The process for regulatory approvals under the Compact necessarily requires the application of State law. Beyond the Compact's definition,[1] the Director of ADG cannot execute any duty under the Compact until he is so directed by State statute. *See Arizona State Bd. of Regents ex rel. Ariz. State Univ. v. Arizona State Pers. Bd.*, 195 Ariz. 173, 175, 985 P.2d 1032, 1034 (1999) (administrative agencies lack power beyond their enabling statutes); *see also* A.R.S. § 5-602 (authorizing ADG to issue approvals under the Compact). The ADG process, therefore, is necessarily a "State-law function." *See* A.R.S. § 5-602. The Nation's assertion to the contrary fundamentally misperceives the preemptive scope of IGRA.

Second, the Nation's argument that ADG may not consider State law in the regulatory approval process directly contravenes the Compact. (Compl., Doc. 1, Ex. B, at

[1] Section 1(hh) of the Compact defines "State Certification" as "the process utilized by [ADG] to ensure that all Persons required to be certified are qualified to hold such certification in accordance with the provisions of this Compact." (Compl., Doc. 1, Ex. B, at its p. 6.)

Snell & Wilmer L.L.P. LAW OFFICES One Arizona Center, 400 E. Van Buren, Suite 1900 Phoenix, Arizona 85004-2202 602.382.6000

its pp. 30-36.) The Nation's preemption claim provides no legal authority authorizing the Court to order Defendants to exercise their authority under State law. *See Lester*, 235 F.2d at 790 n.5; *Vaughan*, 83 F.2d at 374; *see also Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 232. In fact, as referenced in the Motion, the Nation does not actually claim that the State law is preempted, it just complains about how it is being enforced. Therefore, as made clear by its requested relief, what the Nation really wants is mandamus relief, not a preemption declaration.

B. Granting the Nation's Proposed Relief Would Make the State the Agent of Congress and the Court.

The Nation contends IGRA provides the sole criteria the State may consider in granting or denying regulatory approvals and that the State is compelled to take legal action to provide those approvals when these federal criteria are met.[2] (Resp., Doc. 60, at 11; Nation's Opp'n to Def. Bergin's Mot. to Dismiss ("Resp. to ADG, Doc. 59") at 16-17.)[3] Again, the Nation provides no legal support for this proposition that contradicts the structure of IGRA, State law, and Section 5 of the Compact. But, if federal law circumscribes what the State can do upon executing a compact, this legal structure necessarily would compel the State to enact and administer a federal regulatory program in violation of the Tenth Amendment to the United States Constitution. *See Printz v. United States*, 521 U.S. 898, 926-33 (1997) (citing *New York v. United States*, 505 U.S. 144 (1992)). Such an unconstitutional reinterpretation of IGRA should be avoided.

[2] The Nation cites no authority for its position that it is not required to "submit to an administrative process that is preempted by federal law," or even any authority for its insinuation that submission to that process would be futile.

[3] This Reply addresses portions of the Nation's response to Director Bergin's Motion to Dismiss (Doc. 59) that are incorporated by reference in the Nation's response to the Governor and Attorney General's Motion to Dismiss (Doc. 60).

Snell & Wilmer L.L.P. LAW OFFICES One Arizona Center, 400 E. Van Buren, Suite 1900 Phoenix, Arizona 85004-2202 602.382.6000

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

III. THE NATION FAILS TO STATE A JUSTICIABLE CLAIM AGAINST THE GOVERNOR AND ATTORNEY GENERAL.

A. The Nation Lacks Standing to Sue the Governor and Attorney General to Redress ADG's Alleged Wrongdoing.

The Nation cannot demonstrate standing by speculating that letters from the Governor and Attorney General "contribute[d] in some undefined way and to some undefined degree to [its] injuries." *See Washington Envtl. Council v. Bellon*, 732 F.3d 1131, 1143 (9th Cir. 2013) (internal punctuation omitted). First, the Nation makes much of the fact that, prior to the correspondence at issue here, ADG stated it would "proceed in the normal course of business with various regulatory requirements imposed by IGRA and the Compact[.]" (Resp., Doc. 60, at 12.) This hardly shows any commitment by ADG to *issue* regulatory *approvals*, and it is pure speculation that ADG took a stronger position later as a result of "political pressure." (*Id.*; Compl., Doc. 1, at ¶ 78.)

Second, the Nation says essentially nothing when it argues that an injunction barring the Governor and Attorney General from "interfering" with ADG would redress its claimed injury. (*See* Resp., Doc. 60, at 13.) Even if the Court could bar the Governor and Attorney General from communicating with ADG, any contention that ADG would then act as the Nation desires, during a regulatory approval process memorialized in State law and the Compact, is speculative.

Finally, finding standing here would have an undesirable precedential effect. Holding the Governor and Attorney General liable for an alleged injury when a separate State agency acts would open the door to abuse by litigious, regulated parties. It would also chill both officers in the performance of their duties as provided by the State constitution.

B. The Nation Fails to State a Ripe Claim via Group Pleading.

The Nation provides no legal basis or explanation for its novel argument that it may state a ripe claim against the *Governor and Attorney General* solely by alleging "imminent" wrongdoing by *ADG*. (Resp., Doc. 60, at 11-14.) The Nation only breaks its pattern of undifferentiated allegations against "Defendants" to argue that ADG will

wrongfully withhold certifications. (Resp., Doc. 60, at 13-14.) The Nation's argument that its group pleading justifies an injunction "to prevent [the Governor and Attorney General] from interfering . . . with ADG's issuance" of certifications, (*id.* at 13), falls short of demonstrating that a constitutionally ripe controversy exists between the Nation and the Governor and Attorney General.

The Nation's arguments are even weaker with regard to Class II gaming at the West Valley casino. Unlike with Class III gaming, there is no regulatory approval process in which the Governor or Attorney General could "interfere" and give rise to a ripe claim by the Nation. *See Shell Gulf of Mexico, Inc. v. Center for Biological Diversity*, 771 F.3d 632, 635-36 (9th Cir. 2014) (courts should not issue declaratory judgments where the parties' legal interests are not sufficiently adverse).

Finally, the Nation's inability to identify any concrete threat of imminent injury other than potential and unspecified "interference" by the Governor and Attorney General in the State certification process further demonstrates this case is not prudentially ripe. *See United States v. Braren*, 338 F.3d 971, 975-76 (9th Cir. 2003). Even taking the Nation's arguments at face value, a vague injunction against "interference" by the Governor and Attorney General would be as impossible to obey as it would be to enforce. *See* Fed R. Civ. P. 65(d); *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (mandatory injunctions not issued in doubtful or uncertain cases).

IV. THE NATION FAILS TO STATE A CLAIM FOR RELIEF AGAINST THE GOVERNOR AND ATTORNEY GENERAL.

A. *Armstrong* and IGRA Foreclose the Nation's Supremacy Clause Claims.

The Nation's attempt to recast the Complaint's Supremacy Clause claims as claims arising under this Court's inherent equitable power to enjoin action by State officials that is preempted by federal law cannot salvage those claims. (*See* Resp. to ADG, Doc. 59, at 10-11; *see also* Resp., Doc. 60, at 14; Compl., Doc. 1, at ¶¶ 95, 115). Indeed, "[t]he power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations." *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378,

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

1385 (2015) (citing *Seminole Tribe of Fla. v. Florida*, 514 U.S. 44, 74 (1996)). As with the federal remedial scheme in *Armstrong*, IGRA's remedial scheme prohibits the Nation from invoking this Court's jurisdiction to decide this dispute with the State. *Armstrong*, 135 S. Ct. at 1385 (stating that "the Medicaid Act implicitly precludes private enforcement of § 30(A), and respondents cannot, by invoking our equitable powers, circumvent Congress's exclusion of private enforcement").

The circumstances here are closely analogous to those the Court considered in *Armstrong*, which calls for the same result. Specifically, both *Armstrong* and this case involve (1) a claim by a party that contracted with a state, (2) pursuant to a federal law, (3) alleging that the state officials' conduct violates the federal law. In *Armstrong*, the Court concluded that, in the Medicaid Act, Congress intended to foreclose equitable relief against a state by entrusting the remedy under the section at issue to the Secretary of Health and Human Services. *Id.*

IGRA similarly forecloses an action in equity by the Nation. In particular, the provisions of IGRA at issue here do not create a private right of action. *See Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000) (stating that "where IGRA creates a private cause of action, it does so explicitly"); *Friends of Amador Cnty. v. Salazar*, No. CIV. 2:10-348 WBS KJM, 2010 WL 4069473, at *4 (E.D. Cal. Oct. 18, 2010) (quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979)) ("[T]he fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person.").

However, IGRA states that tribal-state Compacts may include "remedies for breach of contract," which the Compact here includes. 25 U.S.C. § 2710(d)(3)(C)(v); (Compl., Doc. 1, Ex. B, § 15.) Consequently, Congress's "express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others" and there

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

is no right to seek an injunction under this Court's general equitable power. *See Armstrong*, 135 S. Ct. at 1385 (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)).

B. The Nation Failed to Join the Remaining Issues Raised in the Motion.

The Nation also failed to state a claim for relief against the Governor and Attorney General because their opinion letters to ADG are not actionable as a matter of law. (Resp., Doc. 60, at 16.) In addition, their lack of authority to issue regulatory approvals and certifications makes it impossible for the Nation to obtain the relief sought from the Governor or Attorney General. (*Id.*, at 17.) The Nation's response offers no authority to refute these arguments.

Rather, the Nation clarifies the substance of its claim is that ADG purportedly violated IGRA by considering the Nation's fraud as a ground for denial of certification under Section 5 of the Compact, when the Compact does not permit such considerations. (*Id.* at 12, 15-16 n.8.) This clarification confirms both that the Governor and Attorney General are not proper parties and that the Nation's purpose in this action is to obtain relief on the Compact without waiving its sovereign immunity against counterclaims for promissory fraud by the State. (*See* Motion, Doc. 49, at 9 n.3.)

Moreover, the Nation's fraud bears directly upon the considerations outlined in Section 5(f) of the Compact. (*See* Compl., Doc. 1, at Ex. B, at its pp. 30-36.) Simply, if the Nation believes it has a claim for relief under the Compact, it should exercise the dispute resolution option or bring an action related to Compact performance. Attempting to sidetrack a recognized avenue of relief by bringing a preemption claim is inappropriate and a waste of judicial resources.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss with prejudice the Nation's Complaint as against the Governor and the Attorney General.

Snell & Wilmer L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

RESPECTFULLY SUBMITTED this 21st day of August, 2015.

SNELL & WILMER L.L.P.

By: *s/ Brett W. Johnson*
Heidi McNeil Staudenmaier
Brett W. Johnson
Sara J. Agne
Thomas Clees
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren, Suite 1900
Phoenix, Arizona 85004-2002
Attorneys for Doug Ducey, Governor of Arizona

MARK BRNOVICH
Attorney General

By: *s/ Karen J. Hartman-Tellez*
Thomas K. Chenal
Karen J. Hartman-Tellez
Assistant Attorneys General
1275 West Washington Street
Phoenix, Arizona 85007
Attorneys for Mark Brnovich, Arizona Attorney General

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants.

s/ Tracy Hobbs

22355138