

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

OXFORD CASINO HOTEL,
777 Casino Way, Oxford, ME 04270,

BB DEVELOPMENT, LLC,
777 Casino Way, Oxford, ME 04270,

CHURCHILL DOWNS INCORPORATED,
600 N. Hurstbourne Parkway, Suite 400,
Louisville, KY 40222,

Plaintiffs,

v.

MILTON F. CHAMPION, in his official
capacity as Executive Director of the Maine
Gambling Control Unit,

45 Commerce Drive, Suite 5, Augusta, ME
04333,

Defendant.

Civil Action No.
1:26-cv-00046-LEW

**PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS
UNDER FED. R. CIV P. 12(C) AND MEMORANDUM IN SUPPORT**

Preliminary Statement

This action calls for the Court to determine whether the State of Maine—without express authorization from Congress—may enact a law which is solely preferential to Maine's Indian Tribes when the United States Constitution expressly reserves to Congress exclusive and plenary power over Indian affairs. The First Circuit has determined that any state law preferentially treating Indian Tribes without an express grant of authority by federal law serves as a racial classification subject to strict scrutiny under the Fourteenth Amendment. *KG Urban Enters., LLC v. Patrick*, 693 F.3d 1 (1st Cir. 2012). That determination applies equally here.

So too does another blackletter principle: That a state law facially discriminating against out-of-state economic actors is virtually per se invalid under the Dormant Commerce Clause. Application of the Fourteenth Amendment’s guarantee of Equal Protection and the Dormant Commerce Clause’s prohibition against laws discriminating against interstate commerce compel, twice over, judgment in favor of Plaintiffs.

* * *

At the beginning of this year, the State of Maine enacted a “An Act to Create Economic Opportunity for the Wabanaki Nations Through Internet Gaming” (the “Act”). P.L. 2025, ch. 538 (to be codified at 8 M.R.S.A. § 1205 et seq.). For the first time in Maine, the Act authorizes internet-based gambling (“iGaming”)—allowing Mainers to play traditional table games or games of chance on their computers or mobile devices. The Act authorizes only four iGaming licenses, one for each of Maine’s four federally recognized Indian Tribes.¹ In short, the State created and granted an exclusive monopoly over iGaming to Maine’s Tribes.

But under the U.S. Constitution, the federal government has exclusive and plenary power to enact such legislation preferentially treating Indian Tribes. It may exercise that authority either on its own or expressly grant that authority to a state. Here, it has done neither.

There is no question that the federal law which squarely addresses Indian gaming, the Indian Gaming Regulatory Act, does not apply in Maine. And it should be little surprise that if the federal law that specifically addresses Indian gaming is not applicable in Maine, there exists no other, less express, delegation of authority from Congress to Maine addressing Indian gaming.

¹ There are four Federally recognized Indian Tribes in Maine: The Penobscot Nation, Passamaquoddy Tribe, Houlton Band of Maliseet Indians, and Mi’kmaq Nation. ECF No. 26 at 3. Collectively, the Indian Tribes are also referred to as the “Wabanaki Nations” *Id.* at 1. For consistency with prior case law and statutory law, Maine’s Tribes are collectively referred to as the “Tribes” herein.

The acts that establish the relationship between Maine and its Tribes, the (federal) Maine Indian Claims Settlement Act of 1980, and (state) Act to Implement to the Maine Indian Claims Settlement, are silent on the issue of tribal gaming.

Accordingly, the Act, which is not specifically authorized under federal law, is a racial classification subject to strict scrutiny under the Fourteenth Amendment. The Act cannot remotely pass that daunting examination. Even assuming a compelling governmental interest, granting a monopoly over iGaming is not narrowly tailored to that interest. Less restrictive alternative means abound, such as quotas, set asides, and granting a percentage of tax revenue. The Act therefore violates the Fourteenth Amendment's Equal Protection clause.

For similar reasons, the Act violates the Dormant Commerce Clause. On its face, the Act discriminates against all out-of-state economic actors from the newly created industry of iGaming. This total exclusion of out-of-state economic actors from a state-created industry exemplifies the principle that such state protectionism is per se invalid. The Act cannot survive strict scrutiny under the Dormant Commerce Clause and thus is unconstitutional for this additional reason.

The unlawful effort to grant a monopoly on iGaming to Maine's Tribes will cause myriad injuries to Plaintiffs. Plaintiff Oxford Casino Hotel (operated through Plaintiff BB Development, LLC) will be harmed by the Act because the legislation will inevitably funnel customers away from its brick-and-mortar casino—which employs hundreds of Mainers and pays tens of millions in annual taxes—to the virtual casinos exclusively granted to Maine's Tribes. Both Oxford Casino Hotel and its parent, Plaintiff Churchill Downs Incorporated (“Churchill Downs,” and collectively with Oxford Casino Hotel and BB Development, LLC, “Oxford Casino”), though they oppose iGaming, are interested in applying for an iGaming license. But the Act prohibits them from

entering into this new, state-created iGaming market which is sure to reduce Oxford Casino Hotel's market share.

This Court should accordingly grant Oxford Casino's motion for judgment on the pleadings, enjoin Maine's unconstitutional effort to grant a monopoly over iGaming to its Tribes, and declare that the Act violates the United States Constitution's guarantee of equal protection and its prohibition of discrimination against interstate commerce.

Background

A. The Act

In June 2025, the Maine Legislature passed the Act, introduced as L.D. 1164. First Amended Compl. ("FAC") ¶ 35. The Legislature then adjourned. *Id.* After the Legislature reconvened in January 2026, Governor Janet Mills had three days to either sign or veto L.D. 1164 or it would become law automatically. *Id.* Governor Mills took no action on L.D. 1164 and, accordingly, the Act, to be codified at 8 M.R.S.A. § 1205 et seq.,² became law on January 11, 2026. *Id.* The Act legalizes, for the first time in Maine, "the operation of internet gaming" by licensed entities. *Id.* ¶ 36. The Act requires the Director of the Gambling Control Unit to "adopt rules governing the conduct of Internet gaming in the State," 8 M.R.S.A. § 1403(2), and to "issue an Internet gaming license upon finding that the applicant meets all requirements" of the statute, *id.* § 1406(1). The Act makes plain its discriminatory effect: "[t]o be eligible to receive an Internet gaming license, an applicant must be a federally recognized Indian nation, tribe or band in this State." *Id.* § 1406(2). Each Tribe "may receive only one Internet gaming license," and the license

²The Court will find a copy of the Act attached hereto as **Exhibit A**. As the Court will see, the Act contemplates the codification of the bulk of the Act's provisions within a newly formed Chapter 39 of Title 8 of the Maine Revised Statutes. As of this writing, online copies of the Maine code have not been updated to reflect the Act's provisions. Accordingly, herein, Plaintiffs cite to the code sections to be given to the Act's provisions, as identified on the attached Exhibit A.

“may not be transferred” outside the tribal community. *Id.* So while “a federally recognized Indian nation, tribe or band in this State may transfer its Internet gaming license to a business entity with a principal place of business in the State that is wholly owned by that federally recognized Indian nation, tribe or band,” it may not transfer the license to a business not “wholly owned by that federally recognized Indian nation, tribe or band.” *Id.* In short, there is one license available for each of Maine’s Tribes, and only Maine’s Tribes may become licensed as online gambling operators. FAC ¶ 40. This is by design. As the Governor announced as she let the law go into effect without her signature, she “met with the five elected Chiefs of the Wabanaki Nations, who each spoke passionately about the importance of this bill in offering life-changing revenue for Tribal communities, as well as providing a form of economic sovereignty for their Nations.” *Governor Mills Announces Bill to Create Economic Opportunities for the Wabanaki Nations to Become Law*, Office of Governor Janet T. Mills (Jan. 8, 2026) (“Announcement of Governor Mills”) <https://tinyurl.com/3726ceh9>. Governor Mills further explained that her hope was “to improve the lives and livelihoods of the Wabanaki Nations” through the “new revenue” to be generated by the Act. *Id.*

B. The Parties

Plaintiff Oxford Casino Hotel sits on a near-100-acre property at the foot of Maine’s western mountains. FAC ¶ 19. Oxford Casino Hotel is one of Maine’s two licensed casinos and has offered Mainers a safe and fun gambling experience for more than a decade. FAC ¶ 19. Oxford Casino Hotel offers 970 slot-machine options, including video slots, reel slots, and video poker. FAC ¶ 20. Customers may play in denominations from one penny to five dollars or more. FAC ¶ 20. Oxford Casino Hotel also offers 23 classic table games, including blackjack, craps, baccarat, roulette, Texas hold’em, and Mississippi stud, among others. FAC ¶ 21. With varying

table minimums and maximums, customers can enjoy a variety of table games with different stakes. FAC ¶ 21. Plaintiff BB Development, LLC, doing business as Oxford Casino Hotel, is a Maine corporation. FAC ¶ 14. It is a subsidiary of Plaintiff Churchill Downs Incorporated. FAC ¶ 14. Churchill Downs Incorporated is a Kentucky corporation, dedicated to offering extraordinary entertainment experiences for more than 150 years. FAC ¶ 15. It is the parent corporation of Oxford Casino Hotel. FAC ¶ 15.

Oxford Casino alleges that the Act inflicts multiple injuries on Plaintiffs. First, the law is unconstitutional, so they are harmed by the Act's very existence. FAC ¶ 43. More specifically, Oxford Casino Hotel, although it opposes internet gambling in Maine, would be interested in applying for an iGaming license in Maine and would apply for such a license. FAC ¶¶ 44. But the Act prohibits it from doing so because Oxford Casino Hotel is not a federally recognized Indian tribe in Maine. FAC ¶ 44. Nor could an iGaming license be transferred to Oxford Casino Hotel, for the same reason.³ FAC ¶ 45. Accordingly, unable to obtain any license to conduct internet gambling, Oxford Casino Hotel is projected to experience substantial revenue losses directly from the Act, which will, in turn, reduce tax contributions for vital public services and cause substantial job losses in Maine. FAC ¶ 47. Oxford Casino Hotel's current and prospective customers will inevitably turn to internet competitors who offer gaming experiences on their mobile phone or computer. FAC ¶ 48.

Defendant Milton F. Champion is sued in his official capacity as Executive Director of the Maine Gambling Control Unit. FAC ¶ 16; *see* 8 M.R.S.A. § 1402(4). He is charged with

³ Likewise, Churchill Downs opposes internet gambling in Maine. FAC ¶ 49. But it would be interested in applying for an iGaming license in Maine and would apply for such a license. FAC ¶ 49. The Act, however, prohibits it from doing so because it is not a federally recognized Indian tribe in Maine. FAC ¶ 49. Nor could an iGaming license be transferred to Churchill Downs, for the same reason. FAC ¶ 50.

“administering and enforcing” the Act, *see* 8 M.R.S.A. § 1403, including deciding whether to issue online gaming licenses to applicants under 8 M.R.S.A. §§ 1405-1406.

C. Plaintiffs’ Complaint and Subsequent Procedure

Shortly after the Act went into effect, Oxford Casino filed this civil action, brought under Section 1983, alleging the Act violates the 14th Amendment because it expressly discriminates on the basis of race and fails strict scrutiny. *See generally* ECF No. 1, Compl. Oxford Casino further alleges that the Act violates the Dormant Commerce Clause because it expressly discriminates against out-of-state economic actors and fails strict scrutiny. Compl. ¶¶ 73-83. After the State indicated it would not consent to this Court determining analogous state-law claims, *see Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984), Oxford Casino filed the FAC solely alleging the two U.S. Constitutional claims raised in the original complaint. *See generally* ECF No. 22.

Plaintiffs allege two counts. FAC at ¶¶ 51-72. *Count One*, alleging a violation of equal protection under the Fourteenth Amendment, is brought under Section 1983, the Declaratory Judgment Act, and invokes the Court’s inherent equitable power. FAC ¶¶ 51-61. *Count Two*, alleging violations of the Commerce Clause of the United States Constitution, is brought under Section 1983, the Declaratory Judgment Act, and invokes the Court’s inherent equitable power. FAC ¶¶ 62-72. Plaintiffs request that this Court declare that the Act violates the United States Constitution’s guarantee of equal protection and its prohibition of discrimination against interstate commerce under the Commerce Clause. FAC ¶ 73. Plaintiffs further request this Court enjoin Defendant from administering and enforcing the Act. FAC ¶ 73.

Defendants answered the FAC. ECF No. 23 (“State’s Answer”). Shortly thereafter, the Wabanaki Nations moved to intervene. ECF No. 26. Neither party opposed the motion, ECF

No. 26, at 1-2, which the Court granted, ECF No. 29. All parties agreed and presented the Court with a briefing schedule that presents this Court with dispositive motions to be fully briefed in advance of the earliest date by which the State would implement rules implementing the Act. ECF No. 25. The Court approved that schedule. ECF No. 30. Absent Court intervention, the Act could be fully implemented by July 31, 2026, at the earliest. ECF No. 25, at 2.

Standard of Review

Pursuant to Federal Rule of Civil Procedure 12(c), a party may move for judgment on the pleadings after they have closed. “Judgment on the pleadings is warranted under Fed. R. Civ. P. 12(c) when there exist no genuine issues of material fact and the moving party establishes that it is entitled to judgment as a matter of law.” *Lovell v. One Bancorp*, 690 F. Supp. 1090, 1096 (D. Me. 1988) (citing *Beal v. Mo. Pac. R.R. Co.*, 312 U.S. 45, 61 (1941)). On a Rule 12(c) motion, the court reviews the “well-pleaded facts and reasonable inferences therefrom in the light most favorable to the nonmovant.” *Kando v. R.I. State Bd. of Elections*, 880 F.3d 53, 58 (1st Cir. 2018). In a constitutional facial challenge such as is at issue here, however, the absence of agreed-upon facts plays little role because a “facial challenge is an attack on a statute itself as opposed to a particular application.” *City of L.A. v. Patel*, 576 U.S. 409, 415 (2015). A motion for judgment on the pleadings is “accorded much the same treatment” as a motion under Rule 12(b)(6). *Aponte-Torres v. Univ. of P.R.*, 445 F.3d 50, 54 (1st Cir. 2006). A Rule 12(c) motion differs, however, from a Rule 12(b)(6) motion because it “implicates the pleadings as a whole.” *Id.* at 54-55.

Applicable Legal Standards

I. Applying Equal Protection To Legislation Preferential To Indian Tribes

A. Equal Protection

In the aftermath of the Civil War, the States ratified the Fourteenth Amendment, which provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. After failing to live up to that core commitment, nearly a century later the Supreme Court and the nation began to fully realize that “its central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race.” *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (citing *Washington v. Davis*, 426 U.S. 229, 239 (1976)). “Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) (cleaned up). “If both are not accorded the same protection, then it is not equal.” *Id.* (citation omitted).

“No inquiry into legislative purpose is necessary when the racial classification appears on the face of the statute.” *Shaw*, 509 U.S. at 642. Such express racial classifications are facially suspect “because, absent searching judicial inquiry, there is simply no way of determining what classifications are ‘benign’ or ‘remedial’ and what classifications are motivated by illegitimate notions of racial inferiority or simple racial politics.” *Id.* at 642-43 (cleaned up).

Application of Equal Protection principles is only somewhat modified by the authorities governing the federal government’s ability to pass laws specifically applicable to Indian Tribes—additional Constitutional powers granted to the federal government also come into play, as discussed next.

B. Congress has Exclusive Power to Legislate in Respect to Indian Tribes

“[T]he Constitution grants Congress broad general powers to legislate in respect to Indian Tribes, powers the [Supreme Court] ha[s] consistently described as ‘plenary and exclusive.’” *United States v. Lara*, 541 U.S. 193, 200 (2004) (citation omitted). Two Constitutional clauses are the source of that power: the Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3, and the Treaty Clause, U.S. Const. art. II, §, 2 cl. 2. *Lara*, 541 U.S. at 200. The “central function of the Indian Commerce Clause . . . is to provide Congress with plenary power to legislate in the field of Indian affairs.” *Id.* (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989)). And while the Treaty Clause grants authority to the executive, treaties made under that power in turn may authorize Congress to enact legislation governing Indian Tribes. *Id.* at 201. The combined effect of these clauses is that “the treaties and laws of the United States . . . provide that all intercourse with [Indians] shall be carried on exclusively by the government of the union.” *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832).

Within the nation’s federal system, the federal government’s “plenary and exclusive” power over relationship with Indian Tribes necessarily precludes individual states from exercising this same authority. “[A]bsent federal authorization all aspects of tribal sovereignty are privileged from diminution by states.” Restatement of the Law of American Indians, ch. 3, Introductory Note. Thus, “[s]tates are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it.” *Washington v. EPA*, 752 F.2d 1465, 1469-70 (9th Cir. 1985). Generally speaking, “[t]he policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation’s history.” *Rice v. Olson*, 324 U.S. 786, 789 (1945).

C. Federal Power to Enact Legislation Preferential to Indian Tribes

Because of the Constitution's express grant of power to Congress, the Supreme Court has sustained federal "legislation that singles out Indians for particular and special treatment." *Morton v. Mancari*, 417 U.S. 535, 554-55 (1974). Thus, the Supreme Court's decisions "leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based on impermissible racial classifications." *United States v. Antelope*, 430 U.S. 641, 645 (1977). Put differently, "in a sense the Constitution itself establishes the rationality of the present classification, by providing a separate federal power that reaches only the present group." *United States v. Cohen*, 733 F.2d 128, 139 (D.C. Cir. 1984) (en banc) (Scalia, J.). In short, "[t]he Constitution . . . singles Indians out as a proper subject for separate legislation." *Id.* (quoting *Antelope*, 430 U.S. at 649 n.11 (1977)).

The leading case applying these principles is *Morton v. Mancari*, 417 U.S. 535 (1974). *Mancari* involved a due-process challenge to the Indian Reorganization Act of 1934, which allowed for an employment preference for qualified Indians in the Bureau of Indian Affairs. *Id.* at 537. Acting under that law, the Secretary of the Interior issued a directive that such a preference would not only apply to initial hiring, but also to promotion within the BIA. *Id.* at 538.

In determining whether this preference was permissible, the Court first noted that the Constitution, under the Indian Commerce Clause and Treaty Clause, "explicitly and implicitly" granted "plenary power" to Congress "to deal with the special" relationship with Indian tribes. *Id.* at 551-52. In exercising this power, "[l]iterally every piece of legislation dealing with Indian tribes and reservations, and certainly dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations." *Id.* at 552. The Court reasoned that if these laws were deemed discriminatory, an entire section of the U.S. Code addressing Indian

affairs “would be jeopardized.” *Id.* The Court accordingly concluded that federal laws passed under Congress’ unique power over Indian affairs need only pass rational-basis review: “As long as the special treatment can be tied rationally to the fulfilment of Congress’ unique obligation toward the Indians, such legislative judgments will not be disturbed.” *Id.* at 555.

Yet the Supreme Court has been careful to note the limited nature of *Mancari*’s holding. As the Court later observed, *Mancari* itself “was confined to the authority of the BIA, an agency described as ‘*sui generis*.’” *Rice v. Cayetano*, 528 U.S. 495, 520 (2000) (quoting *Mancari*, 417 U.S. at 554). Confronted with both *Mancari* and subsequent limiting precedent, courts have wrestled with precisely defining the boundaries of *Mancari*’s holding. The Ninth Circuit, for example, has expressed reservations over whether *Mancari* extends beyond federal statutes that “affect uniquely Indian interests.” *Williams v. Babbit*, 115 F.3d 657, 665 (9th Cir. 1997). That court “seriously doubt[ed] whether Congress could give Indians a complete monopoly on the casino industry or on Space Shuttle contracts.” *Id.* Such a preference is “unrelated to Congress’ unique obligation toward the Indians.” *Id.* And recently, the Supreme Court was presented with, but did not decide, an equal-protection challenge to placement preferences under the Indian Child Welfare Act. *Haaland v. Brackeen*, 599 U.S. 255, 291 (2023). In a concurring opinion, Justice Kavanaugh noted that “the equal protection issue remains undecided” but that issue “is serious.” *Id.* at 333 (Kavanaugh, J., concurring).

Thus, even where the federal government enjoys unique constitutional authority to enact preferential laws for the benefit of Indian Tribes, that authority does not fully eclipse equal-protection principles.

D. State Power to Enact Legislation Preferential to Indian Tribes

But while the precise boundaries of Congress' power to legislate specifically as to Indian affairs without affronting the Constitution's requirement for equal protection have yet to be fully defined, the case law is settled that a *state* has no independent authority to enact such preferential legislation without surviving strict scrutiny.

The First Circuit has rejected the argument that a state-granted preference to an Indian tribe is “not a racial preference” that escapes strict-scrutiny review. *KG Urban*, 693 F.3d at 17-19. *KG Urban* involved a challenge to state legislation expanding gaming in Massachusetts, the Massachusetts Gaming Act (“Gaming Act”). *Id.* at 4. The Gaming Act established three regions (A, B, & C) within the state and permitted only one gaming license allowing table games and slot machines (a “Category 1” license) in each region. *Id.*

Massachusetts's only federally recognized Indian tribes are located in the southeast region (Region C). *Id.* at 4-5. Region C thus was the sole region impacted by special procedures designed to, in effect, grant exclusivity for Category 1 gaming to the Mashpee Wampanoag Tribe. *See id.* at 6-7. But there remained one significant roadblock: the Mashpee possessed no Indian Lands in Massachusetts. *Id.* at 12. Nonetheless, the Gaming Act was specifically structured to grant the Mashpee exclusive rights to a Category 1 license in Region C. *Id.* at 6-7. Under Section 91 of the Gaming Act, Massachusetts would not request other “Category 1 License applications in Region C unless and until it determines that the [Mashpee] Tribe will not have land taken into trust for it by the United States Secretary of the Interior.” *Id.* at 6 (citation omitted). Accordingly, the upshot of Gaming Act was to grant the Tribe “exclusive” rights to a Category 1 casino in Region C. *Id.* at 6-7.

KG Urban challenged these provisions, hoping to apply for a Category 1 gaming license in Region C, where it had invested millions for a gaming site. *Id.* at 11. The First Circuit summarized KG Urban’s challenge as follows:

The most powerful of KG’s theories on appeal is that § 91 of the Massachusetts Gaming Act discriminates on the basis of race, harming KG’s ability to seek a commercial gaming license and the terms that would govern any such license, in violation of the Equal Protection Clause of the Fourteenth Amendment.

Id. at 12. KG Urban argued that because neither of the two federally recognized Tribes in Massachusetts possessed any Indian Lands, tribal gaming could not be authorized under the federal Indian Gaming Regulatory Act (“IGRA”). *Id.* Therefore, “[s]ince only the federal government, not the state, has plenary power to give tribes preferences (and even then limited), the state’s attempt to prefer the Mashpee is a form of race discrimination not authorized by Congress.” *Id.* at 12-13.

Massachusetts’s defense of the claim first rested on the proposition that, under *Mancari*, its state-granted preference was not a racial preference. *Id.* at 17. Therefore, the state argued, § 91 merited only rational-basis review. *Id.* But the First Circuit flatly rejected this reading of *Mancari*, holding that *Mancari*’s analysis applies only to “*federal* laws giving preference based on Congress’ unique obligation toward the Indians.” *Id.* at 18-19 (citation omitted). In contrast, “it is quite doubtful that *Mancari*’s language can be extended to apply to preferential *state* classifications based on its tribal status.” *Id.* at 19. That is because *Mancari* “relied on several sources of federal authority to reach its holding, including the portion of the Commerce Clause relating to Indian Tribes, the treaty power, and the special trust relationship between Indian Tribes and the federal government.” *Id.* On the other hand, “[t]he states have no such equivalent authority, which has been ceded by the Constitution to the federal government. Further, the state preference [had] to do

with the establishment of gaming facilities, not employment of Indians within agencies whose mission is to assist Indians.” *Id.* There was “no authority holding that state preferential classifications based on tribal status which are not authorized by federal law are nonetheless not racial classifications under *Mancari*.” *Id.*

The First Circuit further found it would be “difficult” to credit Massachusetts’s argument that IGRA authorized the Gaming Act “where there are no Indian lands in Region C at present within the meaning of IGRA.” *Id.* at 21. Accordingly, the First Circuit reversed the district court’s dismissal of KG Urban’s complaint, concluding that equitable relief may be appropriate at some future date. *Id.* at 27.

E. The Maine Indian Claims Settlement Act

The Tribes in Maine are subject to a different legal regime than every other federally recognized tribe in the nation. The Maine Indian Claims Settlement Act of 1980 (“Settlement Act”), Pub. L. No. 96-420, 94 Stat. 1785, is the differentiator.

In the late 1970s, two Maine tribes—the Penobscot Nation and the Passamaquoddy Tribe—brought a civil action claiming ownership over much of the State of Maine. *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 44 (1st Cir. 2007). Ultimately, with assistance from the federal government, the Penobscot and Passamaquoddy reached a settlement agreement with the State. *Id.* The agreement “was designed to transform the legal status of [those tribes], and to create a unique relationship between state and tribal authority.” *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 787 (1st Cir. 1996).⁴

⁴ Mi’kmaq Nation, previously known as the Aroostook Band of Micmacs, “which had not filed suit or asserted any claim, is not mentioned anywhere in the [Maine Implementing Act].” *Aroostook Band*, 484 F.3d at 44; *see also* 30 M.R.S. § 7202. By contrast, the Houlton Band of Maliseet Indians (“Houlton Band”) “is mentioned in several places.” *Id.* Despite these differences, the Settlement Act provides generally that “except as otherwise provided by the act, all Indian tribes ‘shall be subject to the laws

The “agreement” consists of two separate acts, one state and one federal. In April 1980, the Maine Legislature passed the Maine Implementing Act (“Implementing Act”). P.L. 1979, ch. 732 (codified at 30 M.R.S. §§ 6201-6214); State’s Answer ¶ 32. Several months later, in October 1980, Congress passed the Settlement Act. 94 Stat. 1785.⁵

i. The State’s Jurisdiction Over the Tribes

“Among other things, the Settlement Act rid the State of all Indian land claims and submitted [both tribes] and their tribal lands to the state’s jurisdiction.” *Passamaquoddy Tribe*, 75 F.3d at 787. “The description of the state’s authority and the delineation of the lines of shared authority was central to the settlement.” *Great N. Paper, Inc. v. Penobscot Nation*, 2001 ME 68, ¶ 31, 770 A.2d 574. “[T]o accommodate the state’s resistance to the creation of a ‘nation within a nation,’ the model chosen for the sharing of authority between the individual tribes and the state was a municipal model.” *Id.* Specifically, the Implementing Act provided that the Tribes “are subject to all the duties, obligations, liabilities and limitations of a municipality of and subject of the laws of the State.” 30 M.R.S. § 6206(1). “[B]ecause the state’s authority over municipal matters was well established,” reluctant members of state government were “reassured by the language of the [Implementing Act] establishing the state’s authority to enforce its laws throughout the state.” *Great N. Paper*, 2001 ME 68, ¶ 31, 770 A.2d 574. The Maine Attorney General put this

of the State and to the civil and criminal jurisdictions of the courts of the State to the same extent as any other person.” *Id.* (quoting 30 M.R.S.A. § 6204). In a 2007 decision, the First Circuit determined that the Settlement Act applied to the Aroostook Band. *See Aroostook Band*, 484 F.3d at 49.

⁵ As noted, Mi’kmaq Nation was not referred to in the Settlement Act. 30 M.R.S. § 7202. But after the Settlement Act, Mi’kmaq Nation raised its own claims with Maine and, in 1989, reached a settlement memorialized in the Micmac Settlement Act. *Aroostook Band of Micmacs v. Ryan*, 404 F.3d 48, 54 (1st Cir. 2005), *overruled by Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16 (1st Cir. 2006). That act “generally accorded [Mi’kmaq Nation] the same status as the [Houlton Band].” *Id.*

arrangement starkly: “Let there be no mistake . . . This Proposed Settlement does not create any nation within a nation.” *Id.* ¶ 32 (alteration in original).

In addition to this municipal framework, the State’s legal authority over the Tribes was further entrenched in Section 6 of the Settlement Act, which provides that, except in two limited circumstances, the Tribes are subject to Maine law, just like any other person in Maine:

[A]ll Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian . . . shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

Settlement Act § 6(a).

ii. The Settlement Act’s Limitation of the Applicability of Future Federal Laws Benefiting Indians

Additionally, in what is a defining feature of the Settlement Act, Section 16(b) “gave the State a measure of security against future federal intrusion upon these hard-won gains.” *Passamaquoddy Tribe*, 75 F.3d at 787. *See generally* Settlement Act § 16(b). Under Section 16(b) of the Settlement Act, if Congress further exercised its plenary power over Indians in a way that impacted Maine law, Congress would have to specifically make the law applicable in Maine.

Section 16(b) provides:

The provisions of any Federal law enacted after [October 10, 1980, the effective date of the Settlement Act], for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, . . . shall not apply within the State of Maine, *unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.*

Settlement Act § 16(b); *see also Passamaquoddy Tribe*, 75 F.3d at 787. Section 16(b) has thus served to prevent laws which benefited every other federally recognized Tribe in the United States from taking effect in Maine.

F. IGRA

In February 1987, six months before Congress passed IGRA, the Supreme Court decided *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). *Cabazon* held that California, which permitted certain gambling, “could not civilly regulate tribal bingo games because such regulation ‘would impermissibly infringe on tribal government.’” *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618, 622 (1st Cir. 2017) (quoting *Cabazon*, 480 U.S. at 221-22). In response, Congress passed IGRA which “sets in place a sophisticated regulatory framework” for gambling on Indian lands. *Id.* IGRA declares that its purpose is to

- (1) “provide a statutory basis for the operation of gaming by Indian tribes” to promote tribal development;
- (2) “provide a statutory basis for the regulation of gaming by an Indian Tribe” to protect it from “organized crime and other corrupting influences” and ensure gaming is conducted fairly and honestly; and
- (3) “declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.”

25 U.S.C. § 2702. Under IGRA, gaming is divided into three classes:

Class I gaming, which includes traditional Native American gaming, is always permitted; Class II gaming, which includes bingo, is permitted so long as the state does not generally proscribe gaming of that type; and Class III gaming, which includes casino gambling, is permitted only pursuant to a compact between a tribe and the state.

Wampanoag Tribe, 853 F.3d at 622 (citing 25 U.S.C. § 2710). IGRA sets out an elaborate scheme governing the formation of this compact. In short, to operate Class III gaming, a tribe must request that the State “negotiate in good faith” to enter into a compact, which is then subject to approval by the Secretary of the Interior. *Seminole Tribe of Fl. v. Florida*, 517 U.S. 44, 49-50 (1996); accord 25 U.S.C. § 2710(d)(3). Thus, “in the area of jurisdiction over and regulation of gaming on Indian tribal lands, Congress has made the federal interest clear and has provided states a very

limited role—essentially to negotiate a tribal-state compact governing the conduct of Class III gaming activities in good faith.” *Massachusetts v. Wampanoag Tribe of Gay Head*, 36 F. Supp. 3d 229, 236 (D. Mass. 2014).

G. IGRA Does not Apply in Maine

There is no dispute that IGRA does not apply in Maine, as the State has admitted. State’s Answer ¶ 33. And recent federal and state legislative efforts to make IGRA applicable to Maine have failed. *See* Advancing Equality for Wabanaki Nations Act, H.R. 6707, 117th Cong. (2022); L.D. 554 (130th Legis. 2021) (proposing adoption of IGRA).

In the mid-1990s, the Passamaquoddy Tribe sued the State of Maine to recognize rights to conduct gaming that Congress granted under IGRA. *Passamaquoddy Tribe*, 75 F.3d at 787. The Tribe wanted to build a tribal-sponsored casino in Calais, but “[w]hen formally apprised of the Tribe’s plans, the State concluded that [IGRA] did not apply within Maine’s boundaries and scotched the proposed casino.” *Id.* at 788. The Passamaquoddy Tribe then sued the state to commence negotiations for a compact under which it could introduce gaming on its Indian lands. *Id.*

The First Circuit determined that Section 16(b) of the Settlement Act prevented IGRA’s application in Maine. *Id.* at 789-90. The court readily concluded that the conditions making Section 16(b) applicable were satisfied: IGRA was a federal law adopted after 1980 which would “affect or preempt the laws of the State of Maine.” *Id.* at 789. “In such circumstances, section 16(b) provides that Maine will be exempt from such a statute *unless* Congress has ‘specifically made’ the statute ‘applicable within the State of Maine.’” *Id.* (quoting Settlement Act § 16(b)). With IGRA, Congress did not. “The text of [IGRA] contains not so much as a hint that Congress intended to make that Act specifically applicable within Maine.” *Id.* The First Circuit further

rejected the Passamaquoddy Tribe's argument that IGRA impliedly repealed the Settlement Act. *Id.* at 790.

Argument

I. The Act Falls Far Short of Surviving Strict Scrutiny Demanded By the Equal Protection Clause

The central purpose of the Equal Protection Clause is to prevent States from discriminating on the basis of race. *Shaw*, 590 U.S. at 642. Any such law that expressly discriminates on the basis of race is facially suspect, requiring the most demanding judicial inquiry. *Id.* Despite these teachings, the Act facially grants to the members of one racial group exclusive access to an entire sub-industry, online gambling. That the members of that group are members of Maine's Tribes does not lower the bar. Indeed, as the First Circuit has held, state legislation that preferences Indian Tribes stands as an improper racial classification if unauthorized by federal law. *KG Urban*, 693 F.3d at 19.

The State of Maine has no authority to enact legislation that expressly grants the Tribes benefits to the exclusion of all others. The Constitution reserves that power to Congress, which has not expressly granted or delegated that authority to Maine. Strict scrutiny thus applies. The Act cannot remotely pass that daunting test. Even assuming the State could set out a compelling interest, myriad narrower means exist to benefit the Tribes short of granting a complete monopoly over iGaming, such as allocating additional tax dollars to tribal-welfare programs.

A. The State has no inherent authority to enact preferential laws based on tribal status; such laws discriminate on the basis of race

The First Circuit's decision in *KG Urban* exemplifies these principles and compels the application of strict scrutiny to the Act. *KG Urban* affirmed that under *Mancari*, certain *federal* laws giving preference to Indian Tribes escape strict scrutiny. 693 F.3d at 18-19. But the sources of

that authority—the Indian Commerce Clause and treaty power, between Indian Tribes and the federal government—have no application to a *state*. *Id.* at 19. Indeed, the Constitution expressly vests this authority to the federal government, not the states. *Id.* Consequently, as the First Circuit found, there is no authority holding that “state preferential classification based on tribal status which are not authorized by federal law are nonetheless not racial classifications under *Mancari*.” *Id.* at 19-20. The First Circuit declined to stretch *Mancari*’s holding—that the “sui generis” legal status of the Federal Bureau of Indian Affairs allowed it to adopt employment policies preferential to “members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion”—to support a *state*’s enacting preferential laws based on tribal status. *Id.* 18-20 (quoting *Mancari*, 417 U.S. at 554). *KG Urban* expressly disposes of any claim that the State may have some free-floating authority to enact legislation giving the Tribes the sole access to internet gambling to the exclusion of all others. *See id.*; *W. Flagler Assocs., Ltd. v. Haaland*, 144 S. Ct. 10 (2023) (statement of Justice Kavanaugh respecting the denial of the application for stay) (noting that when a state law authorizes a tribe—“and only the . . . Tribe—to conduct certain . . . gaming operations in [the state],” the “state law raises serious equal protection issues”).

B. Congress has not expressly delegated to Maine authority to enact preferential internet-gambling legislation to benefit the Tribes

Lacking independent authority to enact the Act, the State must find some express grant of authority from Congress to avoid strict-scrutiny review. Any such search yields but a meager harvest that does not apply in this instance.

First, as the State has confirmed, the federal statute which specifically addresses and regulates Indian gaming, IGRA, does not apply in Maine. *Passamaquoddy Tribe*, 75 F.3d at 788; State’s Answer ¶ 33. Were it to apply, and each Tribe pursued Class III gaming, the State would be bound to negotiate a State-Tribal contract with each Tribe. *See Seminole Tribe*, 517 U.S. at 49-

50. And if IGRA were to apply, the State might have an argument, or additional legislative means, to root the Act in such a compact. *See, e.g., W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1063, 1068 (D.C. Cir. 2023) (finding IGRA did not require Secretary of Interior to disapprove state-tribal compact providing that off-reservations sports betting was deemed to be placed on tribal lands). But such avenues are squarely foreclosed to the State because, as the State admits, IGRA is inapplicable in Maine.

It should be little surprise that if IGRA, a specific federal statute that provides the statutory basis for gaming by Indian Tribes to promote their development and establishes multiple conditions to protect “gaming as a means of generating tribal revenue,” 25 U.S.C. § 2702, does not apply in Maine, Congress did not, by some other less-explicit means, grant the State similar authority. Simply put, IGRA’s inapplicability is more than enough to conclude that Congress has not expressly granted Maine authority to enact preferential gaming legislation as a means to generate tribal revenue. The State admits as much—the Implementing Act “does not address gaming or the sovereign status of the Wabanaki Nations for the purpose of gaming.” State’s Answer ¶ 34. The Court need go no further.

Second, even modest scrutiny of the Settlement Act and Implementing Act confirms that Congress has not delegated authority to Maine to pass preferential internet-gambling legislation with respect to Indian Tribes. The Settlement Act narrows the potential application of federal Indian law considerably, cutting off any federal legislation specifically enacted for the benefit of the Tribes after 1980. Settlement Act § 16(b). Thus, in the absence of specific federal Indian laws such as IGRA, the State must fall back on the broad terms of the Settlement Act or Implementing Act to support any argument that Congress expressly granted authority to the State to enact the Act. But neither the Settlement Act nor the Implementing Act contains any express provision

delegating authority from Congress to Maine to enact any sort of gaming legislation at all. Indeed, neither act contains any provision allowing the State to enact preferential legislation of any kind. Rather, both acts contemplate that such power remains not with the State but with *Congress*, which may pass future laws specifically benefitting Indian Tribes. *See id.*

Third, a core tenet of the Settlement Act and Implementing Act was to ensure that Maine law would apply to the Tribes, just as it would to any other Mainer. Settlement Act § 2(b)(4); 30 M.R.S. § 6204. Equal treatment, not particular status, is at the core of the compromise set out in the Settlement Act. The Implementing Act establishes that, except in narrow circumstances, state law applies to the Tribes in the state, just as it does to any other person. Specifically, Section 6204 of the Implementing Act provides:

Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity *shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.*

30 M.R.S. § 6204.

The “municipal model,” *Great N. Paper*, 2001 ME 68, ¶ 31, 770 A.2d 574, established in the Implementing Act further cements the equal application of Maine law to the Tribes. Except for “internal tribal matters,” the Tribes themselves are treated just like any other municipality in the State under the Implementing Act. *See id.* ¶¶ 38, 46; 30 M.R.S. § 6206(1). Thus, under the framework of the Implementing Act and with regard to the application of Maine law, an individual tribal member is largely situated similarly to every other Maine citizen: She is subject to the criminal and civil laws of the State and, at the next lower level of government, subject to Maine municipal law. *See Great N. Paper*, 2001 ME 68, ¶ 35 & n.15, 770 A.2d 574; 30 M.R.S. §§ 6203(4), 6206. Similarly, the Implementing Act provides that the Tribes shall have the same eligibility and

entitlement to state funding as other Maine municipalities. Section 6211 of the Implementing Act provides,

[t]he Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must be determined using statutory criteria and formulas generally applicable to municipalities in the State.

30 M.R.S. § 6211(1). Likewise, the Tribes are eligible to apply for discretionary state grants or loans “to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.” *Id.* § 6211(3).

So too individual tribal members. “Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state . . . benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State” *Id.* § 6211(4). And such like-manner treatment is even greater when the Tribes act in a business capacity. Acting in such a capacity, as opposed to a government capacity, “a Tribe is taxed to the same extent as another other corporation.” *Great N. Paper*, 2001 ME 68, ¶ 40, 770 A.2d 574.

Fourth, the Settlement Act further ensures that Congress’ plenary power to legislate specifically as to Indian Tribes shall not serve to disrupt the applicability of Maine’s general laws to Maine’s Tribes. Any then-existing federal law that undermined the State’s governance over the Tribes does not apply in Maine: “[N]o law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians . . . and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine . . . shall apply within the State.” Settlement Act § 6(h). And, as noted above, the Settlement Act provides that when Congress exercises its plenary and exclusive power to enact legislation

benefiting Indian Tribes which “affects or preempts” Maine law, it must specifically make that legislation applicable to the State of Maine. In such cases, the federal law benefiting Indians “shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.” *Id.* § 16(b).

Fifth, and finally, while the Settlement Act and Implementing Act are unambiguously not an express grant of authority to the State enabling it to enact gaming legislation preferential to the Tribes, relevant legislative history amply confirms the point. *See Rubin v. United States*, 449 U.S. 424, 430 (1981) (when the terms of a statute are “unambiguous, judicial inquiry is complete except in rare and exceptional circumstances.” (cleaned up)); *Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019) (“If the words of a statute are unambiguous, this first step of the interpretive inquiry [analyzing the statutory language] is [the] last.”); *Smith v. Henson*, 2025 ME 55, ¶ 12, 339 A.3d 816. (“Only if the statutory language is unclear or can reasonably assigned multiple meanings will we look to secondary or other extrinsic indicia of the Legislature’s intent, such as statutory history and the policy underlying the statute.”). The legislative history patently underscores the Implementing Act’s intent, which was not to afford special sovereign treatment to the Tribes. “The state was resistant to any settlement that would create a ‘nation within a nation.’” *Great N. Paper*, 2001 ME 68, ¶ 27, 770 A.2d 574. As a representative of Governor Joseph E. Brennan testified, “We could never have a nation within a nation in Maine. Such a result would not only be unworkable in a State our size, but it would also promote racial and ethnic hostility and resentment to the ultimate detriment of all our people.” *Id.* ¶ 27 n.10 (citation omitted). Maine’s Attorney General, who acted for the State in the negotiations resulting in the Settlement Act and Implementing Act, emphasized, “Let there be no mistake This proposed Settlement does not create any nation within a nation.” *Id.* ¶ 32 & n.12; *see also* 30 M.R.S. § 6202. These statements underscore the

Settlement Act and Implementing Act’s plain text, which do not grant Maine the ability to enact preferential legislation based on the Tribes’ sovereign or political status. On the contrary, the laws of Maine applied to the Tribes in nearly the same way as they did elsewhere in the State. 30 M.R.S. § 6203 (“[T]o achieve a just and fair resolution of their disagreement over jurisdiction . . . the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act.”).

* * *

IGRA’s inapplicability to Maine is enough to conclude that there is no express grant of authority to Maine to enact tribal-gaming legislation. Moving beyond that federal law to the Settlement Act and Implementing Act only confirms that there is no express, or even implied, grant of federal authority to the State. Neither Act addresses tribal gaming at all. And the text and structure of those Acts affirm that the power to enact legislation specifically benefiting Maine’s Tribes rests with Congress, not the State. Finally, if the legislative history of those Acts is considered (and it need not be), it reaffirms that the intent of those acts was not to grant Maine’s Tribes sovereign, political status within the State.

It is clear, multiple times over, that Congress did not expressly grant the State authority to enact preferential tribal gaming legislation like the Act. And in the absence of an express grant of Congressional authority to the State, the Act must satisfy strict scrutiny. *KG Urban*, 693 F.3d at 18-20; *see also Malabed v. N. Slope Borough*, 42 F. Supp. 2d 927, 939 (D. Alaska 1999) (subjecting ordinance adopting employment preference for Native Americans to strict scrutiny).

C. The Act Falls Far Short of Satisfying Strict Scrutiny

Any exception to equal protection must “survive a daunting two-step examination” under a strict-scrutiny standard. *Students for Fair Admissions*, 600 U.S. at 206. That standard requires first deciding “whether the racial classification is used to ‘further compelling governmental interests.’” *Id.* (quoting *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003)). If so, a court then turns to a second question: “Whether the government’s use of race is ‘narrowly tailored,’ *i.e.*, ‘necessary,’ to achieve that interest.” *Id.* (quoting *Fisher v. University of Tex. at Austin*, 570 U.S. 297, 311-12 (2013)). Strict scrutiny presents a high bar for a reason: “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Rice*, 528 U.S. at 517 (citation omitted). It is only the “most extraordinary case” which can override this principle. *Students for Fair Admissions*, 600 U.S. at 208. It is the State’s burden to prove that racial classifications are “narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

A “compelling” interest is not a general one to “alleviate the effects of societal discrimination.” *Shaw v. Hunt*, 517 U.S. 899, 909-910 (1996). The Supreme Court “never has held that societal discrimination alone is sufficient to justify a racial classification.” *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 274 (1986). Rather, it has identified only two compelling governmental interests that permit the government to discriminate on the basis of race. *Louisiana v. Callais*, No. 24-109, 2026 WL 1153054, at *10 (U.S. Apr. 29, 2026). Aside from a specific prison-safety interest, “remediating specific, identified instances of past discrimination that violated the Constitution or a statute” is the only other compelling governmental interest. *See id.* (quoting *Students for Fair Admissions*, 600 U.S. at 207).

The Act is not traceable to any specific, identified instances of past discrimination that violated the U.S. Constitution or a statute. Rather, the Act's intent is the promotion of a general interest: "offering life-changing revenue for Tribal communities, as well as providing a form of economic sovereignty for their Nations." *Supra* Announcement of Governor Mills, <https://tinyurl.com/3726ceh9>. The Act's goal of granting "economic opportunity for the Wabanaki Nations through internet gambling" advances a prototypical general interest in providing a source of additional revenue for the Tribes. The Act does not even attempt to meet the burden of showing specific, identified instances of past discrimination which the Act attempts to remediate. *Callais*, 2026 WL 1153054, at *10. Nor did the State or Legislature take the next necessary step of "determin[ing] the precise scope of the injury it seeks to remedy," which must be rooted in a "strong basis in evidence to conclude that its remedial action is necessary." *Id.* (citation omitted). The Act fails strict scrutiny for this reason alone.

But even if the State could establish a compelling governmental interest, granting a monopoly is not remotely narrowly tailored to that interest.

A state-granted monopoly in a particular sub-industry, internet gambling, is necessarily the *most* restrictive means possible and facially fails narrow tailoring. An *exclusive* license to conduct iGaming connotes that all others are excluded and, by necessity, less than full exclusion is possible. Thus, a race-based ban on all other actors from entering a new, state-created market is the "broadest possible remedy." *Williams*, 115 F.3d at 665. As such, the Act is "almost by definition not narrowly tailored." *See id.* at 665-66. There exist myriad less-restrictive means of improving Indian welfare other than a complete monopoly over iGaming: quotas, set asides, percentage of tax revenue, favorable tax treatment, and an earmarking of proceeds. Simple logic

dictates that granting a monopoly over internet gambling licenses, to the exclusion of *all* others, cannot be narrowly tailored to any purported compelling interest.

Confirming plain logic, Plaintiffs are not aware of any decisional authority finding that the granting of state-created monopoly is narrowly tailored to a compelling interest in redressing instances of past discrimination. But the application of analogous case law only confirms the singular logical conclusion that the Act is not narrowly tailored. In determining whether a governmental program is narrowly tailored, a court will consider:

(1) the necessity for relief and the efficacy of alternative remedies, (2) the flexibility and duration of the relief, (3) the relationship of the numerical goals of the relief to the relevant labor market (or to its analog in a case involving something other than employment discrimination), and (4) the impact of the relief on the rights of third parties.

U.S. v. Sec’y of Housing & Urban Dev., 239 F.3d 211, 219 (2d Cir. 2001) (citing *United States v. Paradise*, 480 U.S. 149, 171 (1987)). All these factors show the Act lacks narrow tailoring. *First*, the State made no attempt to show either the need to redress prior discrimination or to assess the efficacy of alternative means to address that discrimination. On the contrary, the State executive officials who testified before the legislative committee considering L.D. 1164 testified *against* its enactment.⁶ *Second*, the relief is neither flexible nor time-limited. The Act grants the Tribes a monopoly over iGaming forevermore. This stands in stark contrast to other narrowly tailored remedial schemes that are temporary. *See, e.g., Stuart v. Roache*, 951 F.2d 446, 454 (1st Cir. 1991) (noting that decree was “limited in time and likely terminate sometime next year” in keeping with

⁶ *An Act to Create Economic Opportunity for the Wabanaki Nations Through Internet Gambling: Hearing Before the Comm. on Veterans & Legal Affs.*, 132nd Legislature (2025) (testimony of Defendant Milton Champion, Exec. Dir. of the Gambling Control Unit; testimony of Steve Silver, Chair of the Maine Gambling Review Board; and testimony of Puthiery Va, Director of the Maine Center for Disease Control & Prevention), available at https://www.mainelegislature.org/legis/bills/display_ps.asp?ld=1164&PID=1456.

“remedial goals [which] should be temporary” (citation omitted)). *Third*, the Act sets no numerical goals to achieve its remedial purpose; rather, it is a one-time grant of the entire market for perpetuity. And *fourth*, the impact of the rights of third parties is patent. Oxford Casino Hotel’s market share will inevitably decline as it cannot participate in iGaming. And neither Oxford Casino Hotel, nor its parent, Churchill Downs, as with any other non-Tribal actor, can even attempt to participate in the newly created iGaming market. All these factors weigh heavily in favor of finding an utter lack of narrow tailoring. For this additional reason, the Act fails strict scrutiny.

II. The Act Facially Fails Commerce Clause Strict Scrutiny

A. The Dormant Commerce Clause

The Constitution gives Congress the power to “regulate Commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. These “few simple words . . . reflected a concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation.” *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979). Thus, although the Commerce Clause is an affirmative grant of power, the Supreme Court has read the Clause to “contain a further, negative command, one effectively forbidding the enforcement of certain state economic regulations even when Congress has failed to legislate on the subject.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 368 (2023) (cleaned up). This has come to be known as the Dormant Commerce Clause. *Id.* “The antidiscrimination principle” of the Dormant Commerce Clause “lies at the ‘very core’ of [the Court’s] . . . Commerce Clause jurisprudence.” *Id.* at 369 (quoting *Camps Newfoundland/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 581 (1997)). Applying

this principle, the Supreme Court has “said that the Commerce Clause prohibits the enforcement of state laws driven by economic protectionism—that is regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Id.* (cleaned up).

Accordingly, “State laws that discriminate against interstate commerce face ‘a virtually *per se* rule of invalidity.’” *Granholm v. Heald*, 544 U.S. 460, 476 (2005) (quoting *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978)). Thus, a discriminatory law “invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives.” *Hughes*, 441 U.S. at 337. If a state law discriminates against interstate commerce “‘either on its face or in practical effect,’ the burden falls on the State to demonstrate both that the statute ‘serves a legitimate local purpose,’ and that this purpose could not be served as well by available nondiscriminatory means.” *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (quoting *Hughes*, 441 U.S. at 336); see also *Tenn. Wine & Spirits Retailers Assoc. v. Thomas*, 588 U.S. 504, 518 (2019) (“Under our dormant Commerce Clause cases, if a state law discriminates against out-of-state goods or nonresident economic actors, the law can be sustained only on a showing that it is narrowly tailored to advance a legitimate local purpose.” (cleaned up)). “[W]here simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected.” *City of Philadelphia*, 437 U.S. at 624. “The State’s burden of justification is so heavy that facial discrimination by itself may be a fatal defect.” *Or. Waste Sys., Inc. v. Dep’t of Env’t Quality*, 511 U.S. 93, 101 (1994) (citation omitted).

B. The Act Fails Commerce Clause Strict Scrutiny

Dormant Commerce Clause principles are easily applied to the Act. The Act facially discriminates against out-of-state economic actors who wish to do business in Maine. The Act expressly limits participants in Maine’s internet-gambling industry to in-state residents by

providing that “[t]o be eligible to receive an Internet gaming license an applicant must be a federally recognized Indian nation, tribe or band *in this State*.” 8 M.R.S. § 1406(2). That license “may not be transferred or assigned, except that a federally recognized Indian nation, tribe or band *in this State* may transfer its Internet gaming entity with a principal place of business *in the State* that is wholly owned by that federally recognized Indian nation, tribe or band.” *Id.* The Act expressly discriminates against out-of-state economic actors, who are not eligible to receive a license and cannot be assigned or transferred one either. The Act is thus purposely nativistic, excluding all other out-of-state participants from the internet-gaming market. Strict scrutiny thus applies.

Even assuming a “legitimate governmental purpose,” any such purpose can easily be achieved by nondiscriminatory means. Like the less-restrictive means readily apparent in the equal-protection context, many non-discriminatory means exist to provide economic benefits to the Tribes—out-of-state economic actors need not be completely boxed out to achieve that aim. Rather, tax dollars raised from proceeds could be used to benefit the Tribes; a certain quota of licenses could be granted to Maine businesses; funds generated could be allocated to certain programs; and so on. *See* 8 M.R.S. § 1416(1). Moreover, the State would need to present “concrete record evidence” that any of “nondiscriminatory alternatives will prove unworkable.” *Granholm*, 544 U.S. at 492-93. The legislative record surrounding the Act cannot satisfy this standard—it is void of any such evidence. Nor can the Governor’s publicly pronounced justifications—such as noting her meetings with the leaders of Maine’s Tribes who described the Act as providing “life changing revenue” and “economic sovereignty” for the Tribes—suffice. *Supra* Announcement of Governor Mills, <https://tinyurl.com/3726ceh9>. “Sweeping assertions” or “mere speculation” that the Act’s overt discrimination against out-of-state actors are necessary to achieve its aims are plainly insufficient. *See Family Winemakers of Cal. v. Jenkins*, 592 F.3d 1, 17 (1st Cir. 2010) (cleaned

up). Indeed, the potential existence of but *one* alternative is enough to strike down a state law that discriminates against out-of-state commerce. *Id.* Here, because multiple alternatives are available and the State has not shown that these are unworkable, the Act plainly fails. *See id.* at 17-18.

The complete exclusion of out-of-state economic actors from a state-created industry exemplifies the principle that such state protectionism is *per se* invalid. *See City of Philadelphia*, 437 U.S. at 624. Where, as here, the State has “ample alternatives short of a facially discriminatory” policy, the Act violates the Dormant Commerce Clause. *See Camps Newfoundland/Owatonna, Inc.*, 520 U.S. at 582 & n.16; *cf. Taylor*, 477 U.S. at 143, 151 (upholding Maine’s ban on importation of live baitfish based on factual finding of a lack of available nondiscriminatory alternatives).

The Act cannot remotely survive strict scrutiny under the Dormant Commerce Clause and is unconstitutional for this additional reason.

Conclusion

For all these reasons, this Court should hold that, as a matter of law, the Act is unconstitutional under the Fourteenth Amendment and Dormant Commerce Clause of the United States Constitution and grant Oxford Casino’s motion for judgment on the pleadings.

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Respectfully submitted,

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