

**SOUTHERN UTE INDIAN TRIBE**,  
a federally recognized Indian tribe, and

**UTE MOUNTAIN UTE TRIBE**, a  
federally recognized Indian  
tribe,

Plaintiffs,

v.

**JARED POLIS**, in his official capacity  
as Governor of Colorado, and

**CHRISTOPHER SCHRODER**, in his  
official capacity as Director of the  
Colorado Division of Gaming,

Defendants.

Civil Action No. 1:24-cv-01886-GPG-NRN

## **SECOND VERIFIED AMENDED COMPLAINT**

### **OVERVIEW**

1. Plaintiffs, the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe (collectively, the “Tribes”), are sovereign and federally recognized Native American tribes located in Southwestern Colorado.

2. Since 1995, the Southern Ute Indian Tribe has operated the Sky Ute Casino Resort (“Casino”) in Southwestern Colorado, within the exterior boundaries of the Southern Ute Indian Reservation and pursuant to a Gaming Compact entered into with the State of Colorado under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (“IGRA”), attached to this Second Verified Amended Complaint as Exhibit A-1<sup>1</sup> (“Southern Ute

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<sup>1</sup> Exhibits in this Second Verified Amended Complaint have been labeled in a manner that preserve the original designations when possible.

Gaming Compact”). This Casino is regulated by the Southern Ute Division of Gaming (“SUDOG”), not the Colorado Division of Gaming (“CODOG”), which has only limited and strictly ministerial powers under the Gaming Compact. The Tribe is sophisticated, professional, and successful; it enjoys a rare AAA bond rating, and, for nearly three decades, has always run and regulated a clean and reputable gaming business.<sup>2</sup>

3. The Southern Ute Gaming Compact provides that the Tribe may “conduct any or all Class III Games that are Explicitly Authorized by the laws of the State.” Southern Ute Gaming Compact § 3(a). The Compact recognizes the Tribe’s authority to regulate and manage its own gaming and establishes the Tribe’s authority to conduct gaming so long as the Tribe does so with “those gaming activities and bet amounts that are identical to the activities and bet amounts that are authorized in the State of Colorado.” Southern Ute Gaming Compact at §§ 2(f), 3(a). In other words, pursuant to its inherent sovereign authority, the Southern Ute Indian Tribe may engage in any gaming activity that is authorized elsewhere in Colorado so long as the Tribe’s gaming activity mirrors Colorado’s authorized gaming activity.

4. Similarly, the Ute Mountain Ute Tribe operates the Ute Mountain Casino and a physical sports book, pursuant to an Amended Gaming Compact entered into with the State of Colorado in 1995 and attached to this Second Verified Amended Complaint as Exhibit A-2 (individually, the “Ute Mountain Gaming Compact” and collectively, with the Southern Ute Gaming Compact, the “Gaming Compacts”). The Ute Mountain Gaming

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<sup>2</sup> Fitch Ratings, Fitch Affirms Southern Ute Indian Tribe, CO’s IDR and Series 2007 VRDBs at ‘AAA’ (March 1, 2024), <https://www.fitchratings.com/research/us-public-finance/fitch-affirms-southern-ute-indian-tribe-co-idr-series-2007-vrdb-at-aaa-01-03-2024>. Exhibit B.

Compact also permits “any or all Class III gaming that is permitted within the State for any purpose by any person, organization, or entity, now or hereafter.” *Id.* at § 3(a).

5. The Colorado legislature, noting “the special governmental relationships and the unique political status” of the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe, created the Colorado Commission of Indian Affairs (“CCIA”) in 1976 to serve as the official liaison between the Colorado State government and the Ute Tribes. In particular, CCIA’s role includes reviewing all pending and proposed legislation affecting the Tribes and “coordinat[ing] intergovernmental dealings between tribal governments and [the] state.” C.R.S. 24-44-101 *et seq.*

6. On May 1, 2020, sports betting and internet sports betting became legal under the Colorado Sports Betting Act, C.R.S. § 44-30-1501 *et seq.* This legislation made no mention of tribal gaming. The State did not make any effort to meet with the Tribes to discuss the Tribes’ ability to engage in internet sports betting throughout the State until shortly before the Colorado Sports Betting Act became law, despite clear language in both Gaming Compacts permitting the Tribes to engage in any gaming activity authorized elsewhere in Colorado. This was a departure from customary practice in Colorado, which has generally maintained close and respectful ties with the only two resident Tribes and consulted them on matters of mutual concern.

7. The State discussed the subject with the Southern Ute Indian Tribe for the first time less than two months before the Colorado Sports Betting Act went into effect. On that conference call, which took place on March 9, 2020, the State did not identify any concerns with the Southern Ute Indian Tribe’s proposed internet sports betting operation. The Tribes planned to reconvene virtually with CODOG and representatives of the State

from Governor Polis's office later that month, on March 25, 2020, but the State canceled the meeting shortly before it was to take place without explanation. Later, on April 21, 2020 and April 28, 2020, the Tribes met virtually with CODOG and representatives from the Attorney General's office. At that meeting, the Tribes fully disclosed their plans to operate an internet sports betting operation, and Dan Hartman, then the director of CODOG, responded by assuring the Tribes that CODOG had no intention of interfering with the Tribes' plans.

8. Because the language of the Compacts is clear and authorizes the Tribes to conduct any gaming otherwise legal in Colorado and because the State did not raise any concerns, legal or otherwise, the Tribes proceeded to establish their sports betting offerings apace, including establishing their regulatory framework and hiring appropriate vendors to assist with operations that had been legalized by the Colorado Legislature, executed by Governor Polis, and ratified by a vote of Coloradoans in 2019.

9. The Southern Ute Indian Tribe adopted the Southern Ute Sports Betting Rules ("Tribal Sports Betting Rules"), which were modeled off the comparable Colorado regulations and incorporated the same restrictions and protections found therein. The Tribe maintained geofencing so that only bettors physically located in Colorado could use it and contracted with a vendor to provide sports betting advisory services and process payments. In June 2020, the Tribe launched the Sky Ute SportsBook, a modest internet sports betting operation.

10. After the Tribes launched, or attempted to launch, their respective sports books, without any notice from the State, they learned through their vendors that the State in fact opposed their internet sports betting operations. In a letter dated June 25, 2020,

CODOG notified one of the Southern Ute Indian Tribe's vendors that the Tribe's internet sports betting operation was illegal. Similarly, the Ute Mountain Ute Tribe explored launching its own online sports betting operation but was unable to do so because of the State's correspondence with one of the Tribe's vendors. The vendor declined to do business with the Ute Mountain Ute Tribe out of fear of an enforcement action by the State, leaving the Ute Mountain Ute Tribe unable to proceed with creating an internet sports betting operation.

11. The State previously gave no indication that it would take any legal action against the Tribes' internet sports betting operations. Nor did the State request to reopen the Gaming Compacts to address such activity. The State's opposition reflects an unlawful interpretation of the Tribes' express Compact terms and a failure to operate within the legal parameters set forth under IGRA.

12. The State's unlawful interpretation and approach continues to this day. At the direction of Governor Polis, CODOG—in violation of IGRA, Colorado's own clear commitments enshrined in the Gaming Compacts, and almost thirty years of historic practice—has taken the positions that (i) Colorado, not the Tribal Gaming Commissions, has the authority to regulate any internet sports betting operation launched by the Tribes, and (ii) the Tribes are required to collect a 10% fee on all sports bets initiated by bettors who are located off the Reservation even when those bets are accepted on-Reservation.

13. Contrary to the State's position, bets placed with the Tribes' online sports betting operations are made on-Reservation, even if the bettor initiates a bet from a location off-Reservation but still from a location physically within Colorado, and such bets accordingly cannot be subject to State-imposed taxes, fees, charges, or other

assessments, pursuant to IGRA and the Gaming Compacts. As defined in IGRA, “Indian lands” include “all lands within the limits of any Indian reservation,” 25 U.S.C. § 2703(4)(A), and IGRA provides further that “nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe” engaged in Class III gaming activities on tribal land, *see id.* at § 2710(d)(4). While revenue sharing can be included as part of a gaming compact under certain circumstances, the Gaming Compacts do not provide revenue sharing to Colorado. Most importantly, the Gaming Compacts clearly provide that the State “shall not impose any tax, fee, charge or other assessment upon the Tribe.” Southern Ute Gaming Compact § 13; Ute Mountain Gaming Compact § 10(B); *see also* 25 U.S.C. § 2710(d)(4).

14. The Tribes’ internet sports betting operations are consistent with State law requirements, and thus, the betting activity would occur on “Indian lands” where the State has no authority to impose a tax or fee. The State’s sports betting laws and regulations provide that the location of a bet is where the bet is **accepted**. 1 C.C.R. § 207-2:1.4 (defining “sports bet” as the “business of **accepting** approved bets by a licensee on any sports event by any approved system or method of betting”) (emphasis added); C.R.S. § 44-30-1501(4) (defining an “Internet sports betting operation” as “a sports betting operation in which wagers on sports events are made through a computer or mobile or interactive device and **accepted** by an internet sports betting operator”) (emphasis added); C.R.S. § 44-30-1506(8) (providing that “[a]n internet sports betting operator **shall accept** bets only from persons physically located within the state of Colorado”) (emphasis added). No bet is accordingly considered to be placed until it has been accepted after a

screening process, which ensures that the bettor is of the required age and that the bettor is located within the boundaries of the State of Colorado.

15. Because the Tribes' sports betting operation would consist of a server located on "Indian lands" within their reservation boundaries, bets are received on that server and accepted on that server after being similarly screened. See 1 C.C.R. 207-2:7.6(c)(2) (requiring that a "Sports Betting Operation must locate the primary server in the state of Colorado" and stating that "[t]he primary server shall be the server responsible for the **acceptance** and storage of patron wagers") (emphasis added). If the bet is received and accepted on Indian lands, then the betting activity is not occurring off-reservation, and therefore, is not subject to State regulation or taxation. Rather, such activity is occurring on "Indian lands" subject to IGRA and the Gaming Compacts.

16. Indeed, the Colorado Sports Betting Act itself is based on the principle that the location of the bettor does not determine where betting activity occurs. Article XVIII § 9(3)(a) of the Colorado Constitution permits limited gaming to occur only in the City of Central, the City of Black Hawk, and the City of Cripple Creek. Despite this constitutional limitation, the Colorado Sports Betting Act permits sports bets to be placed from "*anywhere in the state.*" C.R.S. § 44-30-1505(2)(a)(III) (emphasis added). To comply with the constitutional mandate while permitting bets to be placed from anywhere in Colorado, the Colorado Sports Betting Act requires licensed sports betting operations to contract with an entity physically located in one of the three constitutionally permitted cities: Central, Black Hawk, or Cripple Creek. C.R.S. § 44-30-1505(2)(a)–(b). The arrangement proposed by the Tribes is precisely the same: bettors can place bets from

“anywhere in the state” that are accepted by servers physically located on tribal lands, where such gaming activity is permitted.

17. The State’s attempt to bring Tribal gaming under State regulation is not only contrary to the terms of IGRA but is also an assault on tribal sovereignty. The Tribes are sovereign Indian nations that have occupied their homelands since time immemorial and, as such, enjoy a sovereign right to regulate their own commercial activities as they see fit, consistent with IGRA and their binding Gaming Compacts with Colorado. Furthermore, the Tribes have been successfully operating their own gaming for almost thirty years without incident, along with other successful, highly regulated Tribal enterprises. There is no basis for the State to assert that the Tribes are now not fully capable of regulating their own businesses pursuant to Tribal and applicable federal laws.

18. Governor Polis and CODOG, acting at the Governor’s direction, have therefore illegally and improperly sought to freeze the Tribes out of the broader Colorado sports betting market by, among other things, adopting a legal position contrary to IGRA, the Gaming Compacts, and the Colorado Sports Betting Act and regulations, thereby discouraging vendors from doing business with the Tribes. While the Southern Ute Indian Tribe’s initial principal vendor did not ultimately succumb to that pressure from the Polis Administration, the State’s disregard for the Southern Ute Gaming Compact and IGRA, the belated challenge by the Administration to Southern Ute engaging in internet sports betting throughout the State, its refusal to withdraw that challenge, and the unnecessary and unfair burden imposed on tribal gaming in this State, effectively foreclosed the ability



of Tribes to compete in the sports betting market.<sup>3</sup> The State's wrongful legal posture is a continuing violation of IGRA, threatening the Tribes' future sports betting activity and other potential future activities that are permitted under the Gaming Compact.

19. The Southern Ute Indian Tribe accordingly seeks a declaration that its Tribal Sports Betting Rules, its internet sports betting operation, and the internet sports betting in which they would again engage absent continued unlawful interference from the State, do not violate the applicable provisions of (1) IGRA, (2) the Southern Ute Gaming Compact, and (3) the Colorado Sports Betting Act and its regulations, and also seeks an injunction against continued interference by Governor Polis and CODOG with any tribal sports betting operations. The Southern Ute Indian Tribe also seeks an order enjoining continuing unlawful interpretations by Governor Polis and CODOG of the terms of the Southern Ute Gaming Compact, which clearly authorize internet sports betting and prohibit imposition of the sports betting tax sought by the State as a prerequisite to such operations.

20. The Ute Mountain Ute Tribe seeks a declaration stating that the same principles apply under the Ute Mountain Gaming Compact, if and when it launches a sports betting operation.

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<sup>3</sup> There are currently 13 Online Sports Betting Operators with active licenses in Colorado. Colorado Department of Revenue, *Colorado Sports Betting Operators – Currently Operating*, [https://docs.google.com/spreadsheets/d/10U\\_66tli87Et38MplUEUTS39EvnEghVzP3gZd2tDAXI/edit?pli=1&qid=1190930214#gid=1190930214](https://docs.google.com/spreadsheets/d/10U_66tli87Et38MplUEUTS39EvnEghVzP3gZd2tDAXI/edit?pli=1&qid=1190930214#gid=1190930214).

## I. PARTIES

21. Plaintiff the Southern Ute Indian Tribe is a federally recognized Indian tribe.<sup>4</sup> The Tribal government is headquartered at 356 Ouray Drive, Ignacio, Colorado 81137 on the Southern Ute Indian Reservation.

22. Plaintiff the Ute Mountain Ute Tribe is a federally recognized Indian tribe.<sup>5</sup> The Tribal government is headquartered at 125 Mike Wash Rd. Towaoc, CO 81334, on the Ute Mountain Ute Reservation.

23. Jared Polis is Governor of Colorado and is being sued in his official capacity.

24. Defendant Christopher Schroder is the Director of CODOG, established by C.R.S. § 44-30-201, and is being sued in his official capacity.

## II. JURISDICTION, VENUE AND STANDING

25. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this case brings claims under federal law, specifically IGRA, 25 U.S.C. § 2701 *et seq.* “The general federal-question statute, 28 U.S.C. § 1331, gives a district court subject matter jurisdiction to decide any claim alleging a violation of IGRA.” *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 n.2 (2014).

26. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391 because all parties have a principal place of business in Colorado and the events and omissions that give rise to this Second Verified Amended Complaint took place in Colorado.

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<sup>4</sup> See 89 Fed. Reg. 944,946 (Jan. 8, 2024) (providing periodic list of all federally recognized Indian tribes in the United States).

<sup>5</sup> *Id.*

27. The Gaming Compacts provide that “the complaining Party may invoke arbitration.” However, this language is merely permissive and does not compel a party to select an arbitral forum if it would prefer federal court. Southern Ute Gaming Compact § 12; Ute Mountain Gaming Compact § 9.

28. Governor Polis serves as Colorado’s governor pursuant to Section 2, Article IV of the Colorado Constitution, which provides that, “The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.” This suit is brought against Governor Polis in his official capacity for declaratory and injunctive relief prohibiting ongoing and future violations of IGRA, the Gaming Compacts, the Colorado Sports Betting Act, and applicable regulations as to the Tribes’ internet sports betting operations. In these circumstances, he has no immunity from suit. *Ex Parte Young*, 209 U.S. 123, 159–60 (1908); *Elephant Butte Irr. Dist. Of New Mexico v. Dep’t of Interior*, 160 F.3d 602, 608 (10th Cir. 1998).

29. Christopher Schroder serves as the Director of CODOG. Schroder supervises and controls the department which “license[s], implement[s], regulate[s], and supervise[s],” among other things, “[s]ports betting” in the state of Colorado. See C.R.S. § 44-30-202. The Colorado Limited Gaming Commission oversees the Director of CODOG’s activities, and the Governor has the power to appoint and the power to remove “at any time” the members of the Colorado Limited Gaming Commission. C.R.S. § 44-30-302; C.R.S. § 44-30-301(1)(d). Schroder is therefore subject to oversight and control by Governor Polis. The suit is brought against Schroder in his official capacity for declaratory and injunctive relief prohibiting his ongoing and future violations of IGRA, the Gaming Compacts, the Colorado Sports Betting Act, and applicable regulations as to the Tribes’

internet sports betting operations. Although Schroder was not in his current position until September 2023, he has contributed to CODOG's ongoing violations of the aforementioned laws and otherwise assumes responsibility for the actions of his predecessor, Dan Hartman. See *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (“[W]hen officials sued in [their official] capacity in federal court die or leave office, their successors automatically assume their roles in the litigation.”) In these circumstances, Schroder is responsible for CODOG's violations at all times relevant and he has no immunity from suit. *Ex Parte Young*, 209 U.S. at 159–60; *Elephant Butte*, 160 F.3d at 608.

### III. FACTUAL ALLEGATIONS

#### A. The Indian Gaming Regulatory Act

30. “Indian tribes are ‘distinct, independent political communities, retaining their original natural rights’ in matters of local self-government.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (quoting *Worcester v. Georgia*, 6 Pet. 515, 559 (1832)).

31. “Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” *United States v. Wheeler*, 435 U.S. 313, 323 (1978) (abrogated by statute on other grounds). “The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history.” *McGirt v. Oklahoma*, 591 U.S. 894, 928 (2020) (quoting *Rice v. Olson*, 324 U.S. 786, 789 (1945)).

32. “The Court has consistently recognized that Indian tribes retain attributes of sovereignty over both their members and their territory, and that tribal sovereignty is dependent on, and subordinate to, only the Federal Government, **not the States.**”

*California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987) (quotations omitted, emphasis supplied).

33. This includes the regulation of gaming. *Id.* at 222 (“State regulation would impermissibly infringe on tribal government, and this conclusion applies equally to the county’s attempted regulation of the Cabazon card club.”).

34. In response to the *Cabazon* decision, Congress enacted IGRA, which largely reaffirmed tribes’ inherent and historic powers, but created some limited scope for state involvement. Specifically, it provided that in states where Class III gaming is consistently forbidden for all purposes and by all persons and entities, it may also be forbidden on tribal land. But if a state elected to permit parties to engage in Class III gaming, then it must negotiate in good faith with any interested tribe for a gaming compact to specify how certain enumerated areas of tribal gaming would be regulated. *Northern Arapaho Tribe v. Wyoming*, 389 F.3d 1308, 1311 (10th Cir. 2004). Under IGRA, “if a state permits Class III gaming ... that state must negotiate a compact for those games even if state law restricts the sponsors or purposes of such gaming.” *Id.* at 1313. In sum, IGRA provided states only with a binary choice—to allow gaming within the exterior boundaries of the state or not. IGRA did not confer on states any regulatory power over tribes.

35. “The Indian Gaming Regulatory Act . . . creates a framework for regulating gaming activity on Indian lands.” *Bay Mills*, 572 U.S. at 785.

36. “Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity.” 25 U.S.C. § 2701(5).

37. Class III gaming is legal when: (1) “such activities are ... authorized by an ordinance or resolution that is adopted by the governing body of the Indian tribe having jurisdiction over such lands;” (2) the reservation is “located in a State that permits such gaming for any purpose by any person, organization, or entity;” and (3) such activities are “conducted in conformance with a Tribal-State compact entered into by the Indian tribe.” 25 U.S.C § 2710(d).

38. Under the plain terms of IGRA, there is no prohibition against a state legislature enacting a state sports betting law to allow for internet sports betting within the state’s boundaries and for tribal governments located within the state to engage in such authorized gaming activity under the terms of a gaming compact. *W. Flagler Assocs. v. Haaland*, 71 F.4th 1059, 1065 (D.C. Cir. 2023), cert denied, 144 S.Ct. 10 (2024) (upholding hub-and-spoke exclusive online sports betting structure agreement between Florida and the Seminole Tribe whereby the Seminole Tribe accepts on-reservation bets by online bettors anywhere in the State of Florida).

## **B. The Gaming Compacts**

39. In 1995, the Southern Ute Indian Tribe and the State entered into the amended, and operative, Gaming Compact which was duly approved by the United States Department of the Interior under IGRA and remains in force. This superseded the original 1993 Gaming Compact.

40. In keeping with what was then Colorado’s longstanding policy of supporting the development and self-government of the Indian tribes remaining in Colorado, this Gaming Compact enshrines the Southern Ute Indian Tribe’s sovereign right to engage in

any gaming activities that are otherwise legal within the State and to retain the full proceeds of such gaming to support the Tribe's government functions and priorities.

41. "[T]he Tribe may conduct any or all Class III Games that are Explicitly Authorized by the laws of the State, each game having a maximum single bet as Explicitly Authorized by State law." Southern Ute Gaming Compact § 3(a).

42. "'Explicitly Authorized' means, with respect to gaming activities and bet amounts, those gaming activities and bet amounts that are identical to the activities and bet amounts that are authorized in the State of Colorado." Southern Ute Gaming Compact § (1)(f).

43. This provision is stated in the present tense, permitting such gaming activities as "are authorized." *Id.* The Compact includes in authorized gaming activities "any and all Class III Games that, subsequent to the effective date of this Compact, are Explicitly Authorized by the laws of the State." *Id.* at § 3(a). Thus, as Colorado has expanded the gaming activities that are lawful within the State, these new categories have also automatically and expressly become lawful for the Southern Ute Indian Tribe and its gaming enterprise by operation of law.<sup>6</sup>

44. In 1995, the Ute Mountain Ute Tribe and the State entered into the amended, and operative, Ute Mountain Gaming Compact which was duly approved by the United States Department of the Interior under IGRA and remains in force.

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<sup>6</sup> For instance, in 2008, Colorado voters approved a constitutional amendment allowing the cities of Central, Black Hawk, and Cripple Creek to increase maximum bets from five dollars to one hundred dollars, offer craps and roulette games, and keep casinos open for twenty-four hours. Colo. Const. art XVIII, § 9(7). The Tribes accordingly increased bet limits from five dollars to one hundred dollars and began offering craps and roulette games.

45. The Ute Mountain Gaming Compact includes language similar to the Southern Ute Gaming Compact, permitting Ute Mountain to engage in “any or all Class III gaming that is permitted within the State for any purpose by any person, organization, or entity, now or hereafter.” Ute Mountain Gaming Compact § 3(a).

46. Under the Gaming Compacts, the Tribes take the primary responsibility for regulating and managing their own gaming enterprises, and CODOG has only limited powers to review the decisions made by the Tribes and intervene if necessary or if one of the Tribes requests assistance. Similarly, Tribal law enforcement is responsible for maintaining public safety at the facilities, although cooperative arrangements and cross-deputization agreements with adjacent counties are permitted and encouraged. *See, e.g.,* Southern Ute Gaming Compact § 4; Ute Mountain Gaming Compact § 4 (“The Tribe shall have the exclusive licensing authority with respect to Tribal gaming.”).

47. It is the Tribes, not the State, that are responsible for licensing gaming facilities, and nothing in the Gaming Compacts permits the State to require the Tribes to apply for a Colorado license. There are some administrative limitations that permit the State to engage in criminal background checks and to assure itself that other legitimate, enumerated regulatory requirements are being enforced, but these are, to a large extent, strictly ministerial and administrative and do not confer decision-making power or discretionary authority. Southern Ute Gaming Compact § 5(a); Ute Mountain Gaming Compact § 7.

48. No provision in either Tribal Gaming Compact permits the State to demand that a share of the funds be diverted from the Tribes’ sovereign management and control to any other public or private purpose. *See* Southern Ute Gaming Compact § 13; Ute



Mountain Gaming Compact § 10. Colorado is unique among the states in that it never bargained for any revenue sharing in its Gaming Compacts, and since the passage of IGRA in 1988—until the Polis Administration—there has been a strong bipartisan consensus that the State works with the Tribes with regard to gaming and respects the Tribes’ financial and regulatory independence. There is a compelling reason for this given the significant governmental services that the Tribes provide to Colorado residents and the expense the Tribes bear for ensuring regulatory requirements are met, particularly in the area of environmental management, for which the State provides little or no reimbursement.

### **C. The Colorado Sports Betting Act**

49. In November 2019, the people of Colorado approved Proposition DD, now codified at C.R.S. § 44-30-1501, which legalized sports betting in Colorado.

50. This legislation specifically legalizes “Internet sports betting operation[s]” defined as “a sports betting operation in which wagers on sports events are made through a computer or mobile or interactive device and accepted by an internet sports betting operator.” C.R.S. § 44-30-1501(4).

51. Although Proposition DD was a referred measure, drafted by the State General Assembly and presented to the people of Colorado, there is no mention of tribal gaming in the legislation, although gaming in the cities of Central, Black Hawk, and Cripple Creek is specifically addressed. Under Colorado’s sports betting law, the location of the bet is where the bet is accepted. The sports betting regulations define “sports bet” as the “business of **accepting** approved bets by a licensee on any sports event by any approved system or method of betting.” 1 C.C.R. § 207-2:1.4 (emphasis added).

Similarly, the law provides that an “Internet sports betting operation” means “a sports betting operation in which wagers on sports events are made through a computer or mobile or interactive device and **accepted** by an internet sports betting operator.” C.R.S. § 44-30-1501(4) (emphasis added). Likewise, Colorado law provides that “[a]n internet sports betting operator **shall accept** bets only from persons physically located within the state of Colorado.” C.R.S. § 44-30-1506(8) (emphasis added). Lastly, Colorado sports betting regulations require that a “Sports Betting Operation must locate the primary server in the state of Colorado. The primary server shall be the server responsible **for the acceptance** and storage of patron wagers.” 1 C.C.R. § 207-2:7.6(c)(2) (emphasis added). Based on these state law standards and the fact the Tribes’ primary server would be located on “Indian lands,” the Tribes’ betting activity occurs on-Reservation.<sup>7</sup>

52. The Colorado Sports Betting Act does not deem the location of a bet to be where the bet is initiated. The Colorado Constitution permits limited gaming only in the cities of Central, Black Hawk, and Cripple Creek, Colo. Const. art. XVIII, § 9(3)(a), whereas the Colorado Sports Betting Act permits bets to be placed from “anywhere in the state,” C.R.S. § 44-30-1505(2)(a)(III). The Colorado Sports Betting Act, however, recognizes this constitutional limitation and requires that licensed internet sports betting operators enter into a contract with entities physically located in one of the three constitutionally permitted cities. C.R.S. § 30-1505(2)(a)–(b). It is thus crucial to the constitutionality of the Colorado Sports Betting Act that the location of a bettor does not determine where a bet is placed.

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<sup>7</sup> Indeed, when the Southern Ute Indian Tribe launched the Sky Ute Sports Book, the servers associated with the internet sports betting operation were located on the Tribe’s lands.

#### **D. The Launch of Tribal Sports Betting and the State's Response**

53. As noted above at Paragraph 8, the Southern Ute Indian Tribe began preparing its sports betting market entry in 2019, during the legalization process. In March 2020, the State and the Tribe scheduled a call to discuss sports betting, following the State's outreach. The Tribe had all of its necessary representatives available to engage in those discussions. However, no representative of CODOG or the Colorado Department of Revenue was available for the call, and the sole representative of the State could not identify any concerns the State had with the Tribe engaging in sports betting. The Tribe requested that if there were any such concerns, that they be identified in writing. Nothing was received.

54. On March 25, 2020, another meeting was scheduled between the State and the two Tribes to discuss sports betting. The purpose of the meeting, as described by the State, was to "share [everyone's] respective understandings of relevant rules and regulations and to identify additional conversations/action items needed to ensure that online sports betting can be implemented smoothly on May 1st." Exhibit C. Once again, all necessary representatives of the Southern Ute Indian Tribe were available to discuss this issue.

55. On March 24, 2020, the State cancelled the meeting. *Id.* No reason was given. However, the State again assured the Southern Ute Indian Tribe it would provide a written outline of any concerns the State might have with the Tribe engaging in internet sports betting.

56. On April 16, 2020, SUDOG provided CODOG with a Notice of Implementation of the Tribal Sports Betting Rules. Exhibit D.

57. The Tribal Sports Betting Rules were largely modeled off the State's rules and drafted to conform to the requirements of Colorado and federal law. *Compare* Exhibit E-1<sup>8</sup> with 1 C.C.R. § 207-2-1.

58. For example, like Colorado, the Southern Ute Indian Tribe did not permit betting on high school sports events; required contractors to pass criminal background checks and conflict of interest screenings; had customer screening in place to prevent betting by underaged persons, people with inside knowledge, and others who would not be able to participate under the Colorado statute; and did not permit bets to be placed from outside the State of Colorado. *Id.*

59. The Ute Mountain Ute Tribe has adopted similar protections that apply to a sports betting enterprise. See Ute Mountain Gaming Commission Rules and Regulations, adopted on November 13, 2002 and revised on February 28, 2023 ("UMUT Gaming Regulations"), attached to this Second Verified Amended Complaint as Exhibit E-2. The Tribe's Amended and Restated Gaming Ordinance permits Class I, II and III gaming by enterprises that are wholly owned by the Tribe itself, subject to licensure and regulation by the Tribe's Gaming Commission and compliance with applicable law,<sup>9</sup> and Chapter 18 of the associated Tribal regulations specifically authorize and regulate sports betting.<sup>10</sup>

60. One day after SUDOG provided CODOG with its Notice of Implementation, on April 17, 2020, the Southern Ute Indian Tribe received a letter from CODOG that stated, "the Division would like to find a solution that does not put any of our partners in conflict with IGRA and the Unlawful Internet Gambling Enforcement Act ("UIGEA"). There has

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<sup>8</sup> Exhibit numbers have been assigned to avoid relabeling of the Exhibits to the original Complaint and the Verified Amended Complaint as a matter of efficiency and clarity.

<sup>9</sup> UMUT Gaming Ordinance § 106.

<sup>10</sup> UMUT Gaming Regulations, § 18-101, *et seq.*

always been a great working relationship between the Tribe and the Division and that should be a great foundation to find a positive legal solution to internet sports betting. We look forward to our conversation.” Exhibit F. CODOG further suggested for the first time that tribal internet sports betting was limited to bets initiated and accepted within (i.e., “geo-fenced inside”) the Reservation boundaries. *Id.*

61. In late April, the Southern Ute Indian Tribe finally had discussions with CODOG and the representatives of the Colorado Attorney General’s office. This was in the final weeks before implementation of sports betting in the State. The Tribe provided full disclosure regarding the activities in which it planned to engage. The culmination of those meetings was that the State would have internal discussions and would get back to the Tribe with any concerns.

62. Assurances were provided by Dan Hartman, then Director of CODOG, that there was no intention of interfering with the Southern Ute Indian Tribe’s internet sports betting operation. CODOG’s email of April 21, 2020 referred to plans for “great follow-up meetings,” particularly around the Tribe’s Sports Betting Rules. Ex. F. That meeting regarding the Rules was not scheduled.

63. Due to changes in Tribal personnel, the Ute Mountain Ute Tribe alleges upon information and belief that its Tribal representatives also participated in March and April 2020 communications with the State, alongside Southern Ute Indian Tribe representatives, but not on every virtual meeting, call, or email between the Southern Ute Indian Tribe and the State.

64. On June 2, 2020, the Southern Ute Indian Tribe launched the Sky Ute Sports Book, a sports betting operation conducted through its gaming enterprise.

65. At that time the Southern Ute Indian Tribe's Casino was closed and shuttered as Covid lockdowns were in force.

66. The Ute Mountain Ute Tribe also invested significant resources in preparation for the launch of its own online sports books but did not proceed in light of the State's opposition and the rapid saturation of the online market.

67. CODOG has taken the position that the Southern Ute Gaming Compact does not apply to the Southern Ute Indian Tribe's sports betting operation and demanded that it secure a license from the Colorado Gaming Commission. *See, e.g.*, Letter dated May 17, 2021 from Dan Hartman to David Smith, attached to this Second Verified Amended Complaint as Exhibit G. CODOG has made clear that its position is pursuant to a directive from Governor Polis.

68. The Tribes do not pay any portion of their gaming proceeds to the State because this is not required by the Gaming Compacts or IGRA and, in accordance with IGRA, they use those funds to provide basic public services to their communities. 25 U.S.C. § 2702(1). Although Colorado is unique among the states in not requiring revenue sharing from tribal gaming, this failure to include revenue sharing in the Gaming Compacts was not by accident. The Gaming Compacts do not provide for revenue sharing because Colorado chose not to negotiate for it.

69. Faced with the clear authority of the Gaming Compacts, the State tried to put off the Tribes, delaying engagement and belatedly asserting its legal position.

70. If the State had a view about the legal parameters of the Tribes' internet sports betting operations, it should have initiated good faith compact negotiations as required by IGRA before authorizing sports betting statewide. But given that they elected

not to do so, the current Gaming Compact controls, which authorizes the Tribes' participation in this new gaming industry free of state taxation and regulation. The State's failure to consult with the Tribes regarding any perceived regulatory matters subject to the Gaming Compacts approved under IGRA and then seeking to restrict permissible gaming by the Tribes and impose a state tax on such activity poses a violation of federal law.

71. Instead, the State quietly tried to shut down the online Sky Ute SportsBook by sending a threatening letter to the Southern Ute Indian Tribe's key vendor. Specifically, on June 16, 2020, CODOG sent a letter to US Bookmaking ("USB"), which provided advisory services to the Sky Ute Casino on sports bets. The letter stated that "[b]ased on an initial review of your activities, we believe that your company is participating in sports betting in Colorado on behalf of the Southern Ute Indian Tribe without complying with Colorado gaming law." This letter to USB is attached to this Second Verified Amended Complaint as Exhibit H. The letter, which was delivered with no notice to the Southern Ute Indian Tribe, violated the terms of the Southern Ute Gaming Compact, which mandated consultation with the Tribe.

72. The Ute Mountain Ute Tribe's proposed online sports book vendor, IGT, received a similar letter. This letter to IGT is attached to this Second Verified Amended Complaint as Exhibit I. On information and belief, this vendor responded by discontinuing its relationship with Ute Mountain with respect to statewide internet sports betting.

73. These letters, sent without consultation, have effectively prevented the Tribes from participating in internet sports betting in Colorado. With respect to the Southern Ute Indian Tribe, it has required the Tribe to justify the legality of its operations.

As to the Ute Mountain Ute Tribe, its vendor refused to implement online sports betting outside of the reservation due to the State's correspondence. The practical consequence of the State's action was that reputable vendors were faced with threatened litigation with the State if they engaged in business with the Tribes.

74. The State's admonition to vendors was clear: "[T]he Division considers such gaming occurring off Tribal lands but within the state of Colorado, and the facilitation of such gaming, to be illegal." Ex. H; Ex. I.

75. Pressure tactics such as threatening to take action against a vendor of the Sky Ute SportsBook Betting Enterprise infringe on the Tribe's right to engage in online sports betting as guaranteed under the express terms of its Compact and under IGRA. 25 U.S.C. § 2710(d)(3).

76. In a letter dated May 17, 2021, Dan Hartman, then Director of CODOG, proposed that the arrangement with the Southern Ute Indian Tribe be modified to more closely resemble that of the State of Michigan, a state that has historically had a less favorable approach to tribal gaming than the one taken by Colorado and resultantly negotiated its tribal gaming compacts very differently than Colorado. See Ex. G. Specifically, Mr. Hartman proposed that the Tribe would be "eligible to obtain a sports betting license" from the State but could not license and regulate its own operations as is guaranteed under the Gaming Compact and would need to subject its operations to discretionary authority of the State. *Id.* Such license would be "conditioned upon" "a payment in an amount equal to 10% of net sports betting proceeds for bets placed with the Tribe's operation by bettors located off Tribal land" and submission to the regulatory jurisdiction of the State. *Id.*



77. Mr. Hartman's May 17 letter further stated, "The issuance of a sports betting license to a Tribe is conditioned upon the following agreements . . . The Tribe (1) permits, to the extent necessary, the Division and Colorado Limited Gaming Control Commission to enforce the Act and accompanying regulations concerning consumer protection; (2) permits the Colorado Attorney General and other appropriate State agencies to bring claims protecting Colorado consumers arising out of the Tribe's off-Tribal land sports betting activity; and (3) permits consumers of the Tribe's off-Tribal land sports betting activity to resolve disputes in the same or similar manner as with other licensed operators." *Id.* Although it does not use the phrase "waiver of sovereign immunity," that is what this requirement is demanding. In fact, CODOG was attempting to subject the Tribe to civil jurisdiction in every county of the State while non-Tribal sports betting operators were being permitted to litigate claims with consumers in their home jurisdictions or the jurisdiction of their choice.

78. None of these requirements appear in the Southern Ute Gaming Compact that was formally negotiated with the State and approved by the Department of Interior, and none have been requested by any other Colorado administration in the decades since the Gaming Compact was negotiated and came into effect.

79. This license would place the operation under the jurisdiction of CODOG, rather than SUDOG, in violation of the Southern Ute Gaming Compact.

80. The Southern Ute Indian Tribe would be required to pay a full 10% of its proceeds to the State, although the State would agree to place some portion of this money in a "designated fund" for water projects "impacting tribal lands." *Id.*<sup>11</sup>

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<sup>11</sup> The State has conveyed these same demands to the Ute Mountain Ute Tribe in various settings.

81. Roughly a year and a half into Colorado sports betting and its improper threat campaign to the Tribes' vendors, on October 6, 2021, the State, through CCIA, and the Colorado Department of Revenue, finally sent an invitation for "a formal consultation" regarding "[s]ports betting within the state of Colorado and within Southern Ute and Ute Mountain Ute Tribal casinos." Letter dated October 6, 2021, attached to this Second Verified Amended Complaint as Exhibit J. At that point, the Colorado online sports betting market was already saturated, and the Tribes had been wrongly frozen out of the opportunity to participate in it by the Polis Administration.

82. Nonetheless, the parties met on the Southern Ute Reservation on April 29, 2022, and exchanged proposals, following a long delay due to changes in the Governor's counsel.

83. In the five years since the Colorado Sports Betting Act was adopted, the State has refused to pull back from its baseless requirements that the Tribes hand over 10% of their sports betting revenues to the State or impose on themselves a 10% assessment. Numerous meetings, communications, and discussions have been fruitless due to the Polis Administration's complete intransigence. During the course of those discussions, it was specifically requested that the letters to vendors be withdrawn. That request was refused and they continue in effect today.

84. During this time, there have been no incidents regarding consumer protection or public safety that were not handled promptly and professionally by the experienced Southern Ute Tribal staff and by the Southern Ute Gaming Commission. The same is true as to the Ute Mountain Ute Tribe.

85. While the Southern Ute Indian Tribe's initial vendor did not ultimately succumb to that pressure from the Polis Administration, the State's disregard for the Southern Ute Gaming Compact and IGRA made sports betting operations challenging and more expensive for the Tribe, and unnecessarily placed a cloud of uncertainty over Tribal sports betting in Colorado. Having been hamstrung by the Polis Administration's improper efforts to restrict Tribal sports betting and having missed out on effective implementation in 2020 and 2021, the Southern Ute Indian Tribe encountered a quickly over-saturated Colorado sports betting market populated by major industry players. When the Tribe's initial vendor left the market, the likelihood of finding a vendor who would withstand pressure from the State was unlikely. Indeed, in June 2023, Elys Game Technology ("Elys"), the entity that replaced USB as the Tribe's gaming vendor, emailed CODOG and expressed interest in applying for an online sports betting operator license to provide sports betting services to the Tribe. CODOG elevated Elys's email to Governor Polis's office and to the Attorney General's office, among others. Elys ultimately applied for a license, and Governor Polis's office notified the Southern Ute Indian Tribe that Elys's application was impacted by the lack of an agreement between the State and the Tribe to participate in internet sports betting.

86. The Tribes have acted diligently and timely in pursuing their claims and have initiated legal action only after repeated attempts to resolve the issue through negotiation with the State. Governor Polis and Schroder cannot otherwise demonstrate any prejudice resulting from any purported delay in filing suit, given that all relevant evidence remains readily available.

87. Faced with the reality that Governor Polis had effectively frozen the Southern Ute Indian Tribe out of the broader Colorado sports betting market, thereby restricting competition and securing the State 10% of virtually the entire Colorado market, the Tribe determined to close the Sky Ute SportsBook in July 2023 until this matter could be resolved. However, the State's wrongful legal posture threatens the Tribe's ability to ever engage in internet sports betting activity as non-Tribal gaming operators do. The Ute Mountain Ute Tribe is in a very similar position—having presented the State with unrebutted analysis demonstrating the legality of Tribal internet sports betting operations anywhere within Colorado. Both Tribes want to engage in internet sports betting to the same extent as non-Tribal operators in this State as permitted by their compacts. However, having exhausted their efforts to persuade Governor Polis on a government-to-government basis and with no indication of a change in the State's ongoing federal law violations, the Tribes seek this Court's recognition of the plain language of the Gaming Compacts and an Order enjoining further breach of the Gaming Compacts and IGRA by Governor Polis and/or CODOG or other State agencies.

88. Like the State of Colorado, the Tribes have broad and sweeping powers of civil regulation, and the Gaming Compacts specifically recognize that they can conduct, license, and regulate any gaming activity legal in Colorado, as they have done, without incident, for decades.

89. Colorado's actions are illegal and should be enjoined. The named officials are violating federal law because the location of the sports bet is where the bet is accepted, which in the case of the Tribes' sports betting operations, would be through a primary server located on "Indian lands," subject to IGRA and the Gaming Compacts as

opposed to state law. The Tribes' internet sports betting activity is located within their respective tribal boundaries on tribal lands and does not constitute off-reservation activities subject to state law.

90. The Tribes' operation of online sports books has no bearing on the State's regulatory authority with respect to non-Tribal online sports books; Colorado's actions are deleterious to the Tribes' sovereignty and seek to evade the State's solemn legal obligations to the Tribes flowing from the Gaming Compacts, which are binding federal law. Whether or not either Tribe maintains an online sports book or declines to do so in light of market saturation is irrelevant to the Tribes' sovereign interest in having Colorado honor the terms of the Gaming Compacts. Colorado's contractual legal obligations to the Tribes under the Gaming Compacts are enforceable under the terms of the Compact. The State cannot eviscerate the Tribes' rights under the Gaming Compacts. The Tribes are entitled to operate online sports books in compliance with federal law and both Tribes' laws.

91. To this day, Governor Polis and Director Schroder maintain their position that the State, not the Tribes, has the proper authority to regulate internet sports betting operations launched by the Tribes. Governor Polis and Director Schroder also continue to assert that the Tribes would be required to collect a 10% fee on all sports bets initiated by bettors located physically outside the Reservation boundaries notwithstanding that those bets would be received and accepted – and thus ultimately placed – on tribal lands. These positions are unlawful violations of IGRA, the Gaming Compacts, the Colorado Sports Betting Act, and applicable regulations, and they have frozen and will continue to freeze the Tribes out of the sports betting market. Governor Polis is entrusted with faithful execution of this State's laws, including the State's obligations under the Gaming

Compacts, and, as Director of CODOG, Director Schroder is responsible for licensing, implementing, regulating, and supervising internet sports betting operations, C.R.S. § 44-30-202(1)(b). Governor Polis and Director Schroder are accordingly not immune from this lawsuit, given the Tribes' request for prospective relief against actions in violation of state and federal law taken by Governor Polis and Director Schroder in their official capacities. *Ex Parte Young*, 209 U.S. at 159–60; *Elephant Butte*, 160 F.3d at 608.

### **CLAIM ONE**

#### **DECLARATORY JUDGMENT UNDER IGRA, 25 U.S.C. § 2710, AND THE GAMING COMPACT**

92. Plaintiffs reallege and incorporate by reference the allegations contained in this Second Verified Amended Complaint.

93. Class III gaming is legal when: (1) “such activities are ... authorized by an ordinance or resolution that is adopted by the governing body of the Indian tribe having jurisdiction over such lands;” (2) the reservation is “located in a State that permits such gaming for any purpose by any person, organization, or entity;” and “(3) when “conducted in conformance with a Tribal-State compact entered into by the Indian tribe.” 25 U.S.C. § 2710(d)(1).

94. The Sky Ute SportsBook Betting Enterprise, as the Southern Ute Indian Tribe had conducted and intends to conduct in the future, is compliant with these three requirements.

95. Any online sports book operated under the laws of the Ute Mountain Ute Tribe is also compliant with these three requirements.

96. Each Tribe's operation of an online sports book is governed by an ordinance adopted by the Tribe's government, located in a state that authorizes online sports betting

for a wide range of entities, and is conducted in conformance with a Gaming Compact that authorizes the Tribe to conduct any gaming activity lawful within the State of Colorado and to exercise its own licensure and regulatory authority, including with respect to online sports betting.

97. The Tribes are not asserting that Colorado has engaged in bad faith negotiations around drafting a new compact or modifying the existing compacts and seek no order from this Court directing the State to engage in good faith negotiations regarding the Tribes' sports betting operations or potential operations. Instead, the Tribes assert that they are already legally authorized to engage in online sports betting (including receiving and accepting bets that are submitted electronically within the State from bettors located outside of the exterior boundaries of their respective Reservations and processed within the Reservations) but have been unable to do so because the State continues to engage in unlawful interpretations of its compacts and to act in violation of IGRA to freeze the Tribes out of the sports betting market in Colorado. The State's ongoing unlawful interpretation of Tribal compacts and violation of IGRA have worked to effectively unilaterally rewrite these compacts to seriously disadvantage the Tribes.

98. No remedial scheme exists under IGRA that dictates a singular means by which the Tribes must seek to enforce their right under 25 U.S.C. § 2710(d)(1) to engage in sports betting as authorized by existing and approved compacts and without the State imposing illegal taxes on such operations. Further, the Southern Ute Indian Tribe's Compact does not designate an exclusive remedy for breach of compact provisions, but rather authorizes arbitration in addition to "any remedies provided in the Act, or otherwise

available under Federal law.” Southern Ute Gaming Compact at § 12. As a result, this relief requested is proper.

99. This Court should issue a Declaratory Judgment that the Tribes’ respective Tribal laws, and the Tribes’ internet sports betting activity regulated by those laws, do not violate applicable provisions of (1) IGRA, (2) the Gaming Compacts entered into between the State and the Tribes, and (3) the Colorado Sports Betting Act, and should also enjoin against continued interference and unlawful taxation by the Polis Administration with the Tribes’ sports betting operations by means of an ongoing unlawful interpretation of the Tribes’ Compacts and violation of IGRA.

## **CLAIM TWO**

### **INJUNCTIVE RELIEF IGRA, 25 U.S.C. § 2710, AND THE GAMING COMPACT**

100. Plaintiffs reallege and incorporate by reference the allegations contained in this Second Amended Verified Complaint.

101. Class III gaming is legal when: (1) “such activities are ... authorized by an ordinance or resolution that is adopted by the governing body of the Indian tribe having jurisdiction over such lands;” (2) the reservation is “located in a State that permits such gaming for any purpose by any person, organization, or entity;” and “(3) such activities are “conducted in conformance with a Tribal-State compact entered into by the Indian tribe.” 25 U.S.C. § 2710(d)(1).

102. The Sky Ute SportsBook Betting Enterprise, as it existed and as the Southern Ute Indian Tribe intends to move forward in the future, is compliant with these three requirements.



103. It is governed by an ordinance adopted by the Southern Ute Indian Tribe's government, located in a state that authorizes online sports betting for a wide range of entities, and is conducted in conformance with a Gaming Compact that authorizes the Tribe to conduct any gaming activity lawful within the State of Colorado and to exercise its own licensure and regulatory authority.

104. A sports betting enterprise operated by the Ute Mountain Ute Tribe would also comply with these requirements.

105. This Court should issue an injunction requiring Colorado to refrain from ongoing and future interference with any internet sports betting operations of either Tribe including unlawful taxation, except to the extent that it is exercising its legitimate powers under the Gaming Compacts, as expressly and strictly limited therein. Specifically, this Court should issue an injunction requiring Colorado to refrain from continued and future interpretations of the Tribes' Compacts to require the Tribes to remit or impose on itself an illegal tax before they can engage in online sports betting.

106. This Court should issue an injunction requiring Colorado to refrain from interfering with the relaunch of a Southern Ute Indian Tribe internet sports betting enterprise, except to the extent that it is exercising its legitimate powers under the Southern Ute Gaming Compact, as expressly and strictly limited therein.

107. This Court should issue an injunction requiring Colorado to refrain from ongoing and future interference with the business development and launch of a Ute Mountain Ute internet sports betting enterprise, except to the extent that it is exercising its legitimate powers under the Ute Mountain Gaming Compact, as expressly and strictly limited therein.

**PRAYER FOR RELIEF**

WHEREFORE, based on the above allegations, Plaintiffs respectfully request that this Court grant the following relief:

A. A final judgment in favor of Plaintiffs declaring that the Southern Ute Indian Tribe's launch of an internet sports betting enterprise is lawful and that a comparable sports betting enterprise launched and operated by the Ute Mountain Ute Tribe would also be lawful;

B. An injunction requiring the State to cease and desist from its ongoing and future efforts to interfere with the Sky Ute SportsBook Betting Enterprise and its business relationships and to any sports betting enterprise operated by the Ute Mountain Ute Tribe;

C. An injunction requiring the State to cease and desist from its ongoing and future flagrant violation of IGRA and the Gaming Compacts and attempts to unilaterally rewrite the Gaming Compacts contrary to binding federal law;

D. An injunction requiring the State to cease and desist its unlawful efforts to unilaterally and illegally rewrite and misinterpret the Gaming Compacts;

E. Judgment in favor of Plaintiffs and against the Defendants on all claims;

F. An order awarding Plaintiffs' costs, interest, and attorneys' fees incurred in connection with the commencement and prosecution of this action; and

G. Such other relief as the Court deems just and reasonable.

Dated March 7, 2025.

**HOGAN LOVELLS US LLP**

s/ Michael C. Theis

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*Counsel for Plaintiff  
the Ute Mountain Ute Tribe*

### VERIFICATION

I, the Honorable Melvin J. Baker, as the duly-elected Chairman of the Southern Ute Indian Tribe, a Plaintiff in this matter, verify this Second Amended Complaint, and that I have read this Second Amended Complaint and the facts stated herein are true and correct to the best of my knowledge and belief as to the Southern Ute Indian Tribe. I base this certification on my personal knowledge and knowledge related to me by employees and agents of the Southern Ute Indian Tribe.

Dated this 4<sup>th</sup> day of March, 2025,

A handwritten signature in blue ink, appearing to read "Melvin J. Baker", is written over a horizontal line.

Hon. Melvin J. Baker, Chairman  
Southern Ute Indian Tribe

I, the Honorable Manuel Heart, as the duly-elected Chairman of the Ute Mountain Ute Tribe, a Plaintiff in this matter, verify this Second Amended Complaint, and that I have read this Second Amended Complaint and the facts stated herein are true and correct to the best of my knowledge and belief with respect to the Ute Mountain Ute Tribe. I base this certification on my personal knowledge and knowledge related to me by employees and agents of the Ute Mountain Ute Tribe.

Dated this 3rd day of March, 2025,

Hon. Manuel Heart, Chairman  
Ute Mountain Ute Tribe

### VERIFICATION

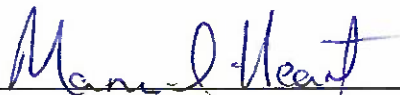
I, the Honorable Melvin J. Baker, as the duly-elected Chairman of the Southern Ute Indian Tribe, a Plaintiff in this matter, verify this Second Amended Complaint, and that I have read this Second Amended Complaint and the facts stated herein are true and correct to the best of my knowledge and belief as to the Southern Ute Indian Tribe. I base this certification on my personal knowledge and knowledge related to me by employees and agents of the Southern Ute Indian Tribe.

Dated this \_\_\_\_ day of March, 2025,

\_\_\_\_\_  
Hon. Melvin J. Baker, Chairman  
Southern Ute Indian Tribe

I, the Honorable Manuel Heart, as the duly-elected Chairman of the Ute Mountain Ute Tribe, a Plaintiff in this matter, verify this Second Amended Complaint, and that I have read this Second Amended Complaint and the facts stated herein are true and correct to the best of my knowledge and belief with respect to the Ute Mountain Ute Tribe. I base this certification on my personal knowledge and knowledge related to me by employees and agents of the Ute Mountain Ute Tribe.

Dated this 6<sup>th</sup> day of March, 2025,

  
\_\_\_\_\_  
Hon. Manuel Manuel Heart, Chairman  
Ute Mountain Ute Tribe

**CERTIFICATE OF SERVICE**

I certify that, on March 7, 2025, I filed the foregoing **PLAINTIFFS' SECOND VERIFIED AMENDED COMPLAINT** via the Court's electronic filing system which will serve a copy on all counsel of record.

s/ Michael C. Theis

Michael C. Theis