UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**CAYUGA NATION, a federally recognized Indian Nation,**

*Plaintiff*,

*v.*

**NEW YORK STATE GAMING COMMISSION, et al.**

*Defendants*.

No. 5:24-cv-537 (BKS/TWD)

**MEMORANDUM OF LAW IN OPPOSITION TO STATE DEFENDANTS' RENEWED MOTION TO DISMISS**

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## INTRODUCTION

Plaintiff Cayuga Nation ("Nation"), by and through undersigned counsel, respectfully submits this memorandum of law in opposition to Defendants', New York State Gaming Commissioners, sued in their official capacities, John Crotty, Sylvia Hamer, Martin Mack, Peter Moschetti, Jr., Brian O'Dwyer, and Marissa Shorenstein ("Commissioners"), renewed motion to dismiss the Nation's First Amended Complaint ("Amended Complaint"). Dkt. No. 63. This renewed motion, filed at the Court's invitation following partial denial of Defendants' prior motion to dismiss, is limited to the question of whether the Nation may proceed under the Indian Gaming Regulatory Act ("IGRA") based on either a private right of action or the Court's equitable jurisdiction.

As detailed below, the statutory text, structure, and legislative history collectively establish that Congress expressly intended to create enforceable rights for Indian nations—including a cause of action to prevent states or third parties from authorizing unlawful Class III gaming on Indian land without an Indian nation's approval. The Senate Report's Section-by-Section analysis of IGRA clarifies that Section 2710(d)(7)(A) grants United States district courts jurisdiction over action by "a tribe or state to enjoin illegal gaming in Indian lands." The legislative history thus confirms that Section 2710(d)(7)(A)(ii) was intended to provide nations and states with a private right of action to stop unauthorized Class III gaming.

Even if the Court concludes that IGRA's text and legislative history do not expressly create a cause of action for the Nation to enforce the statute, a private right of action is nevertheless implied and all four factors for an implied right of action has been met. First, the Nation is plainly within the class for whose especial benefit IGRA was enacted; second, IGRA's legislative history reflects that Congress intended to empower tribes to control and protect gaming on their lands, without suggesting any intent to deny them judicial recourse when states unlawfully interfere;

third, implying a private right of action is fully consistent with IGRA's overarching purpose; and fourth, this cause of action is not traditionally relegated to state law.

Furthermore, equitable jurisdiction provides an independent basis for relief if the Court disagrees that there is no express or implied right of action. The IGRA lacks a singular enforcement mechanism and presents legal—not technical—questions well suited for judicial resolution. The IGRA specifically provides for both administrative remedies for specific issues and explicitly provides for causes of actions for others, which makes it judicially administrable. Determining whether a state is conducting or authorizing Class III gaming without Indian nation consent involves straightforward statutory interpretation, not complex policy judgments or economic rate-setting like the Medicaid statute.

Finally, as further detailed below, the Defendants' renewed arguments regarding *Ex parte Young* and Section 1983 and collateral arguments on preemption are not only misplaced but irrelevant to the narrow issue this Court directed them to address on renewal. The question before the Court is whether the Nation may proceed under IGRA. It may do so in three independent ways: (1) under IGRA's express private right of action, (2) through an implied right of action consistent with the statute's text and purpose, or (3) pursuant to this Court's jurisdiction in equity. Any one of these is sufficient to permit the Nation's claims to proceed.

## BACKGROUND

The Cayuga Nation brought this action seeking declaratory and injunctive relief against the Defendants for their ongoing authorization of certain lottery terminals and issuance of mobile gaming licenses in violation of IGRA. The then State Defendants (Commission and Commissioners) moved to dismiss the Nations' Complaint and First Amended Complaint (most recently Dkt No. 37). In a March 31, 2025, decision, the Court denied and granted the motion to dismiss in part. Dkt. No. 61. The Court dismissed the action against the Commission for lack of

subject matter jurisdiction and denied the remainder of the Commissioners' arguments. The Court allowed the Commissioners to renew its motion on a limited issue that was not briefed but discussed at oral argument —whether the Nation's claims may proceed under IGRA and whether this Court may exercise equitable jurisdiction. On April 18, 2025, the Commissioners filed their renewed motion to dismiss. Dkt. No. 63.

## ARGUMENT

### I. CONGRESS EXPRESSLY INTENDED FOR AN INDIAN NATION TO HAVE A CAUSE OF ACTION FOR VIOLATIONS OF IGRA.

The IGRA was enacted to support an Indian nation's sovereignty and self-governance, with the central goal of allowing Indian tribes to independently determine whether and how gaming would occur on their lands. *See* 25 U.S.C. § 2702; *see also Davids v. Coyhis*, 869 F. Supp. 1401, 1410-11 (E.D. Wis. 1994). The statutory text, structure, and legislative history collectively establish that Congress expressly intended to create enforceable rights for Indian nations—including a cause of action to prevent states or third parties from authorizing unlawful Class III gaming on Indian land without an Indian nation's approval. *See* 25 U.S.C. § 2710.

In construing IGRA, the Court must consider the statute as a whole, not isolated provisions. *See, e.g.*, *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975) (explaining that the Court, in expounding a statute, must not be guided by a single sentence or a member of a sentence, but must look to the provisions of the whole law and to its object and policy); *United States v. Dauray*, 215 F.3d 257, 261 (2d Cir. 2000) ("The meaning of statutory language, plain or not, depends on context.") (citations omitted). Here, IGRA clearly grants Indian nations the authority to determine whether Class III gaming may occur on their lands and outlines the procedural framework for doing so. *See* 25 U.S.C. § 2710(d)(1), (3), (5). A nation is not required to request compact negotiations unless it first elects to authorize such gaming through its own ordinance or resolution. *See id.* § 2710(d)(5).

The statutory structure confirms that Indian nation authorization is the necessary first step. Section 2710(d)(1) provides that Class III gaming activities are lawful on Indian lands only if three conditions are met: (1) the Indian nation adopts and the National Indian Gaming Commission ("NIGC") approves an ordinance or resolution authorizing the gaming; (2) the gaming is located in a State that permits such gaming for any purpose; and (3) the gaming is conducted in conformance with a Tribal-State compact entered into under Section 2710(d)(3). *See* 25 U.S.C. § 2710(d)(1)(A)-(C).

Similarly, Section 2710(d)(3)(A) states that "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." 25 U.S.C. § 2710(d)(3)(A). Thus, it is the nation's decision—made through a sovereign act of self-government—that triggers the negotiation process.

Legislative history reinforces this understanding. During Senate debate, members repeatedly emphasized that states could acquire only limited jurisdiction over Indian lands, and only through voluntary compacting at an Indian nation's request. For example, Senator Daniel Inouye stated, "Under this provision, **tribes that choose** to engage in gaming may only do so if they work out a Tribal-State compact with the State." 134 Cong. Rec. 12643 (1988) (emphasis added). Further re-iterated, Senator Daniel Evans explained: "I wish to make it very clear that the committee has only provided for a mechanism to permit the transfer of limited State jurisdiction over Indian lands **where an Indian tribe requests** such as transfer as a part of a Tribal-State gaming compact for class III gaming." *Id.* (emphasis added). Further on, Senator Inouye again said "This section is to be read consistently with the compacting language on pages 60 and 61 of the bill which **makes class III gambling on Indian lands illegal if conducted in the absence of**

**a tribal-State compact.**" *Id.* (emphasis added). These statements leave no doubt: the choice whether to allow Class III gaming rests exclusively with the Indian nation, not the state.

These repeated statements of congressional intent show that IGRA was designed to protect an Indian nation's choice and control. It would be illogical and contrary to the statute's purpose to conclude that a nation must stand by without a remedy if a state authorizes gaming without a nation's consent. *See, e.g.*, *Manor Care, Inc. v. United States*, 89 Fed. Cl. 618, 623 (2009) ("A statute is not to be given a construction that is illogical or that causes absurd results, when it can be given a reasonable application consistent with the statute's words and purpose."). Denying nations a cause of action would gut the very protections IGRA was enacted to provide.

More importantly, Section 2710(d)(7)(A)(ii) provides that:

> The United States district courts shall have jurisdiction over . . . (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. 25 U.S.C. § 2710(d)(7)(A)(ii).

This very provision explicitly gives States or Indian tribes a private right of action to enjoin a class III gaming activity. Although Section 2710(d)(7)(A)(ii) uses the word "and," the statute must be construed to mean "or" to give effect to Congress's clear intent. Courts routinely interpret "and" as "or" (and vice versa) where necessary to avoid absurd results or to carry out legislative purpose. *See, e.g.*, *United States v. Fisk*, 70 U.S. (3 Wall.) 445, 447 (1865) ("[A]nd" may be read as "or" to prevent absurdity or injustice); *Officemax, Inc. v. United States*, 428 F.3d 583, 588 (6th Cir. 2005) ("[T]here is more to 'and' than meets the eye."); *United States v. Moore*, 613 F.2d 1029, 1040 (D.C. Cir. 1979) ("[S]ometimes a strict grammatical construction will frustrate legislative intent . . . That, we are convinced, is precisely what will occur here unless 'or' is read as 'and.'"); *Major Oldsmobile v. GMC*, 93-CV-2189 (SWK), 1995 U.S. Dist. LEXIS 7418, at *18 (S.D.N.Y. May 30, 1995) (holding that "[i]t is well established that the word 'or' is frequently construed to mean

'and' and vice versa, in order to carry out the evident intent of the parties.") (collecting cases), *aff'd*, 101 F.3d 684 (2d Cir. 1996).

The Senate Report's Section-by-Section analysis of IGRA clarifies that Section 2710(d)(7)(A):

> Grants United States district courts jurisdiction over action by: A Tribe against a State for failure to enter into negotiations or to negotiate in good faith; **a tribe or state to enjoin illegal gaming on Indian lands;** and by the Secretary to enforce procedures prescribed in (7)(B).

S. Rep. No. 100-446, at 18 (1988) (emphasis added). A section-by-section analysis is a legislative tool used to summarize and explain the intended meaning of each statutory provision before final passage. *See, e.g.*, *Smith v. Gibbons (In re Gibbons)*, 289 B.R. 588, 594 (Bankr. S.D.N.Y. 2003) ("Courts frequently give substantial weight to a 'section-by-section analysis' in determining legislative intent.") (citations omitted). Here, that analysis clearly reflects Congress's intent to authorize Indian nations to bring suit to enjoin illegal gaming on Indian lands—regardless of whether a compact exists. The legislative history thus confirms that Section 2710(d)(7)(A)(ii) was intended to provide nations and states with a private right of action to stop unauthorized Class III gaming.

A literal reading of "and" would undermine IGRA's protections by allowing states or third parties to authorize gaming on Indian lands without an Indian nation's consent, while simultaneously denying nations the ability to seek judicial relief simply because no compact exists. Such a result would invert the statute's structure and frustrate the fundamental goals Congress sought to achieve. *See Peacock v. Lubbock Compress Co.*, 252 F.2d 892, 893 (5th Cir. 1958) ("But the word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings. Nor has the law looked upon it as such. It is ancient learning, recorded authoritatively for us nearly one hundred years ago, echoing that which had accumulated in the

previous years and forecasting that which was to come, that, In the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or.'") (citations omitted).

Moreover, common sense reinforces the conclusion that Congress intended to allow tribes to enforce IGRA. The statute's central goals were to promote a nation's economic development, self-sufficiency, and strong nation governance. *See* 25 U.S.C. § 2702. Allowing states to authorize gaming in violation of IGRA, while denying nations a judicial remedy to stop such conduct, would fundamentally undermine these purposes. *See Johnson v. United States*, 123 F.3d 700, 703 (2d Cir. 1997) ("[T]he appropriate methodology to employ in interpreting a statute is to look to the common sense of the statute, to its purpose, [and] to the practical consequences of the suggested interpretations . . . .") (citation omitted).

Accordingly, IGRA's text, structure, legislative history, and purpose all demonstrate that the Cayuga Nation has a cause of action to seek relief for the violations of IGRA alleged in the Amended Complaint.

## II. EVEN IF CONGRESSIONAL INTENT WERE UNCLEAR, A PRIVATE RIGHT OF ACTION IS IMPLIED UNDER IGRA.

Even if the Court concludes that IGRA's text and legislative history do not expressly create a cause of action for the Nation to enforce the statute, a private right of action is nevertheless implied. The Supreme Court has long recognized that even where Congress does not expressly authorize a private cause of action, courts may imply one when Congress's intent and the statutory structure support it. *See, e.g.*, *Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979); *Cort v. Ash*, 422 U.S. 66 (1975); *Tex. & P. R. Co. v. Rigsby*, 241 U.S. 33 (1916).

The *Cort v. Ash* framework directs courts to consider several factors when determining whether a private right of action should be implied: (1) whether the plaintiff is part of the class for whose especial benefit the statute was enacted; (2) whether there is any indication of legislative intent to create or deny such a remedy; (3) whether implying a remedy is consistent with the underlying purposes of the legislative scheme; and (4) whether the cause of action is one traditionally relegated to state law. 422 U.S. at 78; *see also Abrahamson v. Fleschner*, 568 F.2d 862, 873 (2d Cir. 1977). While later cases have emphasized that congressional intent is the central focus, *see Alexander v. Sandoval*, 532 U.S. 275 (2001), the *Cort* factors remain useful for discerning that intent. *See, e.g.*, *De Dandrade v. United States Dep't of Homeland Sec.*, 367 F. Supp. 3d 174, 190-91 (S.D.N.Y. 2019) (explaining that, in determining whether to infer a private right of action, courts examine congressional intent as well as the factors set forth in *Cort v. Ash*); *Regnante v. Sec. & Exch. Officials*, 134 F. Supp. 3d 749, 758 (S.D.N.Y. 2015) ("A court's analysis of Congressional intent is guided by the four-factor test outlined by the Supreme Court in *Cort v. Ash*").

Each of the *Cort* factors strongly supports implying a private right of action under IGRA. First, the Nation is plainly within the class for whose especial benefit IGRA was enacted. The statute's stated purpose is to promote Nation sovereignty, economic development, and self-sufficiency by empowering Indian nations to regulate gaming activities on their lands. *See* 25 U.S.C. § 2702. Indian tribes, not states or private third parties, are the statute's intended beneficiaries. *See Davids*, 869 F. Supp. at 1410 ("Certainly tribal members benefit from these goals of the IGRA."); *cf. Vending v. Nat'l Indian Gaming Comm'n*, No. 99-6895-CIV-SEITZ/GARBER, 2001 U.S. Dist. LEXIS 26013, at *15 (S.D. Fla. Apr. 5, 2001) (explaining that an outside game vendor did not have an implied right of action under IGRA to sue the NIGC because a vendor is an "attenuated incidental beneficiary").

Second, IGRA's legislative history reflects that Congress intended to empower tribes to control and protect gaming on their lands, without suggesting any intent to deny them judicial recourse when states unlawfully interfere. As detailed above, congressional debates emphasized that states could exercise regulatory authority over Indian lands only through compacts voluntarily negotiated at the tribe's request. *See* discussion *supra* pp. 3, 5. In addition, the Senate Report's Section-by-Section analysis of IGRA reflects that Conges intended to allow tribes to sue for violations. Congress's consistent emphasis on an Indian nation's control, combined with the absence of any language barring enforcement by tribes, supports inferring a right of action.

Third, implying a private right of action is fully consistent with IGRA's overarching purpose. Allowing a nation to sue to prevent unauthorized state gaming preserves the careful balance Congress struck between promoting nation self-government and regulating gaming activities. Without the ability to seek judicial relief, a nation would be left without any meaningful way to enforce the statutory protections that IGRA promises. Courts have long held that when a statute creates rights, establishes procedures to protect those rights, and a violation of the statute harms those it was intended to benefit, a right to enforcement may be inferred. *See Texas & Pacific R. Co. v. Rigsby*, 241 U.S. at 39 ("A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law . . ."); *Cannon*, 441 U.S. at 717 (recognizing an implied private right of action under Title IX where the statute created enforceable rights, was intended to benefit a particular class, and judicial enforcement was necessary to carry out congressional intent); *De Lima v. Bidwell*, 182 U.S. 1, 176-77 (1901) (explaining that, if there was an obvious wrong, "courts will look far to supply an adequate remedy").

Fourth, this cause of action is not traditionally relegated to state law. Regulation of gaming on Indian lands is primarily an area of federal and Indian nation concern. IGRA was enacted to create a uniform federal framework governing Indian gaming, and the statute explicitly limits the role of the states to those functions authorized by federal law or Tribal-State compacts. *See* 25 U.S.C. §§ 2702-03; *see also* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 16.02 (2025) (explaining that states possess a limited role in Indian gaming).

Accordingly, even if the Court finds IGRA's text and structure ambiguous, a private cause of action should be implied. The Cayuga Nation seeks to vindicate precisely the interests that IGRA was enacted to protect—its sovereign authority over gaming activities on its Reservation.[1] Denying a cause of action would undermine IGRA's core purposes and leave the Nation defenseless against exactly the type of unauthorized state encroachment that Congress sought to prevent.

## III. THERE WAS NO CONGRESSIONAL INTENT TO FORECLOSE EQUITABLE JURISDICTION UNDER IGRA.

Although IGRA's text, structure, and legislative history support the conclusion that Congress intended to create a cause of action for Indian tribes to enforce the statute—whether expressly or implied—equitable jurisdiction provides an independent basis for relief if the Court disagrees. Recent authority confirms that even where a statute does not provide a private right of action, federal courts retain their traditional equitable power to enjoin ongoing violations of federal law. *See Mathis v. United States Parole Comm'n*, 749 F. Supp. 3d 8, 11-12 (D.D.C. 2024) (holding

[1] Although Defendants have not invoked *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), it bears noting that the case does not preclude the Nation's claims. In *Santa Clara*, the Supreme Court held that the Indian Civil Rights Act ("ICRA") did not create an implied cause of action for declaratory or injunctive relief, because Congress deliberately confined federal court review to habeas corpus proceedings to protect Indian nation self-government and avoid undue intrusion into internal Indian nation matters. *Id.* at 66–67. By contrast, IGRA presents a fundamentally different context: it regulates the relationship between states and tribes regarding gaming, expressly contemplates federal court jurisdiction over specific disputes between these sovereigns, and does not implicate core questions of Indian nation membership or self-definition. *See* 25 U.S.C. § 2710(d)(7).

that although the Rehabilitation Act's "program-conductor" provision did not create a private right of action, plaintiffs could still sue in equity to enjoin continuing violations of federal law); *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 66 (1992) ("'Where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.'") (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)); *Payne v. Hook*, 74 U.S. 7 Wall. 425, 430, 19 L. Ed. 260 (1868) ("The absence of a complete and adequate remedy at law, is the only test of equity jurisdiction . . ."). Thus, even if the Court concludes that IGRA does not itself authorize a private right of action, it may still exercise its equitable jurisdiction to enjoin ongoing violations of federal law.

This conclusion is fully consistent with the Supreme Court's decision in *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015). Under *Armstrong*, courts retain equitable jurisdiction to enjoin violations of federal law unless the statute reflects a clear congressional intent to foreclose such relief. *See* 575 U.S. at 328-29. That intent may be inferred where two conditions are present: (1) Congress has provided a comprehensive and exclusive enforcement mechanism; and (2) judicial enforcement would be inappropriate because the statute's administration involves technical "complexity" or "judgment-laden" decision-making better left to an agency. *Id.* Absent both factors, equitable jurisdiction remains available. *See CNSP, Inc. v. Webber*, No. 17-0355 KG/SCY, 2020 U.S. Dist. LEXIS 92257, at *15-22 (D.N.M. May 27, 2020) (distinguishing *Armstrong*, and holding that the court had equitable jurisdiction where the statute at issue, the Telecommunications Act, did not provide a sole remedy and did not involve judgment-laden or technically complex standards requiring agency expertise).

This Court has already acknowledged *Tohono O'odham Nation v. Ducey*, where the district court rejected the argument that IGRA forecloses equitable relief. *See* 130 F. Supp. 3d 1301 (D. Ariz. 2015). Applying *Armstrong*, the *Tohono* court held that IGRA does not reflect a clear

congressional intent to preclude equitable jurisdiction. *See id.* at 1316. First, the court found that IGRA lacks a "carefully crafted and intricate remedial scheme" comparable to that in *Armstrong*; the statute's provision allowing Tribal-State compacts to include remedies for breach is permissive and flexible, not exclusive or comprehensive. *See id.* Second, the court held that the statutory question—whether a state is improperly regulating Class III gaming without an Indian nation's consent—does not involve the sort of technical complexity or agency expertise that would render judicial enforcement inappropriate. *See id.* Accordingly, the court concluded that IGRA does not satisfy either prong of the *Armstrong* test and that a suit in equity to enjoin state officials was not foreclosed. *See id.* The same analysis applies here.

The reasoning of *Tohono* is reinforced by decisions interpreting other federal statutes under *Armstrong*. For example, in *Virgin Mobile USA, L.P. v. Apple*, the court rejected *Armstrong*-based dismissal arguments under the Federal Communications Act. *See* No. 17-CV-2524 (JAR/JPO), 2018 U.S. Dist. LEXIS 95839 (D. Kan. June 7, 2018). The defendants, like the Defendants here, argued that *Armstrong* barred equitable relief because the statute provided administrative remedies and involved technical policy decisions that should be left to the Federal Communications Commission. *See id. at* *8. The court disagreed, holding that *Armstrong* did not apply because the FCA did not provide a sole or exclusive remedy for the alleged harm, nor did the statutory provisions at issue present the type of "judgment-laden" standards requiring agency expertise. *Id.* at *9-13. The court emphasized that both conditions identified in *Armstrong*—a comprehensive remedial scheme and judicial unadministrability—must be present to foreclose equitable jurisdiction, and that the absence of either preserves the court's equitable power to adjudicate federal statutory claims. *See id.* at *10, *13-15. Notably, the court reaffirmed the continued viability of *Ex parte Young* actions where a plaintiff seeks to enjoin an ongoing violation of federal law and does not seek retroactive relief or monetary damages. *See id. at* *14-15.

That logic applies equally here: IGRA lacks a singular enforcement mechanism and presents legal—not technical—questions well suited for judicial resolution. IGRA specifically provides for both administrative remedies for specific issues and explicitly provides for causes of actions for others in Section (A).

IGRA provides no exclusive administrative enforcement mechanism comparable to the one that precluded equitable relief in *Armstrong*. To the contrary, as the *Tohono* court observed, IGRA expressly permits the parties to determine how breach claims will be handled and imposes no limitation on whether judicial remedies may be pursued. *See Tohono*, 130 F. Supp. 3d at 1312-13. The optional, contract-based enforcement provisions of IGRA lack the sort of detailed, mandatory exclusivity that *Armstrong* found dispositive. *See Armstrong*, 575 U.S. at 328-29.

IGRA is not the kind of statute that presents the judicial administrability concerns at issue in *Armstrong*. That case involved Medicaid rate-setting provisions that required agency expertise and complex economic analysis. *See Armstrong*, 575 U.S. at 329. In contrast, the dispute here—whether the State is conducting Class III gaming on Indian lands without nation authorization—involves statutory requirements that courts are fully competent to interpret and apply. As *Tohono* explained, courts are well-equipped to assess whether state conduct conforms to IGRA's standards and whether it improperly intrudes upon the regulatory authority IGRA reserves to Indian nation governments. *See Tohono*, 130 F. Supp. 3d at 1316.

In sum, IGRA does not reflect any congressional intent to bar equitable jurisdiction. Courts interpreting IGRA have not found such intent, and the conditions necessary to foreclose equitable relief under *Armstrong* are plainly absent. *See Tohono*, 130 F. Supp. 3d at 1316 (finding "no IGRA provision that shows a congressional intent to foreclose" an equitable cause of action). As in *Tohono*, this Court should conclude that it retains equitable jurisdiction to hear the Nation's claim and to prevent ongoing violations of IGRA by state officials. *See id.*

## IV. IGRA IS JUDICIALLY ADMINISTRABLE AND DOES NOT FORECLOSE EQUITABLE RELIEF ALIGNING IT WITH FRIENDS OF THE EAST HAMPTON AIRPORT.

This case is more akin to *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133 (2d Cir. 2016), than to *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015), because the IGRA is a judicially manageable statute that does not foreclose equitable relief. Both the structure of IGRA and its enforcement scheme reflect an intent to preserve a meaningful role for the courts—particularly where, as here, an Indian nation seeks to vindicate rights that Congress expressly intended to protect.

### A. IGRA, Like the Statute in *Friends of the East Hampton Airport*, Involves Multiple Parties, Multiple Procedures, and Does Not Provide an Exclusive Remedy.

In *Friends*, the Second Circuit held that equitable relief remained available because the Airport Noise and Capacity Act (ANCA) involved multiple parties, imposed procedural requirements, and did not provide an exclusive remedy for violations. 841 F.3d at 146-47. The court emphasized that the statutory scheme was sufficiently detailed and manageable to be enforced by courts, even where some regulatory enforcement was available to the FAA.

IGRA is structured similarly. It establishes a multi-party, multi-step regulatory framework involving tribes, states, the National Indian Gaming Commission (NIGC), the Secretary of the Interior, the Attorney General, and the federal courts. Under IGRA, Class III gaming on Indian lands may occur only if: (1) the nation enacts an ordinance approved by the NIGC Chairman; (2) the gaming is conducted pursuant to a valid Tribal-State compact; and (3) the compact is approved by the Secretary of the Interior and published in the Federal Register. *See* 25 U.S.C. §§ 2710(d)(1)(C), (d)(3)(B).

Thus, as in *Friends*, IGRA demands participation by multiple sovereign entities and compliance with procedural steps. Critically, it does not channel all disputes into a single agency

or create a sole, exclusive administrative remedy. Instead, it preserves an essential role for federal courts in enforcing statutory rights—especially through equitable relief when other remedies fall short.

Both *Friends* and *Armstrong* confirm that the presence of some remedy does not preclude equitable relief unless it is combined with a finding that judicial enforcement would be unmanageable. *See Armstrong*, 575 U.S. at 328-29; *see also Friends*, 841 F.3d at 145-46. In *Armstrong*, the Court found equitable relief foreclosed because the Medicaid Act provided a sole enforcement mechanism and involved highly judgment-driven standards unsuitable for judicial application. 575 U.S. at 328-29. By contrast, in *Friends*, the Second Circuit emphasized that the ANCA procedures were judicially manageable and straightforward, permitting equitable relief even though some enforcement mechanisms were available to the FAA. 841 F.3d at 146-47.

The same reasoning applies here. Even if the Court finds that IGRA provides certain administrative remedies, that alone does not foreclose equitable jurisdiction because IGRA is judicially administrable. Determining whether a state is conducting or authorizing Class III gaming without Indian nation consent involves straightforward statutory interpretation, not complex policy judgments or economic rate-setting like the Medicaid statute at issue in *Armstrong*. *See St. Luke's Health Sys., Ltd. v. Labrador*, No. 1:25-CV-00023, 2025 U.S. Dist. LEXIS 52979, at *27 (D. Idaho Mar. 20, 2025) (holding that equitable relief remained available because the Emergency Medical Treatment and Labor Act did not provide a sole remedy and involved a straightforward question of statutory interpretation, not a judicially unadministrable scheme).

To the extent the Commissioners suggest that the NIGC is the exclusive source of enforcement under IGRA, that argument is mistaken. *See* Dkt. No. 63-1 at 11. The NIGC's jurisdiction is limited to a defined set of regulatory functions, including approving gaming ordinances and management contracts, and enforcing Indian nation compliance with IGRA's

operational requirements. *See* 25 U.S.C. §§ 2711-13. The NIGC has no authority to adjudicate or resolve disputes involving unlawful state conduct or violations of Indian nation rights under IGRA. That role is reserved for federal courts.

Indeed, IGRA expressly grants district courts jurisdiction over claims brought by Indian tribes to enjoin unauthorized Class III gaming. *See* 25 U.S.C. § 2710(d)(7)(A)(ii). Thus, unlike in *Armstrong*, where the Medicaid Act vested exclusive enforcement authority in a single federal agency, IGRA anticipates and affirmatively authorizes judicial enforcement in federal court. There is no basis to conclude that the NIGC provides a comprehensive, exclusive remedy that displaces equitable relief.

### B. IGRA Is Judicially Administrable, Unlike the Medicaid Statute at Issue in *Armstrong*.

In *Armstrong*, the Supreme Court declined to permit equitable relief because the relevant provision of the Medicaid Act, § 30(A), required policy-heavy, discretionary determinations and granted enforcement exclusively to the Secretary of HHS. 575 U.S. at 328-29. In other words, Congress had created a statutory scheme where administrative expertise was essential and equitable intervention would be unworkable. *See id.*

By contrast, IGRA is materially different. IGRA was not designed to require complex agency expertise or judgment-driven administrative decision-making. Instead, IGRA establishes concrete procedural requirements, identifies clear roles for federal courts, and specifies the parties entitled to participate in gaming regulation. *See, e.g.*, 25 U.S.C. §§ 2702, 2710(d). Courts are fully capable of interpreting and applying IGRA's provisions without the need for policy balancing or specialized administrative oversight.

Importantly, IGRA does not contemplate exclusive federal agency enforcement. It was not enacted to mandate continuous federal oversight of nation gaming operations, nor to displace

nation sovereignty over gaming regulation. On the contrary, IGRA recognizes that the governance of gaming activities—particularly Class I gaming—is a core element of Indian nation self-government and sovereignty. Congress explicitly provided that "Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of [IGRA] or [its] regulations." 25 U.S.C. § 2710(a)(1); 25 C.F.R. § 501.2(b). Even for Class II and Class III gaming, IGRA preserves substantial Indian nation authority while setting out cooperative procedures among tribes, states, and the federal government.

Section 2710(d)(7)(A) reinforces that courts have an affirmative role. It provides jurisdiction over: (1) tribal suits against states for failure to negotiate in good faith; (2) tribal or state actions to enjoin unauthorized Class III gaming; and (3) enforcement suits by the Secretary of the Interior. These are not narrow procedural claims—they go to the heart of the statutory scheme and demonstrate that Congress intended for courts to be involved.

Further, the Defendants' suggestion that allowing judicial enforcement would disrupt "uniformity" under IGRA misconstrues the statute's purpose. According to the Defendants, "Instead of creating the legitimate possibility that district courts across the country could reach potentially conflicting conclusions on claims arising under the IGRA, Congress intended for the NIGC—with its nationwide reach and perspective—to chart the path forward with consistent conclusions and guidance." Dkt. No. 63-1 at 12. That assertion is flatly inconsistent with the structure and application of IGRA. The statute envisions state-specific, tribe-specific compacts—not nationwide uniformity. *See* 25 U.S.C. § 2710(d)(1)-(3). Each tribe and each state has different gaming laws, priorities, and compacts. The purpose of IGRA was to support -state cooperation—not to impose top-down, NIGC-mandated consistency.

Finally, unlike *Armstrong*, where the parties seeking equitable relief were private healthcare providers—not the statute's primary beneficiaries—IGRA was enacted to protect

Indian nations themselves. Its central purposes are to promote Indian nation economic development, self-sufficiency, and strong Indian nation government. *See* 25 U.S.C. § 2702. Legislative history confirms that Congress sought to ensure "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law." 134 Cong. Rec. 23643 (1988).

Thus, IGRA's judicial administrability, express statutory remedies, and beneficiary-focused purpose all confirm that equitable relief is not foreclosed—and that this case is materially unlike *Armstrong*. Consistent with *Friends*, this Court should hold that equitable jurisdiction remains available. The structure of IGRA, the absence of a comprehensive and exclusive remedy, and the manageability of the relevant legal questions all support the Nation's right to proceed in equity.

## V. THE STATE DEFENDANTS' OTHER ARGUMENTS ARE MERITLESS.

The Commissioners' renewed arguments regarding *Ex parte Young* and Section 1983 are not only misplaced but irrelevant to the narrow issue this Court directed them to address on renewal.

First, the State's contention that *Ex parte Young* merely allows a plaintiff to "get into court" but not "stay in court" misrepresents the doctrine's core function. Dkt. No. 63-1 at 6. *Ex parte Young* exists precisely to enable plaintiffs to obtain prospective relief against state officials who are violating federal law. *See, e.g.*, *Bernstein v. New York*, 591 F. Supp. 2d 448, 462 (S.D.N.Y. 2008). This Court has already held—correctly—that the Nation's claims fall squarely within the *Ex parte Young* framework. *See* Dkt. No. 61 at 12-16. The March 31, 2025, Decision confirmed that the lawsuit targets state officials in their official capacities and seeks only prospective, non-retrospective relief. The Commissioners' attempt to relitigate this settled issue is unfounded and should be rejected.

Second, the Commissioners' reliance on Section 1983 case law does not support their position. Their argument improperly conflates two distinct legal doctrines. Section 1983 provides a vehicle for individuals to vindicate federally protected rights, but it does not authorize courts to enjoin ongoing violations of federal law by state officials. That is the role of *Ex parte Young*. Although Section 1983 claims require the underlying statute to create enforceable individual rights, *Ex parte Young* permits equitable relief even when a statute does not provide a private right of action—so long as state officials are acting in violation of federal law. *See, e.g.*, *Verizon Md., Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 645 (2002).

The State's reliance on *Gonzaga University v. Doe*, 536 U.S. 273 (2002), is similarly unavailing. *Gonzaga* addressed whether FERPA created an enforceable individual right under Section 1983—it had nothing to do with *Ex parte Young*. And the statute at issue in *Gonzaga* bears no resemblance to IGRA, which expressly provides district court jurisdiction in key enforcement contexts and was enacted for the benefit of Indian nation governments.[2]

Third, the Defendants mischaracterize both the Nation's position and the Court's prior decision in asserting that "there is no preemption claim in this case." Dkt. No. 63-1 at 13. In fact, the Court did not hold that the Nation lacked a preemption claim, nor did it foreclose the possibility of preemption-based relief. On the contrary, the Court rejected the State's framing, explaining that Defendants had "fundamentally misunderst[ood] the Nation's claim," which "specifically seeks to prevent the State from engaging in or permitting the occurrence of particular games in contravention of IGRA's restrictions on Class III gaming." Dkt. No. 61 at 18.

Although the Nation's Complaint does not identify a particular New York statute,[3] it repeatedly alleges that IGRA preempts any attempt by the State to authorize or regulate Class III

[2] Likewise, the other cases cited by the State Defendants in their Section 1983 argument do not address or apply the *Ex parte Young* doctrine.

[3] Defendants argue that the Nation's preemption claim fails because the Complaint does not cite a specific New York

gaming on Indian lands absent a valid compact. *See, e.g.*, Am. Compl. ¶ 3 ("Federal law preempts New York State's attempts to game on the Nation's Reservation."), ¶ 41 ("IGRA preempts any state regulation or control of gaming on Indian lands."), ¶ 42 ("The IGRA wholly preempts New York law related to gaming on Indian lands except where a tribe and the State enter into a compact."). Whether the challenged conduct arises from a statute, regulation, or executive action is immaterial; any state-sanctioned gaming activity that bypasses Indian naiton approval is, by definition, preempted under IGRA. *See* 25 U.S.C. § 2710(d)(1); *see also Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 550 (8th Cir. 1996) ("Those causes of action which would interfere with the nation's ability to govern gaming should fall within the scope of IGRA's preemption of state law.").

Here, the State's conduct does exactly that. By authorizing and operating Class III gaming on the Nation's Reservation without Indian nation consent or a valid compact, the State not only violates IGRA—it undermines Congress's purpose of promoting Indian nation self-governance. *See Wos v. E.M.A.*, 568 U.S. 627, 636 (2013) ("Pre-emption is not a matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect."); *see also City of Morgan City v. S. La. Elec. Coop. Ass'n*, 31 F.3d 319, 322 (5th Cir. 1994) ("state action is preempted if its effect is to discourage conduct that federal legislation specifically seeks to encourage.").

statute. *See* Dkt. No. 63-1 at 13. That argument is unpersuasive. Courts evaluating preemption claims do not require that a particular state law be identified by number; rather, the focus is on whether the alleged state action or conduct conflicts with federal law. *See, e.g.*, *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 137-38 (1990) ("The question whether a certain state *action* is preempted by federal law is one of congressional intent.") (emphasis added); *Smith v. Dunham-Bush, Inc.*, 959 F.2d 6, 8 (2d Cir. 1992) ("Congressional purpose is the 'ultimate touchstone' in determining whether federal law preempts a particular state *action*.") (emphasis added); *Buffalo S. R.R. v. Vill. of Croton-On-Hudson*, 434 F. Supp. 2d 241, 249 (S.D.N.Y. 2006) ("[W]hether a certain state *action* is preempted requires a fact-specific inquiry.") (emphasis added). New York's operation and authorization of lottery machines on Indian lands does just that: it constitutes affirmative state action that conflicts with and is preempted by IGRA's framework for regulating Class III gaming.

Such conduct falls squarely within the category of state action that is preempted by federal law, and the Nation's claims therefore lie well within the scope of preemption-based actions for which equitable relief is available. *See, e.g.*, *Cayuga Nation v. Tanner*, 6 F.4th 361, 377 (2d Cir. 2021) ("As we and our sister circuits have held, IGRA preempts all state and local legislation and regulation relating to gambling conducted on 'Indian lands,' as defined in that statute.") (citing *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 469-70 (2d Cir. 2013) (noting that IGRA "was intended to expressly preempt the field in the governance of gaming activity on Indian lands"), and *Pueblo of Pojoaque v. New Mexico*, 863 F.3d 1226, 1235 (10th Cir. 2017) (IGRA "expressly preempt[s] state regulation of gaming activity that occurs on Indian lands")); *see also* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 16.02[5] (2025) ("In the absence of a valid compact, state laws are fully preempted by IGRA and have no regulatory effect over gaming on Indian lands.").

The proper inquiry is whether Congress intended to foreclose equitable relief under IGRA, whether IGRA provides an exclusive administrative remedy, and whether the statute is judicially administrable. As explained above, IGRA meets the standards for equitable relief: it was enacted for the benefit of Indian Nations, it provides district courts with jurisdiction in certain enforcement contexts, and it does not impose any exclusive administrative scheme that would preclude equitable jurisdiction.

Accordingly, the Commissioners' collateral arguments should be rejected. The question before the Court is whether the Nation may proceed under IGRA. It may do so in three independent ways: (1) under IGRA's express private right of action, (2) through an implied right of action consistent with the statute's text and purpose, or (3) pursuant to this Court's jurisdiction in equity. Any one of these is sufficient to permit the Nation's claims to proceed.

## CONCLUSION

For the reasons set forth in this memorandum, Plaintiff respectfully requests that the Court deny the Defendants' renewed motion to dismiss.

Dated: May 9, 2025

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 9, 2025, he filed the foregoing document by electronically filing with the Clerk of the Court herein, using the CM/ECF system, which sent notification of such filing electronically to all counsel of record.

By: _____
David G. Burch, Jr.