UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIVE AMERICAN GUARDIAN'S ASSOCIATION, David Finkenbinder – Wanblee Ohitika (Brave Eagle),

Plaintiffs,

-against-

NEW YORK STATE BOARD OF REGENTS, LESTER W. YOUNG, JR, in his official capacity as Chancellor of the New York State Board of Regents, JUDITH CHIN, in her official capacity as Vice Chancellor of the New York State Board of Regents, ROGER TILLES, in his official capacity as a member of the New York State Board of Regents, CHRISTINE D. CEA, in her official capacity as a member of the New York State Board of Regents, WADE S. NORWOOD, in his official capacity as a member of the New York State Board of Regents, SUSAN W. MITTLER, in her official capacity as a member of the New York State Board of Regents, FRANCES G. WILLS, in her official capacity as a member of the New York State Board of Regents, ARAMINA VEGA FERRER, in her official capacity as a member of the New York State Board of Regents, SHINO TANIKAWA, in her official capacity as a member of the New York State Board of Regents, ROGER P. CATANIA, in his official capacity as a member of the New York State Board of Regents, ADRIAN I. HALE, in his official capacity as a member of the New York State Board of Regents, HASONI L. PRATTS, in her official capacity as a member of the New York State Board of Regents, PATRICK A. MANNION, in his official capacity as a member of the New York State Board of Regents, SEEMA RIVERA, in her official capacity as a member of the New York State Board of Regents, BRIAN KRIST, in his official capacity as a member of the New York State Board of Regents, KEITH B. WILEY, in his official capacity as a member of the New York State Board of Regents, and FELICIA THOMAS-WILLIAMS, in her official capacity as a member of the New York State Board of Regents,

Defendants.

No. 25-03008 (SJB-LGD)

REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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Defendants respectfully submit this reply memorandum of law in further support of their motion to dismiss the Complaint.

PRELIMINARY STATEMENT

In their opposition to Defendants' motion to dismiss, Plaintiffs fail to refute Defendants' arguments demonstrating that Plaintiffs lack standing to assert any of their claims, and they fail to state a plausible claim for relief.

ARGUMENT

POINT I: PLAINTIFFS FAIL TO SHOW THEY HAVE STANDING TO ASSERT ANY OF THEIR CLAIMS

In their effort to create standing where none exists, Plaintiffs continue to misrepresent both the scope of Part 123 and the plain terms of the Agreement (Docket Entry ("DE") 1-1). Nothing about Part 123 impairs Plaintiffs' purported mission or interferes with their rights or interests.

Plaintiffs now assert they have standing because Part 123 "renders the . . . Agreement unenforceable." Pls.' Mem. (DE 25) at 5. Plaintiffs are wrong. The case law Plaintiffs cite presumes a valid contract, whereas the Agreement is not valid insofar as it was created to expressly violate Part 123, a New York State regulation already in effect at the time the Agreement was executed. Plaintiffs' argument that Part 123 was not in effect at the time the Agreement was executed, *see* Pls.' Mem. at 19, n.9, is wrong because the "effective date of [Part 123]," 8 NYCRR § 123.4(b), is May 3, 2023, *see* Notice of Adoption (DE 23-3), not June 30, 2025.

Setting aside questions of validity, Plaintiffs still do not show that without the Agreement they are prevented from promoting "respectful use of Native American names imagery in public discourse." Pls.' Mem. at 6 (quoting Compl. ¶¶ 7, 9). If the District's sports teams cannot use the "Chiefs" name or associated logo, Plaintiffs still may engage in countless forms of public discourse on Native American names and imagery.

Plaintiffs argue that the Association has associational standing because Plaintiff Finkenbinder is excluded from forums of expression in schools. Pls.' Mem. at 6. Plaintiffs continue their pattern of misrepresentation by asserting that Part 123 "prohibits recognition of Native identity in public schools." *Id*. This is false. Part 123 has no effect on discussion of Native American names and imagery in public schools for educational purposes. Plaintiff Finkenbinder's lack of standing defeats associational standing, which requires that an organizational plaintiff identify by name at least one member with standing. *See Summers v. Earth Island Inst*., 555 U.S. 488, 498-99 (2009). And, despite Plaintiffs' internally contradictory footnote 3, the Association must assert organizational standing (*i.e*., the organization's own injuries) and cannot rely on associational standing (*i.e*., its members' injuries) for claims asserted under 42 U.S.C. § 1983. *Nat'l Rifle Assoc. of Am. V. Hochul*, No. 20-3187, 2021 WL 5313713, at *2 (2d Cir. 2021).

Plaintiffs also appear to assert that Plaintiff Finkenbinder has standing because he is forbidden from wearing Native names or imagery on school grounds or at school events. Pls.' Mem. at 7. But Part 123 requires school districts to prohibit "*school officers and employees*" from displaying such names and images. 8 NYCRR § 123.5 (emphasis added). Plaintiff Finkenbinder does not allege that he is an officer or employee of any school district.

Plaintiffs now assert that Plaintiff Finkenbinder has taxpayer standing. Pls.' Mem. at 7-8 He does not. *Airey v. State*, 230 N.Y.S.3d 531 (N.Y. Sup. Ct. 2025), relied on by Plaintiffs, explains that common law taxpayer standing may be available to those otherwise lacking in standing "'when the failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action.'" *Id*. at 543 (quoting (*Matter of Colella v. Bd. of Assessors of County of Nassau*, 95 N.Y.2d 401, 410 (2000)). Taxpayer standing is not available for Plaintiff Finkenbinder because there are other parties who could have challenged Part 123,

some of whom did. Plaintiffs misrepresent the holding in *Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents*, No. 23-cv-7052, 2025 WL 929710 (E.D.N.Y. Mar. 27, 2025), which merely held that the municipal plaintiffs lacked capacity to assert certain claims. *Id*. at **25, 28.

Notably, by asserting that without taxpayer standing Part 123 is not susceptible to judicial review, Pls.' Mem. at 7, Plaintiffs effectively concede that they otherwise are entirely lacking in standing to assert their claims.

Plaintiffs fail to refute Defendants' arguments showing Plaintiffs' lack of standing:

First, Plaintiffs' attempt to distinguish *Marez v. Redhorse*, *see* Pls.' Mem. at 8, fails. *Marez v. Redhorse* held that the Association lacked standing to assert an equal protection claim because it had no legally cognizable interest in having school sports teams use a particular name or logo. Order dated May 5, 2022, No. 1:21-cv-02941 (D. Co.) (DE 23-6) at *14. Plaintiffs do not allege that the Agreement has anything to do with their equal protection claim, *see* Compl. ¶¶ 126-138, and the OCR's non-final finding as to Title VI is irrelevant to Plaintiffs' standing.

Second, Plaintiffs argue that restricting application of a regulation to school districts would allow districts to discriminate against individuals, *see* Pls.' Mem. at 9, but the analogy they employ does not work. Plaintiffs are not students being excluded from any program; they are a North Dakota-based non-profit and an individual resident of New York state who are excluded from absolutely nothing by Part 123.

Third, Plaintiffs fail to refute that Part 123's real-world application has been only to interscholastic sports teams. *See* Pls.' Mem. at 9. The terms "name, logo, or mascot," 8 NYCRR § 123.2, inherently refer to sports teams, and Plaintiffs, despite their repeated inaccurate assertions about the scope of Part 123, cite no other application of Part 123 except as to names and images

representing sports teams. And Plaintiffs' passing reference to "overbreadth," Pls.' Mem. at 9, has nothing to do with standing.

Fourth, Plaintiffs still do not allege any facts to show that Part 123 restricts them from engaging in their mission, and they allege no facts to show that Part 123, which does not apply to educational programs, "stigmatizes Native expression in school settings." Pls.' Mem. at 10.

Fifth, Plaintiffs again misleadingly state that Part 123 "ban[s] words and images based on Native Association." Pls.' Mem. at 25. And Plaintiffs fail to identify any concrete and particularized injury suffered by them due to restrictions on names and logos for public school sports teams.

Sixth, Plaintiffs still fail to show that without the Agreement they would be injured. The Agreement does not establish, as Plaintiffs assert, *see* Pls.' Mem. at 10, that the District's continued use of the name and logo was the benefit conferred on the Association. Instead, by the plain terms of the Agreement, the Association's purported authorization to the District to continue to use the name and logo is the benefit conferred on the *District*. The benefit conferred on the Association is the District's continued educational programming on Native American history and culture. *See* Agreement (DE 1-1) ¶ 1. The District may continue such programming with or without Part 123.

Seventh, Plaintiffs fail to identify any name, image, or likeness they have a right to offer the District. Plaintiffs appear to argue that they are free to grant permission to use an image with which they have no association. Pls.' Mem. at 10-11. But Plaintiffs have no common law right to authorize the use of the purported image of Sachem Tackapausha. *See Pirone v. MacMillan, Inc*., 894 F.2d 579, 585-86 (2d Cir. 1990). And the Association is not "cultural affiliated" with Sachem Tackapausha. *See* Smith Decl. (DE 23-7) ¶¶ 16-18; Wallace Decl. (DE 23-18) ¶ 20. And, again,

the use of the name and image is the benefit purportedly conferred on the District, not Plaintiffs, pursuant to the plain terms of the Agreement. Agreement ¶ 1.

Eighth, Plaintiffs cannot establish standing to assert a First Amendment claim by arguing that Part 123 is being enforced against New York public school districts. *See* Pls.' Mem. at 11. The question is whether Part 123 could be enforced against Plaintiffs to impede their free speech rights. The answer is no.

Ninth, Plaintiffs' argument that the fact that Part 123 applies only to school districts means that no group would ever have standing to assert a First Amendment challenge, *see* Pls.' Mem. at 11, is both wrong and irrelevant. Plaintiffs do not have standing to challenge a regulation that in no way prevents them from expressing their views.

Tenth, Plaintiffs' arguments that Part 123's terms "beg for clarification" and that Plaintiffs "have every right to protest" Part 123, *see* Pls.' Mem. at 12, do not show standing to assert a due process challenge. Plaintiffs' general desire for clarity does not confer standing. And the question of whether Plaintiffs are entitled to protest Part 123 is irrelevant to any due process inquiry.

Eleventh, the fact that New York State public school districts receive federal funding does not establish standing for Plaintiffs to assert a Title VI claim. Title VI does not open the door to unlimited lawsuits simply because an entity receives federal funding.

Accordingly, the Complaint should be dismissed in its entirety for lack of standing.

POINT II: ALL CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A PLAUSIBLE CLAIM FOR RELIEF

A. Plaintiffs fail to state a claim of discrimination under the federal or state Equal Protection Clause or 42 U.S.C. § 1981.

1. Equal protection.

Regardless of how many times Plaintiffs repeat themselves, Part 123 is not a "Native Ban." As Defendants explained in their memorandum of law dated August 21, 2025, Plaintiffs' desire to have New York State public schools use Native American names and imagery for their sports teams is not an interest protected by the Equal Protection Clause. *See* Defs.' Mem. (DE 23-1) at 13 (citing *Marez*, Order at 15-16). Plaintiffs argue that Part 123 prohibits "Native names, logos, and imagery, while permitting identical expression, symbolism, and cultural references by non-Indigenous groups." Pls.' Mem. at 4. But Part 123 does no such thing. Part 123 prohibits *public school districts* from using Native names and imagery to represent their sports teams. Part 123 has no effect on Native American groups or individuals' ability to participate in "expression, symbolism, and cultural references." For these reasons, the question of which level of scrutiny applies is irrelevant.

Even if strict scrutiny applied, Plaintiffs fail to show that Part 123 would not pass. Part 123 furthers the State interest in "providing a safe and supportive learning environment for every child." Notice of Adoption (DE 23-3) at 2; *Cambridge* Decision (DE 23-4) at 3-4, 7-8. This interest is no less compelling than other interests related to the welfare of school children that have been found to be compelling. *See F.F. on behalf of Y.F. v. State*, 66 Misc. 3d 467, 482 (N.Y. Sup. Ct. Albany Cnty. 2019), *aff'd sub nom. F.F. v. State*, 194 A.D.3d 80 (3d Dep't 2021) (recognizing protection against infectious diseases in schools as compelling interest)); *Reno v. ACLU,* 521 U.S.

844, 869-870 (1997) (acknowledging compelling interest in protecting children from exposure to indecent material).

Plaintiffs' reliance on *Students for Fair Admissions*, 600 U.S. 181 (2023), is misplaced. That case acknowledged that goals such as "breaking down stereotyping" could be compelling. *Id*. at 214. And *Students for Fair Admissions* did not overrule the holding in *Grutter v. Bollinger*, 539 U.S. 306 (2003), that student diversity may be a compelling interest, nor or did it overrule the holding in *Fisher v. University of Texas at Austin*, 579 U.S. 365, 367 (2016), that the elimination of stereotypes could be a compelling state interest. *See Students for Fair Admission*, 600 U.S. at 211. And *Students for Fair Admission* says nothing about "good discrimination."

Plaintiffs' assertion that "Natives have little or no issue with Native names and symbols being used by American sports teams," Pls.' Mem. at 16, is irrelevant. Part 123 is specifically concerned with the well-being of public-school students, both Native and non-Native. Plaintiffs do not refute the studies cited by SED showing the harms caused to *public school students* by the use of stereotypical names and images. And Part 123 is narrowly tailored to restrict only the precise conduct found by those studies to be harmful.

The same analysis defeats Plaintiffs equal protection claim under the New York Constitution. *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 53 (2d Cir. 2007).

2. 42 U.S.C. § 1981.

Plaintiffs fail to state a claim that Part 123 discriminates against them based on 42 U.S.C. § 1981. Plaintiffs entered into a contract that knowingly violated an existing, valid New York State regulation, as well as long-standing public policy. Any contract that violates a valid state law is not a valid contract, regardless of who the contracting parties are. Plaintiffs' assertion that the Agreement would be valid if the District contracted with a non-Native party, *see* Pls.' Mem. at 18-

19, is incorrect. The invalidity of the Agreement, insofar as it violates Part 123, has nothing to do with Plaintiffs' race or national origin. A contract would be equally invalid if a non-Native party purported to granting a contractual right to a New York State public school district to violate Part 123.

Domino's Pizza, Inc. v. McDonald, 546 U.S. 470 (2006) does not hold otherwise. That case held that § 1981 protects contracts "so long as the plaintiff has or would have rights under the existing or proposed contractual agreement." *Domino's,* 546 U.S. at 476. Plaintiffs have no rights under a contract that violates a valid state law and long-standing public policy.

In addition, Plaintiffs still have not pled a basis for their ill-defined right to authorize the use of any Native American imagery, much less the purported image of Sachem Tackapausha. Plaintiffs have no common law right to authorize use of the purported image of Sachem Tackapausha. *See Pirone*, 894 F.2d at 585-86. And Plaintiffs offer no basis whatsoever for the assertion in the Agreement that the purported image of Sachem Tackapausha is culturally affiliated with them. This renders the contract essentially illusory. *See Lend Lease (US) Constr. LMB Inc. v. Zurich Am. Ins. Co*., 28 N.Y.3d 675, 684 (2017).

Finally, Plaintiffs still fail to allege purposeful discrimination, despite their failed attempt to distinguish *Spirit Lake Tribe of Indians ex rel. Comm. of Understanding & Respect v. Nat'l Collegiate Athletic Ass'n*, 715 F.3d 1089 (8th Cir. 2013). As Defendants argued, *Spirit Lake* is relevant because it held that a ban on display of a Native Nation's names and imagery at certain sports events, which had similarities to Part 123, did not amount to purposeful discrimination against the Nation. *Id*. at 1093.

Plaintiffs fail to state a claim of a violation of 42 U.S.C. § 1981.

B. Plaintiffs fail to state a plausible free-speech claim.

Plaintiffs fail to state a claim of a violation of the First Amendment or of Article I, § 8 of the New York Constitution because Part 123 does not infringe in any way on their right to express their views.

Plaintiffs instead argue that Part 123 does not fall within the government speech doctrine. Pls.' Mem. at 21. But Defendants did not argue in this case that Part 123 falls within the government speech doctrine. Whether or not the government speech doctrine applies is irrelevant in this matter, which does not involve any infringement on Plaintiffs' free speech rights.

C. Plaintiffs fail to state a plausible due process claim.

Plaintiffs fail to state a facial or as-applied Fourteenth Amendment-based vagueness challenge to Part 123. Plaintiffs argue they are not asserting a facial challenge, but at the same time they argue that they challenge Part 123's "core vagueness." Pls.' Mem. at 22. Nevertheless, either way, Plaintiffs' vagueness claim fails. As the *Massapequa* court held, Part 123 provides adequate guidance as to what conduct is prohibited. 2025 WL 929710, at ** 14-15.

Plaintiffs plead no basis on which they may assert a substantive due process claim on behalf of New York State public schools or public school students. And their claim rests on a faulty premise. Part 123 involves no forfeiture of constitutional rights.

Plaintiffs fail to state a claim of a due process violation under any theory they assert.

D. Plaintiffs fail to state a claim that Part 123 violates the dormant Commerce Clause.

Plaintiffs fail to state a claim that Part 123 violates the dormant Commerce Clause.

In their Complaint, Plaintiffs fail to allege either a competitive in-state market or a competitive out-of-state market for Indigenous names and imagery. This is fatal to their dormant Commerce Clause claim. *Selevan v. New York Thruway Auth.*, 584 F.3d 82, 95 (2d Cir. 2009).

Plaintiffs now allege that such a market exists, *see* Pls.' Mem. at 24, but Plaintiffs may not amend their pleadings in a response to a motion to dismiss. *See, e.g., Milligan v. GEICO Gen. Ins. Co*., No. 20-3726-cv, 2022 WL 433289, at *6 (2d Cir. Feb. 14, 2022) (A "[c]omplaint cannot be amended by the briefs in opposition to a motion to dismiss." (internal quotation marks omitted)).

Defendants also showed that Part 123 is "'demonstrably justified by a valid factor unrelated to economic protectionism.'" *New York Pet Welfare Ass'n*, 850 F.3d at 89 (quoting *Wyoming v. Oklahoma*, 502 U.S. 437, 454 (1992)). Part 123 is "demonstrably justified" by its valid anti-discriminatory purpose. *See* Notice of Adoption at 2-3; *Cambridge* Decision at 3-4, 7-8. This State interest has nothing to do with economic protectionism.

Plaintiffs' response also misrepresents 8 NYCRR § 123.4(b). Section 123.4(b) is a narrow provision that carved out an exception for certain *already-existing* agreements between a Nation and a school district. Once Part 123 was adopted, no individual or entity, in state or out of state, may contract to violate Part 123.

E. Plaintiffs fail to state a claim that Part 123 violates Title VI.

Plaintiffs fail to state a plausible claim of a violation of Title VI.

Plaintiffs fail to establish that they have statutory standing to assert a Title VI claim. Plaintiffs appear to argue that because Indigenous public school children may be affected by Part 123, that confers statutory standing on them. Pls.' Mem. at 26. But Plaintiffs do not allege that their members include Indigenous New York State public school students. Plaintiffs merely generally allege that their members include "Native American students. . . directly impacted by the enforcement of Part 123 in the State of New York." Compl. ¶ 8. If the Association's members included Indigenous New York State public school children, it could easily have said so, but it did not. The Association's publicly available website has a page entitled "Members," which gives no

indication whatsoever that Indigenous New York State public school children are members. *See* https://www.nagaeducation.org/team-4 (last visited Sept. 16, 2025). And *Coalition of Bedford-Stuyvesant Block Ass'n, Inc. v. Cuomo*, 651 F. Supp. 1202, 1208 (E.D.N.Y. 1987), relied on by Plaintiffs, does not show that Plaintiffs have statutory standing. *Coalition* explained that private parties may sue under Title VI, "but only if they are either the intended beneficiaries of the federal program or the discrimination that the plaintiffs are suffering will negatively impact upon those intended beneficiaries." *Id*. at 1208, n.2. Plaintiffs cannot show that they are suffering any discrimination, much less how any purported discrimination they allege would impact Indigenous New York State public school children.

Defendants demonstrated that Plaintiffs entirely failed to plead intentional discrimination in support of their Title VI claim, *see* Defs.' Mem. at 24-25, and Plaintiffs fail to address Defendants' arguments, *see* Pls. Mem. at 26-27. This defeats Plaintiffs' Title VI claim.

Plaintiffs' Title VI claim should be dismissed for failure to state a claim.

F. Plaintiffs fail to state a claim that Part 123 violates the Indian Commerce Clause

No Indian Commerce Clause claim is at issue in this litigation. Plaintiffs argue that they state an Indian Commerce Clause claim in the Complaint, *see* Pls.' Mem. at 28, but they do not. Plaintiffs cite Article I, Section 8 of the U.S. Constitution and assert that "only the federal government may regulate Indian tribes or their economic activities." Compl. ¶ 159. But that is not a plausible Indian Commerce Clause claim. *DeRouseau v. Morales-Horowitz*, No. 24-cv-5976, 2025 WL 2172229, at *2 (S.D.N.Y. July 29, 2025) (conclusory allegation of Second Amendment violation insufficient to state plausible claim); *Henry v. Flagstar Bank, FSB*, No. 16-cv-1504, 2017 WL 11886155, at *3 (E.D.N.Y. Aug. 28, 2017) ("Generally, a passing reference to a federal statute is insufficient to state a plausible claim."). Plaintiffs' allegations do not even rise to the level of a

"formulaic recitation of a cause of action's elements," which would still be insufficient. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007).

And Plaintiffs cannot assert a new claim in their opposition to Defendants' motion. *See, e.g., Milligan*, 2022 WL 433289, at *6.

Even if the Complaint could be read to assert an Indian Commerce Clause claim, it would fail. Neither Plaintiff is an Indigenous Nation. And Section 123.4(b) does not regulate commerce with Indigenous Nations. Section 123.4(b) merely carved out an exception for certain already-existing contracts between a Nation and a school district. And upon the adoption of Part 123, no party, Indigenous or not, may contract to violate Part 123. Part 123 has nothing to do with commerce with Indigenous Nations.

In examining an Indian Commerce Clause challenge to a state regulation, courts in the Second Circuit consider "the location of the targeted conduct and the citizenship of the participants in that activity." *Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs*., 769 F.3d 105, 113 (2d Cir. 2014). Once a state law "reaches across a reservation's borders," courts weigh the interests of the tribe, the federal government, and the State." *Id*. A State's interest becomes stronger "if 'the conduct of non-Indians' is in question." *Id*. (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144(1980)). In addition, "a court must still understand 'what' a regulation targets to weigh interests appropriately." *Id*. "A tribe's interest peaks when a regulation threatens a venture in which the tribe has invested significant resources." *Id*. "In contrast, a tribe has no legitimate interest in selling an opportunity to evade state law." *Id*. at 114.

In *Otoe-Missouria Tribe*, the Second Circuit affirmed the district court's conclusion that the plaintiffs, tribes that operate payday lending sites, failed to show they were likely to succeed on their challenge to New York State's anti-usury laws. 769 F.3d at 112-118. The Second Circuit

agreed that the plaintiffs failed to show that the payday loan agreements were on-reservation activity. *Id*. at 116-117.

Here, the Agreement does not involve conduct occurring on tribal lands, which Plaintiffs do not contest. Plaintiffs merely argue that the Court should make a "particularized inquiry." Pls.' Mem. at 30 (internal quotation marks omitted). Such a particularized inquiry shows that Part 123 applies solely to New York State public school districts and involves the names and imagery that New York State public school districts may use to represent their school sports teams. *See generally* Part 123. Thus, the location and citizenships inquiries show that any contract purportedly allowing use of Indigenous names and imagery by a New York State school district is an off-reservation activity.

An examination of competing interests is not necessary because Part 123 does not reach across any reservation's borders. But such an examination eliminates any possibility that Part 123 violates the Indian Commerce Clause. Plaintiffs do not assert that either one is an Indigenous Nation that has "invested significant resources" in developing agreements with school districts for use of Indigenous names and imagery. Pls.' Mem. at 29. Plaintiffs merely refer generally to the Association's mission and assert that they have initiated this and other litigation across the country to "protect Native American imagery." *Id*. Nothing about Part 123 affects any of Plaintiffs' efforts to advance their interests.

Plaintiffs wrongly assert that the State interest in providing a safe and discrimination-free environment for all school children is unsupported and "entirely subjective." Pls.' Mem. at 30. Part 123 is supported by strong objective evidence. *See* Notice of Adoption at 2-3. The State interest underlying Part 123 is no less strong than the State's interest in reducing exploitative payday loans at issue in *Otoe-Missouria Tribe*.

To the extent the Court allows Plaintiffs to assert an Indian Commerce Clause claim, it should be dismissed for failure to state a claim.

CONCLUSION

Defendants respectfully request that the Court grant their motion and dismiss, in their entirety and with prejudice, all claims asserted in the Complaint, and grant such other and further relief that the Court deems just and equitable.

Dated: Mineola, New York
September 18, 2025

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned, an attorney duly admitted to practice before this Court, hereby certifies that the foregoing Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss ("Reply Memorandum") complies with Rule 7.1(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, which acknowledges that a court may grant leave for an enlargement of the 3,500 word-count limit set forth therein. By Docket Order dated September 16, 2025, the Court granted leave for an enlargement, of up to 4,100 words, of the word-count limit for the foregoing Reply Memorandum. The Reply Memorandum contains 4,092 words, as counted by the word processing system used to prepare it. This word count excludes the caption, tables, signature block, and this Certificate, but includes all headings.

Dated: Mineola, New York
September 18, 2025

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