UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

OXFORD CASINO HOTEL, BB DEVELOPMENT, LLC, and CHURCHILL DOWNS INCORPORATED, Plaintiffs, v. MILTON F. CHAMPION, in his official capacity as Executive Director of the Maine Gambling Control Unit, Defendant, HOULTON BAND OF MALISEET INDIANS, MI'KMAQ NATION, PASSAMAQUODDY TRIBE, and PENOBSCOT NATION, Intervenor-Defendants.	Case No. 1:26-cv-00046-LEW

DEFENDANT MILTON F. CHAMPION'S MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Defendant Milton F. Champion Defendant, in his official capacity as Executive Director of the Maine Gambling Control Unit (GCU), hereby moves for summary judgment on all counts of the Amended Complaint, ECF No. 22, filed by Plaintiffs Oxford Casino Hotel,[1] BB Development, LLC, and Churchill Downs Inc. (collectively, "Oxford"). In support of this motion, Director Champion relies on the Joint Supporting Statement of Material Facts ("SMF") and supporting materials, ECF Nos. 36 to 36-11, filed by Director Champion and Intervenor-Defendants Houlton

[1] Oxford Casino Hotel is not a separate entity, but the trade name of BB Development, LLC. *See* Amend. Compl., ¶¶ 13-14. *See also* SMF ¶ 214. In effect, there are two Plaintiffs in this case, not three.

Band of Maliseet Indians, Mi'kmaq Nation, Passamaquoddy Tribe, and Penobscot Nation (collectively, "Wabanaki Nations" or "Nations"). *See* L.R. 56(b).

The relationship between the State of Maine and the Wabanaki Nations is nationally unique. The Nations are sovereign political entities, and their tribal governments provide core government functions, services, and programs to both tribal and non-tribal citizens. Yet the Nations are also subject to Maine state law. This unique jurisdictional relationship is the result of the agreement struck between the United States, Maine, and the Nations in several legislative enactments. *See* Maine Indian Claims Settlement Act (MICSA), Pub. L. No. 96-420, 94 Stat. 1785 (1980) (formerly codified at 25 U.S.C. §§ 1721-1735);[2] Maine Implementing Act (MIA), 30 M.R.S.A. §§ 6201-6214 (2011 & Supp. 2026); Aroostook Band of Micmacs Settlement Act (ABMSA), Pub. L. No. 102-171 (Nov. 26, 1991) (formerly codified at 25 U.S.C. § 1721 note); Mi'kmaq Nation Restoration Act (MNRA), 30 M.R.S.A. §§ 7201-7210 (Supp. 2026). Through MICSA, Congress authorized Maine to exercise jurisdiction over the Nations on a broad variety of issues.

As the Nations and Maine continue to define and re-define their relationship,[3] the Maine Legislature has taken steps to support the Nations' sovereignty and economic development. The recent enactment of "An Act to Create Economic Opportunity for the Wabanaki Nations Through Internet Gaming," P.L. 2025, ch. 538 (eff. Jul. 29, 2026) (enacting 8 M.R.S. §§ 1401-17) ("iGaming law"), will continue that work and support the Nations and the citizens they serve. The

[2] MICSA and other settlement acts remain in effect but were removed from the United States Code as of 25 U.S.C. Supp. IV (September 2016) in an effort by codifiers to improve the code's organization. For ease of reference, the State continues to refer to MICSA as previously codified at 25 U.S.C. §§ 1721-1735. *See generally Penobscot Nation v. Frey*, 3 F.4th 484 (1st Cir. 2021) (citing to MICSA according its previous codification).

[3] *See, e.g.*, Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, Final Report to the 129th Legislature (Jan. 2020).

iGaming law also improves the historic imbalance in Maine's gaming industry, which largely has excluded any opportunities for the Wabanaki Nations.

Oxford operates one of the State's two casinos and a facility-based sports wagering book. SMF ¶¶ 214, 224. Fearful of change, Oxford brings this case to preclude the Wabanaki Nations, and thus everyone in Maine, from engaging in internet gaming. But Oxford's Equal Protection and Commerce Clause challenges to the iGaming law are without merit.

As the Supreme Court has held, and as the summary judgment record shows, the Nations are sovereign political entities, not mere racial groups. Accordingly, the preference for the Wabanaki Nations in the iGaming law is a political classification that is subject to only rational basis review. That preference is also expressly permitted by Congress through MICSA. Oxford's Commerce Clause challenge fares no better because private companies and sovereign governments are not similarly situated, and, in any event, the iGaming law does not affect or burden interstate commerce.

Because there are no issues of material fact as to any of the claims in Oxford's Amended Complaint, the Court should enter judgment in favor of Director Champion. *See* L.R. 56.

LEGAL BACKGROUND

I. The Settlement Acts: Background

Maine's relationship with the Wabanaki Nations is "unique." *See Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 787 (1st Cir. 1996).

During the 1970s, the Penobscot Nation and the Passamaquoddy Tribe pursued claims to nearly two-thirds of the landmass of the State of Maine that the tribes claimed was transferred in violation of the Indian Trade and Intercourse Act of 1790, ch. 33, 1 Stat. 137 (1790). *See generally Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 388 F. Supp. 649 (D. Me. 1975), *aff'd*,

528 F.2d 370 (1st Cir. 1975); *Bottomly v. Passamaquoddy Tribe*, 599 F.2d 1061 (1st Cir. 1979). In 1980, after "years of strife" and many months of intense negotiation, the State of Maine, the Penobscot Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians reached a comprehensive settlement "designed to transform the legal status of [these tribes] and to create a unique relationship between state and tribal authority." *Passamaquoddy Tribe*, 75 F.3d at 787 (1st Cir. 1996). The settlement was embodied in two negotiated legislative enactments: the Maine Implementing Act (MIA), and the Maine Indian Claims Settlement Act (MICSA), which ratified MIA.[4]

Several years later, Congress recognized the Mi'kmaq Nation and affirmed an arrangement similar to that of the other Wabanaki Nations. *See* ABMSA § 2. The ABMSA ratified the state Micmac Settlement Act, P.L. 1989, ch. 148, which is now known as the Mi'kmaq Nation Restoration Act, 30 M.R.S.A. § 7201. Collectively, these series of state and federal acts are referred to as the Settlement Acts.

The Settlement Acts accomplished three primary goals. *See* MICSA § 1721(b) (stating purposes of MICSA). First, the Acts resolved all current and potential land claims brought by the Penobscot, Passamaquoddy, Maliseet, and any other tribe in the State of Maine. MICSA §§ 1723(a)-(c) (ratifying all prior tribal transfers of land and natural resources and extinguishing aboriginal title to, and all claims regarding, land or natural resources so transferred); MIA § 6213 (similar). Second, the Acts provided a process and funds for the Nations to acquire lands within Maine. MICSA § 1724(d); ABMSA § 4(a). Third, the Acts set forth the jurisdictional relationship between the Nations and Maine going forward. This third goal is implicated here.

[4] Subsequent negotiations between the Houlton Band of Maliseet Indians culminated in the Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986, Pub. L. No. 99-566 (Oct. 27, 1986) (formerly codified at 25 U.S.C. § 1724 note). *See* MICSA § 1724(d)(4) (highlighting potential future agreement between Maine and the Maliseets).

The Settlement Acts "define[] the relationship between the State of Maine" and the Nations. MICSA § 1721(b)(3); *see also* ABMSA § 6(b). MICSA generally provides that except as otherwise provided the Nations and their members, and the land and natural resources owned by or held in trust for the benefit of the Nations or their members are subject to the jurisdiction of the State of Maine. MICSA §§ 1725(a), (b)(1); *see also* ABMSA § 6(b); MIA § 6204; MNRA § 7204.

Nevertheless, the Wabanaki Nations still benefit from "the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine" unless those laws or regulations would affect or preempt Maine's jurisdiction. MICSA § 1725(h); *see also id.* § 1735(b). The Nations are also "eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians." MICSA § 1725(i); *see also* ABMSA §§ 6(a)-(b), 9(b).

The Settlement Acts also recognize and safeguard the sovereignty of the Wabanaki Nations. *See, e.g.*, *Akins v. Penobscot Nation*, 130 F.3d 482, 489 (1st Cir. 1997) (MIA recognizes "the independent source of tribal authority, that is, the inherent authority of a tribe to be self-governing" (cleaned up)). In large part, MIA vests control over tribal lands with each tribe and precludes Maine from interfering with internal tribal matters, such as tribal membership, organization, and elections. MIA §§ 6206(1), 6206-B, 6207(1); MNRA §§ 7205(1)-(2), 7206(1). *See also* P.L. 1979, ch. 732, § 16 (repealing former state statutes regarding tribal internal governance). MIA and MICSA recognize the Wabanaki Nations' sovereign authority to establish tribal courts and exercise

jurisdiction over Indian child custody proceedings. MIA §§ 6209-A to -C; MNRA § 7208; MICSA § 1727. Nevertheless, the Settlement Acts, with Congressional authorization, "extended state authority well beyond what is customary for Indian tribes elsewhere in the United States." *Maine v. Johnson*, 498 F.3d 37, 42 (1st Cir. 2007).

II. The Settlement Acts: Implementation

The jurisdictional framework described above has not been without subsequent challenge or controversy. *See, e.g.*, *Penobscot Nation v. Frey*, 3 F.4th 484, 490 (1st Cir. 2021) (concluding the Penobscot Indian Reservation does not include the waters or submerged lands of the Main Stem of the Penobscot River); *Johnson*, 498 F.3d at 43 (affirming Maine's environmental regulatory authority in the Penobscot River); *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 63 (1st Cir. 2007) (concluding Mi'kmaq Nation not immune from state employment discrimination laws and state agency enforcement of those laws); *Houlton Band of Maliseet Indians v. Ryan*, 484 F.3d 73, 74-75 (1st Cir. 2007) (concluding Maliseet not immune from state employment discrimination laws and state agency enforcement of those laws).

Gaming activities by the Wabanaki Nations have been a particular source of controversy. For example, shortly after the enactment of MIA and MICSA, Maine took steps to stop the Penobscot Nation from continuing to operate a beano game it had operated for 6 years on the Penobscot Indian Reservation. *See Penobscot Nation v. Stilphen*, 461 A.2d 478, 480 (Me. 1983). The Penobscot Nation did not have a state license to conduct beano nor did it qualify for one under Maine's then existing beano licensing statute. *Id.* In subsequent litigation brought by the Nation, the Maine Law Court concluded that, notwithstanding MIA and MICSA, "in Maine all gambling, including beano, is still unlawful unless expressly permitted by state statute." *Id.* at 482. The Law Court also concluded that operating a beano game was not an "internal tribal matter" and thus

subject to regulation by the State. *Id.* at 489-90. The Law Court affirmed the trial court's conclusion that the Nation could not continue to operate its long-standing beano game because it was unlicensed and illegal under state law. *Id.* at 490.

After Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-21, the Passamaquoddy Tribe "sued to compel Maine . . . to recognize its asserted right to avoid the prohibitions of Maine's criminal code and conduct high-stakes casino gambling behind the shield" of IGRA. *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 787 (1st Cir. 1996). The First Circuit held, however, that "Congress did not make [IGRA] specifically applicable within Maine, and that, therefore, the Tribe is not entitled to an order compelling the State to negotiate a compact for" casino gaming. *Id.* at 794. Numerous attempts to authorize tribal gaming through state legislation were unsuccessful. *See, e.g.*, L.D. 1274 (122nd Me. Legis.).[5]

In the November 2003 election, Maine voters were presented with two referenda on citizen-initiated bills related to gaming in Maine. One referendum asked voters if they wanted to allow a casino run by Passamaquoddy Tribe and Penobscot Nation, and the other referendum asked voters if they wanted to allow slot machines at horse racing tracks, so called "racinos." SMF ¶¶ 207, 209. A majority of Maine voters (272,394 in favor and 242,490 opposed) voted yes on racinos; but a majority of Maine voters (170,500 in favor and 346,583 opposed) voted no on a tribal casino. SMF ¶¶ 208, 210. Then, in the November 2010 election, Maine voters approved through referendum a citizen-initiated bill that permitted a casino in Oxford County, which is the casino operated now by Oxford. SMF ¶¶ 211-12, 214.

[5] The Maine Legislative Law Library has assembled a legislative history of proposed and enacted legislation (by initiated bill and legislative document) from 1993 to 2022 related to the regulation of casinos under Maine law, the authorization of casinos to operate in Maine, and slot machine gaming. *See* Maine Legislative Law Library, *Maine Casino Gambling Legislative History*, https://www.maine.gov/legis/lawlib/lldl/casinogambling/index.html (last visited May 6, 2026).

Although the Wabanaki Nations historically have had limited ability to conduct tribal gaming, there are numerous other examples of Maine and the Nations working together on issues of mutual significance. For example, in recognition of the economic importance of Maine's elver fishery, since 2014 "21.9% of the overall annual quota of elver fishery annual landings" is allocated "to the federally recognized Indian tribes in the State." 12 M.R.S.A. § 6302-B(1) (Supp. 2026). In 2019, the Maine Legislature created a new designated use of sustenance fishing within Maine's Water Classification Program to "protect[] human consumption of fish for nutritional and cultural purposes" in designated waterbodies. 38 M.R.S.A. § 466(10-A) (Supp. 2026). The waterbodies to which the sustenance fishing use applies are those the Wabanaki Nations identified as having particular significance to their communities—but are not necessarily located in or adjacent to tribal lands. *See* 38 M.R.S.A. §§ 467(7)(A)-(B), (D); 467(13); 467(15)(A), (C), (E)-(F); 468(8)(Q); 469(7)(H-1) (Supp. 2026). In 2023, when the constitutionality of the Indian Child Welfare Act was being challenged, *see generally Haaland v. Brackeen*, 599 U.S. 255 (2003), Maine enacted the Maine Indian Child Welfare Act, 22 M.R.S.A. §§ 3941-55 (Pamph. 2026), on an emergency basis to ensure that Indian children continued to be placed, "whenever possible, in a placement that reflects the unique values of the Indian child's tribal culture." *Id.* § 3942(2); *see also id.* (recognizing "that Indian tribes have a continuing and compelling governmental interest in an Indian child" regardless of custody).

There also have been developments in tribal gaming. Post-*Stilphen*, the Maine Legislature enacted a new high stakes beano law. *See* P.L. 1987, ch. 197, § 3 (eff. Sept. 29, 1987). As amended, that law now permits the GCU to "issue a license to operate high-stakes beano or high-stakes bingo to a federally recognized Indian tribe" to conduct beano games within the tribal lands of the respective tribe. 13-A M.R.S.A. §§ 314-A(1), (5) (Supp. 2026).

And, in 2022, the Maine Legislature authorized sports wagering for the first in Maine. P.L. 2021, ch. 585, §§ I-1 to J-9 (eff. Aug. 8, 2022) (enacting 8 M.R.S. §§ 1201-19). With respect to the newly authorized "structure established for sports wagering," the Maine Legislature found that:

> 1. If conducted by federally recognized Indian tribes in the State, mobile sports wagering will serve as an effective economic development tool for tribal governments and tribal members and provide economic stimulus to rural areas of the State;
>
> 2. Authorizing the federally recognized Indian tribes in the State to conduct mobile sports wagering is fair and equitable because those Indian tribes previously have been excluded from conducting most forms of gaming in the State;
>
> 3. If conducted by licensed off-track betting facilities, commercial tracks and casinos, facility-based sports wagering will support the harness racing industry and agricultural interests that support the harness racing industry; and
>
> 4. Off-track betting facilities, commercial tracks and casinos are well suited to conduct facility-based sports wagering because of their infrastructure and experience with the conduct of wagering in the State

Id. § I-1. Like the iGaming law, the sports wagering law authorizes the GCU to issue mobile operator licenses to an applicant that is also "a federally recognized tribe located in this State." 8 M.R.S.A. § 1207(2) (2026). Maine's sports wagering law also authorizes certain existing licensees, like Oxford Casino, to apply for a facility-based licenses. 8 M.R.S.A. § 1206(2) (2026).

When the Maine Legislature authorized sports wagering law in 2022, it also expressed its intent that the Wabanaki Nations should "have the right to conduct all forms of mobile gaming newly authorized" in the future. 30 M.R.S.A. § 8001(1) (Supp. 2026). The Legislature found that "mobile gaming will, if conducted by federally recognized Indian tribes in the State, serve as an effective economic development tool for tribal governments and provide economic stimulus to rural areas of the State." *Id.*

FACTUAL AND PROCEDURAL BACKGROUND

In 2026, and in accordance with legislative intent expressed in section 8001, the Maine Legislature legalized Internet gaming in Maine through the iGaming law. In order to 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). The iGaming law also requires each licensed operator to remit "18% of the adjusted gross Internet gaming receipts to the" GCU Executive Director to be distributed in support of the Opioid Use Disorder Prevention and Treatment Fund, the Emergency Housing Relief Fund, and the School Revolving Renovation Fund, among others. 8 M.R.S. § 1416(1).

Maine's sports wagering law and the iGaming law are markedly similar. The iGaming law contemplates categories of licensure analogous to sports wagering: iGaming operator, supplier, management service provider, and individual employee occupational licensure. SMF ¶¶ 220-21, 238. Both laws require the use of geolocation services for mobile wagers, and those geolocation service providers must be licensed by the GCU. SMF ¶¶ 234-35, 240. Geolocation services supply technology to detect the physical, geographical location of a mobile wagering patron when the patron is attempting to access the mobile wagering system and place a wager in order to ensure wagers are not accepted from outside of Maine. SMF ¶¶ 234, 236-37, 241. Because all sports wagering licensees, whether mobile or facilities-based, must have a principal place of business in the State, *see* 8 M.R.S.A. §§ 1206(2), 1207(2) (Supp. 2026), Maine's sports wagering laws ensure sports wagering occurs entirely with the State of Maine. SMF ¶ 237. Similarly, because all iGaming licensees must have a principal place of business in the State, *see* 8 M.R.S. § 1406(2), Maine's iGaming law ensure that iGaming activity occurs entirely within the State of Maine. SMF ¶ 242.

Oxford filed this case on January 23, 2026. ECF No. 1. The operative Amended Complaint, ECF No. 22, contains two section 1983 claims. Oxford asserts that the iGaming law is unconstitutional because it constitutes a race-based classification that abridges its Equal Protection rights (Count I) and because it discriminates against out-of-state entities in violation of the Dormant Commerce Clause (Count II).

The Wabanaki Nations moved to intervene in this case in order to protect their sovereign interests, ECF No. 26, which motion was granted on April 2, 2026, ECF No. 29. The Court also adopted the proposed scheduling order presented by the parties, allowed all parties to file dispositive motions on an agreed upon schedule, and stayed discovery pending resolution of the dispositive motions. ECF Nos. 25, 30.

STANDARD OF REVIEW

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Genuine issues of fact are those that a factfinder could resolve in favor of the nonmovant, while material facts are those whose 'existence or nonexistence has the potential to change the outcome of the suit.'" *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 38 (1st Cir. 2014) (quoting *Tropigas de P.R., Inc. v. Certain Underwriters at Lloyd's of London*, 637 F.3d 53, 56 (1st Cir. 2011)).

When the movant "has made a preliminary showing that there is no genuine issue of material fact, the nonmovant must 'produce specific facts, in suitable evidentiary form, to . . . establish the presence of a trial worthy issue.'" *McCarthy v. City of Newburyport*, 252 F. App'x 328, 332 (1st Cir. 2007) (alteration in original) (quoting *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999)). A non-moving party may "defeat a summary judgment motion

by demonstrating, through submissions of evidentiary quality, that a trialworthy issue persists." *Iverson v. City of Boston*, 452 F.3d 94, 98 (1st Cir. 2006). A nonmovant, however, "cannot rely on speculation to avoid summary judgment." *Medina-Rivera v. MVM, Inc.*, 713 F.3d 132, 136 (1st Cir. 2013); *see also Ahern v. Shinseki*, 629 F.3d 49, 58 (1st Cir. 2010) ("Conclusions that rest wholly on speculation are insufficient to defeat a motion for summary judgment."). The nonmoving party must provide "'enough competent evidence' to enable a factfinder to decide in its favor on the disputed claims." *Carroll v. Xerox Corp.*, 294 F.3d 231, 237 (1st Cir. 2002) (quoting *Goldman v. First Nat'l Bank of Bos.*, 985 F.2d 1113, 1116 (1st Cir. 1993)).

ARGUMENT

I. Maine's iGaming law does not abridge Oxford's right to Equal Protection under the United States Constitution.

The Equal Protection Clause requires that "all persons similarly situated . . . be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). Initially, the Court examines (1) whether the Plaintiffs were treated differently than others similarly situated, and (2) whether such a difference was based on an impermissible consideration. *Portland Pipe Line Corp. v. City of South Portland*, 288 F. Supp. 3d 321, 452 (D. Me. 2017), *amended by* No. 2:15-CV-00054-JAW, 2018 WL 4901162 (D. Me. Oct. 9, 2018) (citing *Macone v. Town of Wakefield*, 277 F.3d 1, 10 (1st Cir. 2002)).

Here, Oxford asserts that Section 1406(2) in Maine's iGaming law constitutes a race-based classification which it claims subjects the law to strict scrutiny review. Oxford is wrong. Preferences in statute for tribal governments are political classifications. The Court can and should reject Oxford's Equal Protection argument on that basis alone.

Regardless, the tribal preference in the iGaming law is authorized by federal law, and under well-trod Supreme Court precedent is subject to only rational basis review. Because the iGaming

law is rationally related to the legitimate government interest of furthering the economic development and self-sufficiency of the Wabanaki Nations, it easily passes constitutional muster.

A. Maine's iGaming law preferences tribal governments, not individuals of a particular race.

Contrary to Oxford's claims, Maine's iGaming law does not utilize a race-based classification, nor does it preference members of one racial group. Instead, Maine's iGaming law constitutes a political classification for the benefit of tribal governments.

A preference in statute (whether federal or state) for a tribe is not a race-based preference. As the Supreme Court has long held, the United States Constitution recognizes tribes for what they are: sovereign political entities. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16-17 (1831). "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832). Thus, a tribe is not "a discrete racial group, but, rather," a "quasi-sovereign tribal entit[y]," *Morton v. Mancari*, 417 U.S. 535, 554 (1974). The Supreme Court has repeatedly rejected Oxford's claim that tribes are nothing more than racial groups of persons sharing a similar ancestry. *See United States v. Antelope*, 430 U.S. 641, 646 (1977) (explaining a tribe is "'a separate people' with their own political institutions"). Put another way, a government, whether state or tribal, has no race. *See* U.S. Opp'n to Stay Application at 24, *W. Flagler Assocs., Ltd. v. Haaland*, 144 S. Ct. 10 (2023) (No. 23A315), 2023 WL 7042578. Accordingly, federal laws that preference tribal nations are political classifications. *Mancari*, 417 U.S. at 554; *Antelope*, 430 U.S. at 646.

The same is true of state laws that treat activities by tribes differently than the conduct of private businesses elsewhere. State laws that apply to Indian tribes or in Indian territory reflect "not a racial classification, but a political one," and thus are subject only to rational basis review when applying the Equal Protection Clause. *Squaxin Island Tribe v. Washington*, 781 F.2d 715,

722 (9th Cir. 1986) (upholding state law giving preferential treatment to tribal liquor enterprises); *accord Greene v. Comm'r of Minn. Dept. of Human Servs*, 755 N.W.2d 713, 726-729 (Minn. 2008) (upholding state law requiring tribal member to obtain services through tribal program); *New York Ass'n of Convenience Stores v. Urbach*, 699 N.E.2d 904, 908 (1998) (upholding state decision not to collect taxes from cigarette and motor fuel sales on Indian reservations). So long as the iGaming law does not contain provisions based on racial classifications of individuals, any equal-protection challenge to the law is subject only to rational basis review. *See Fitzgerald v. Racing Ass'n*, 539 U.S. 103, 107 (2003); *United States v. Garrett*, 122 Fed. App'x. 628, 632 (4th Cir. 2005).

Here, Maine's iGaming law reflects a preference for tribal governments, not individuals. Nothing in the iGaming law includes any reference to race or a racial group or classifies on the basis of race. Instead, the iGaming law permits the Director to issue an internet gaming license to "a federally recognized Indian nation, tribe or band in this State." 8 M.R.S. § 1406(2). The Wabanaki Nations are the only federally recognized tribes in the State of Maine. *See* 91 Fed. Reg. 4102, 4104 (Jan. 30, 2026). But there is no preference or classification in the text of the iGaming law for any member of any race or for individuals based on descent.[6] *Cf. Rice v. Cayetano*, 528 U.S. 495, 522 (2000) (invalidating a state law under the Fifteenth Amendment that permitted only persons of Hawai'ian descent to vote in certain statewide elections).

The treatment of the Wabanaki Nations as tribal governments is not unique to Maine's iGaming law. Numerous Maine statutes treat the Nations and other federally recognized Indian tribes as governmental entities. *See, e.g.*, 14 M.R.S.A. § 402(4) (Supp. 2026) ("'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands,

[6] Indeed, even a preference for individual members of federally recognized tribes, as distinguished from a preference for tribes themselves, would be ―political rather than racial in nature because it would ―exclude many individuals who are racially to be classified as "Indians." *Mancari*, 417 U.S. at 553 n.24.

a federally recognized Indian tribe . . ."); 19-A M.R.S.A. § 1734(2) (Supp. 2026) ("A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying this subchapter and subchapter II."); 19-A M.R.S.A. § 2802(19) (Supp. 2026) ("The term 'state' includes: . . . an Indian tribe"); 19-A M.R.S.A. § 4102(8)(C)-(D) (Supp. 2026) ("'Order means: . . . [a]n order of the Passamaquoddy Tribe or the Penobscot Nation" or "[a] similar order issued by a court of the United States or of another state, territory, commonwealth or federally recognized Indian tribe"); 30-A M.R.S.A. § 5250-I(22) (Supp. 2026) ("'Unit of local government' means a municipality, county, plantation, unorganized territory or Indian tribe."). *Cf.* MICSA § 1725(g) ("The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.").

The State of Maine and its agencies also routinely engages with the Wabanaki Nations as sovereign political entities, via statute and otherwise. *See* SMF ¶¶ 190, 192-93 (noting memoranda of understanding and other tribal-state agreements). For example, Maine law requires key state agencies, like the Maine Department of Environmental Protection and the Maine Department of Inland Fisheries and Wildlife, 5 M.R.S.A. §§ 11052(1)(E), (G) (Pamph. 2026), to collaborate with the Wabanaki Nations[7] on each "agency's programs, rules and services that substantially and uniquely affect the Indian tribes or tribal members." 5 M.R.S.A. § 11053(1)(D) (Pamph. 2026). The Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians are each separately represented in the Maine House of Representatives by a Representative from each tribe, if those Nations so choose.[8] 3 M.R.S.A. § 1 (2016). As noted above, "21.9% of the overall annual

[7] The Tribal-State Collaboration Act defines tribe as "a federally recognized Indian tribe within the State of Maine." 5 M.R.S.A. § 11052(2).

[8] These Representatives can participate in committees and debate on the House floor, but they cannot vote on legislation. *See* Me. Op. Atty. Gen. No. 99-1 (Nov. 16, 1999).

quota of elver fishery annual landings" are allocated "to the federally recognized Indian tribes in the State." 12 M.R.S.A. § 6302-B(1); *see also id.* § 6302-B(2) (recognizing tribal authority to distribute elver licenses to tribal members).

Like the iGaming law, these state laws recognize the Wabanaki Nations and other tribes as governmental entities and treat them as such. The Equal Protection Clause does not prohibit Maine from doing so.

B. The tribal preference in Maine's iGaming law is permissible under *Yakima*.

Regardless, the State of Maine was authorized to enact the iGaming law by virtue of the Settlement Acts. Maine's relationship with the Wabanaki Nations is unique, and that unique arrangement permits the State to enact laws for the benefit of the Wabanaki Nations. Moreover, the iGaming law is consistent with the United States' unique obligations to Indian tribes.

Outside of Maine, state laws have limited applicability in Indian country. "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history." *McGirt v. Oklahoma*, 591 U.S. 894, 928 (2020) (quoting *Rice v. Olson*, 324 U.S. 786, 789 (1945)). Accordingly, state law or state "jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

Tribes and tribal nations are thus "subject to the general jurisdictional principles that apply in Indian country in the absence of federal legislation to the contrary." *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 470 (1979). The Settlement Acts, which set a different jurisdictional relationship between Maine and the Wabanaki Nations, are "federal legislation to the contrary." *Id.*

Yakima provides the relevant framework. State laws affecting tribes, like the iGaming law, that are "enacted in response to a federal measure explicitly designed to readjust the allocation of jurisdiction over Indians" do not involve suspect classifications. *Yakima*, 439 U.S. at 501. "When a state law applies in Indian country as a result of the state's participation in a federal scheme that 'readjusts' jurisdiction over Indians, that state law is reviewed as if it were federal law. If rationally related to both Congress' trust obligations to the Indians and legitimate state interests, the state law must be upheld." *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 734 (9th Cir. 2003). As long as the state law is "within the scope of the authorization" provided in federal law, those state laws are permissible. *Yakima*, 439 U.S. at 501.

First, Maine's iGaming law is authorized by the Settlement Acts. As noted, Maine's relationship with the Wabanaki Nations is nationally unique. *Penobscot Nation v. Georgia-Pac. Corp.*, 254 F.3d 317, 320 (1st Cir. 2001). MICSA "purposes to cover virtually the entire field of relationships between the State and the Indian tribes based there." *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 788 (1st Cir. 1996). Congress expressly provided, through MICSA, that the "Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in" MIA. MICSA § 1725(b). The Houlton Band of Maliseet Indians is also 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." MICSA § 1725(a); *see also id.* § 1721(b)(3) (noting one purpose of MICSA is "to ratify the Maine Implementing Act"). MIA, in turn, provides:

> 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.

MIA § 6204. The MNRA, which Congress ratified, *see* AMBSA § 2(b)(4), includes nearly identical language as MIA with respect to the Mi'kmaq Nation:

> Except as otherwise provided in this Act, the Mi'kmaq Nation and all members of the Mi'kmaq Nation in the State and any lands or other natural resources owned by them or held in trust for them by the United States or by any other person or entity are 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 in the State.

MNRA § 7204. The sum of these provisions, all of which were either enacted by Congress or approved by Congress, allocates jurisdiction over tribal gaming (among other matters) to Maine and therefore authorizes Maine's iGaming law. *Cf. Passamaquoddy Tribe*, 75 F.3d at 794 (concluding that the Indian Gaming Regulatory Act does not apply in Maine).

Second, Maine's iGaming law is in accord with the United States' trust obligations to tribes. Although IGRA is not applicable in Maine, it expresses a clear Congressional purpose to promote, "tribal economic development, self-sufficiency, and strong tribal governments" through tribal gaming. 25 U.S.C. § 2702(1). "In its findings, Congress recognized that Indian tribes had been conducting gaming activities on Indian lands as a means of generating revenue for tribal governments." *Artichoke Joe's*, 353 F.3d at 734–35 (citing 25 U.S.C. § 2701(1)).

Maine law is in harmony with these federal purposes. Maine law expressly provides "that the conduct of mobile gaming will, if conducted by federally recognized Indian tribes in the State, serve as an effective economic development tool for tribal governments." 30 M.R.S.A. § 8001(1) (Supp. 2026); *see also id.* § 8001(2)(C) (defining "mobile gaming" as "lawful gambling activity conducted through mobile applications or other digital platforms that involve, at least in part, the

use of the internet"). Similarly, the purpose of the iGaming law is clear from its title: to create economic opportunity for the Wabanaki Nations through internet gaming. P.L. 2025, ch. 538. Although 18% of adjusted gross Internet gaming receipts will be forwarded to the State, 8 M.R.S. § 1416(1), the remainder of those funds can remain with the Wabanaki Nations. *Accord* 25 U.S.C. § 2702(2) (stating one purpose of IGRA is "to ensure that the Indian tribe is the primary beneficiary of the gaming operation"). The Nations can use those amounts to continue to fund and provide essential tribal governmental services, like courts, law enforcement, education, housing substance abuse recovery, and youth and elder programs. SMF ¶¶ 19, 48-51, 70, 85-87, 90, 115, 128, 161, 164, 170, 197, 206.

Accordingly, because the iGaming law has been authorized by Congress and is in accord with the United States' trust obligations to tribes, it is subject to rational basis review. *See KG Urban Enterprises, LLC v. Patrick*, 693 F.3d 1, 21 (1st Cir. 2012) (indicating a state law preferencing a tribe that falls within the scope of Congressional authorization is "subject to only rational basis review").

C. Maine's iGaming law easily passes rational basis review.

Under rational basis review, Oxford can only overcome the iGaming law's "strong presumption of validity" "by demonstrating that there exists no fairly conceivable set of facts that could ground a rational relationship between the challenged classification and the government's legitimate goals." *Wine and Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 53-54 (1st Cir. 2005) (internal quotation marks and citations omitted). Oxford cannot meet that burden.

Here, it was rational for the Legislature to authorize the Wabanaki Nations to conduct iGaming in the State. As the Legislature has found: "The Legislature finds and declares that the conduct of mobile gaming will, if conducted by federally recognized Indian tribes in the State,

serve as an effective economic development tool for tribal governments and provide economic stimulus to rural areas of the State." 30 M.R.S.A. § 8001(1). "[G]aming," and particularly casino style gaming, "can be a source of substantial revenue for []Indian tribes." *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097 (9th Cir. 2003). The iGaming law will support the economic development and self-sufficiency of the Wabanaki Nations, and thus has a rational basis.

It is also rational for the State only to authorize the Wabanaki Nations to conduct iGaming, but not any business entity. The Wabanaki Nations are located in rural and remote areas of the State, where traditional opportunities for economic development have been limited. *See* SMF ¶ 199. iGaming, like mobile sports wagering, does not require its patrons to travel to those areas and will provide additional needed funding to the Nations. *See* SMF ¶¶ 44-62, 112-16, 158-61, 203-06. A statute that regulates methods of gaming in order to promote economic development has a rational basis. *See Fitzgerald v. Racing Ass'n of Central Iowa*, 539 U.S. 103, 109-110 (2003) (differential tax rate favoring intrastate racetrack over intrastate riverboat gambling had rational basis and thus satisfied equal protection). Further, all of the Wabanaki Nations are currently licensed to conduct mobile sports wagering, and thus have experience with the operation of internet gaming. SMF ¶ 225.

It was also rational for the Legislature to continue to support gaming opportunities for the Wabanaki Nations. Maine law has authorized various types of gaming in an ad hoc manner through a series of citizen-initiated bills voted on at referendum. That history demonstrates, and the Legislature has recognized, that the Wabanaki Nations "previously have been excluded from conducting most forms of gaming in the State." P.L. 2021, ch. 585, § I-1. The Legislature reasonably took steps to correct that imbalance in Maine's gaming industry through further gaming opportunities for the Wabanaki Nations.

D. *KG Urban Enterprises* does not apply or control here.

The First Circuit's decision in *KG Urban Enterprises, LLC v. Patrick*, 693 F.3d 1, is distinguishable and not applicable here.

In *KG Urban Enterprises*, the First Circuit addressed a Massachusetts law that established a process by which gaming, including casino gaming, would be conducted in the state. *Id.* at 4-7. At issue was a particular provision that addressed the possibility that a federally recognized tribe in Massachusetts may acquire IGRA-eligible land in the future, and then seek to negotiate a Class III gaming compact with Massachusetts under IGRA. *Id.* at 6-7. In order to account for that possibility, the state law paused applications in one region of Massachusetts from any other party for a certain period of time. *Id.* at 6. If no IGRA compact was negotiated, then applications for casino gaming from other applications could be submitted. *Id.* KG Urban Enterprises, LLC challenged that pause and preference in part on Equal Protection grounds as a race-based classification. *Id.* at 12-12. The District Court denied KG Urban's motion for preliminary injunction and later dismissed the case. *Id.* at 13-14. On appeal, the First Circuit affirmed the denial of preliminary injunctive relief, but permitted KG Urban's Equal Protection claim to proceed. *Id.* at 27-28.

KG Urban Enterprises is distinguishable from the case presented in several ways. First, this case has a different procedural posture than *KG Urban Enterprises.* This matter is being presented to the Court on a summary judgment record, not on a motion to dismiss for failure to state a claim. The First Circuit allowed KG Urban's Equal Protection Claim to move past a motion to dismiss because it had stated an actionable claim, but did not address or review a final judgment on the merits of the case. *Id.* at 27. This Court has factual record before it and a different standard of review to apply.

Second, and relatedly, the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah), the two federally recognized tribes in Massachusetts, did not participate in *KG Urban Enterprises*. *Id.* at 11-12. Thus, the First Circuit did not have the benefit that this Court has from the intervention of the Wabanaki Nations who can address directly their unique sovereign status and interests as related to the iGaming law. *See* SMF ¶¶ 1-206 (detailing sovereign interests of the Wabanaki Nations).

Third, there was serious question in *KG Urban* as to whether IGRA even applied to the Wampanoag Tribes; at the time, neither tribe had a land base that was IGRA-eligible, and neither Tribe was recognized by the federal government before 1934. *KG Urban Enterprises*, 693 F.3d at 21-25; *see also Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) (concluding the Indian Reorganization Act, including its land acquisition provisions, only applies to tribes "under Federal jurisdiction" in 1934). Thus, there was a serious question as to whether the standard set forth in *Yakima* applied. *KG Urban Enterprises*, 693 F.3d at 20. Here, however, MICSA and ABMSA clearly provide the requisite authority for the iGaming law. MICSA § 1725; ABMSA § 6(2); MIA § 6204; MNRA § 7204. In any event, even with these authority issues, the First Circuit suggested the case presented in *KG Urban Enterprises* for preliminary injunctive relief was a close call, *see* 693 F.3d at 25, and declined to provide any injunctive relief at that time.

Fourth, *KG Urban Enterprises* conflated tribal status with a State's authority to act with respect to federally recognized tribes. Federally recognized tribes like the Wabanaki Nations are governments, not mere racial groups. That status does not change based on whether the Wabanaki Nations are interacting with the United States or with Maine. In other words, there is no basis to conclude that the Wabanaki Nations are sovereign political entities under federal law or when engaging with the United States, but somehow transmogrify into mere racial groups under state

law or when engaging with Maine. Instead, this Court should conclude that the Wabanaki Nations are sovereign political entities, regardless of the application of federal or state law. *See Akins*, 130 F.3d at 489.

II. Director Champion is entitled to summary judgment on Oxford's Commerce Clause claim.

The Constitution's Commerce Clause provides that "Congress shall have power" "[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. Const., art. I, § 8, cl. 3.

Oxford focuses on the portion of the Commerce Clause that governs commerce "among the several states," *id.*, and in particular the negative implications of the interstate clause. Amend. Compl. ¶¶ 8-9, 62-68. Oxford ignores, however, that the portion of the iGaming Act it challenges, 8 M.R.S. § 1406(2), implicates Congress's power to "regulate commerce" "with the Indian tribes." U.S. Const., art. I, § 8, cl. 3. Thus, it is not all clear that the negative implications of the Commerce Clause for interstate commerce apply to the challenged portion of Maine's iGaming law. *See Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989) ("The extensive case law that has developed under the Interstate Commerce Clause, moreover, is premised on a structural understanding of the unique role of the States in our constitutional system that is not readily imported to cases involving the Indian Commerce Clause.").

Further, gambling is unlike other forms of commerce in that there is largely no interstate market. Gaming is a heavily regulated industry with many barriers to entry into the market. "Gambling may be outlawed altogether as a vice that is a threat to the health, safety and welfare of the public. Through a democratic referendum process, it may be outlawed or the market for gambling limited." *Northville Downs v. Granholm*, 622 F.3d 579, 590 (6th Cir. 2010) (Merritt, J., concurring). "[F]ederal law traditionally 'respect[s] the policy choices of the people of each State

on the controversial issue of gambling.'" *Flynt v. Bonta*, 131 F.4th 918, 926 (9th Cir. 2025), *cert. denied*, --- S.Ct. ----, 223 L. Ed. 2d 506 (2026) (quoting *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 484 (2018)). Accordingly, Congress has criminalized most, if not all, forms of gambling that are not authorized under state or tribal law, *see, e.g.*, 18 U.S.C.A. §§ 1082-84, 1166, 1301-02, 1953, 1955 (Westlaw through Pub. L. No. 119-84), including "unlawful internet gambling," 31 U.S.C.A. §§ 5362(10), 5363, 5366 (Westlaw through Pub. L. No. 119-84).

With this background in mind, Oxford's Dormant Commerce Clause claim must fail. Oxford does not have standing to challenge the iGaming law, which treats all in-state and out-of-state private business entities alike. Further, Oxford is not similarly situated to the Wabanaki Nations for purposes of the Commerce Clause. Finally, Maine's iGaming law does not discriminate against interstate commerce nor burden interstate commerce in any cognizable way.

A. Oxford lacks standing to challenge Maine's iGaming law.

As an initial matter, Plaintiffs lack standing to challenge the iGaming law. Article III standing contains three elements: 1) "injury in fact" that is "concrete and particularized and" "actual or imminent"; 2) "the injury has to be fairly traceable to the challenged action of the defendant"; and 3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (cleaned up). Plaintiffs must also satisfy prudential standing. In order to satisfy prudential standing, the plaintiff's interests must be "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 396 (1987) (cleaned up). Here, Oxford has satisfied neither Article III standing nor prudential standing.

Oxford broadly claims that the iGaming law favors in-state businesses over out-of-state business, in contravention of the anti-discrimination principle of the Dormant Commerce Clause. Amend. Compl. ¶¶ 8-9, 62-68. Oxford also alleges that its casino business will suffer financial injury from iGaming generally. Amend. Compl. ¶¶ 10, 46-48.

"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." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023) (cleaned up). "[T]he dormant Commerce Clause's fundamental objective [is] preserving a national market for competition." *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 299-300 (1997); *see also Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 350 (1977) (referring to "the Commerce Clause's overriding requirement of a national 'common market'"). It does not confer civil rights upon individuals or businesses. Rather, it "protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations." *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 127-28 (1978) (emphasis added).

1. Oxford lacks Article III standing because it has not suffered any harm fairly traceable to the statute challenged.

Oxford has not suffered any harm fairly traceable to the statute challenged. Here, the iGaming law treats all businesses exactly the same when it comes to iGaming operator licenses.[9] The law permits the Wabanaki Nations to apply for a license, but precludes all others from doing so regardless of their residency or organizational structure. 8 M.R.S. § 1406(2). In other words, "[t]he injuries of which the plaintiffs complain arise in consequence of [Maine]'s [exclusion of business entities], not in consequence of [any] residency requirements." *Wine And Spirits*

[9] There is no residency or other limitation on what types of individuals or entities may apply for the other types of licenses related to internet gaming, i.e., a management services license, supplier license, or occupational license. 8 M.R.S. §§ 1407-09.

Retailers, Inc. v. Rhode Island, 481 F.3d 1, 12 (1st Cir. 2007). Simply stated, Oxford is not a federally recognized tribe, and its status as an in-state or out-of-state private business is immaterial.

It is no answer to equate the Wabanaki Nations with businesses like Oxford that are organized for profit. *See* Amend. Compl. ¶ 34. As shown, tribes are sovereign political entities, *see Cherokee Nation*, 30 U.S. (5 Pet.) at 16-17, that "possess[] attributes of sovereignty over both their members and their territory," *Worcester*, 31 U.S. (6 Pet.) at 557. The summary judgment record illustrates the governmental services and infrastructure that the Wabanaki Nations provide to their citizens and to others, including courts, law enforcement, roads, water and sewer, health care, housing, and education. *See, e.g.*, SMF ¶¶ 19, 70, 128, 170. BB Development and Churchill Downs, on the other hand, are for-profit corporations with fiduciary obligations (presumably) to their shareholders. Put another way, and as argued below, Oxford is not similarly situated to the Wabanaki Nations for purposes of the Dormant Commerce Clause.

Because Oxford's alleged injuries "would continue to exist even if the [legislation] were cured" of the alleged discrimination of which they complain, *Johnson v. U.S. Office of Pers. Mgmt.*, 783 F.3d 655, 662 (7th Cir. 2015), Oxford cannot meet the traceability requirement for Article III standing.

2. Oxford lacks prudential standing because its injury is not within the zone of interests protected by the Dormant Commerce Clause.

Oxford's claim of financial injury does not "fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982) (quotation marks omitted). "Financial injury, standing alone, does not implicate the zone of interests protected by the dormant Commerce Clause. That financial injury must somehow be tied to a barrier imposed on interstate commerce." *City of Los Angeles v. Cnty. of Kern*, 581 F.3d 841, 848

(9th Cir. 2009). Here, however, Oxford's injury would be the same whether in-state tribes or out-of-state tribes were licensed to conduct iGaming in Maine. That makes this case unlike *Houlton Citizens' Coalition v. Town of Houlton*, 175 F.3d 178 (1st Cir. 1999), where the plaintiff lost business customers due to the Commerce Clause implications of the challenged town ordinance. *Id.* at 183.

B. Oxford is not similarly situated to the Wabanaki Nations.

Under the Dormant Commerce Clause "any notion of discrimination assumes a comparison of substantially similar entities." *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 298 (1997). Accordingly, "when the allegedly competing entities provide different products, as here, there is a threshold question whether the companies are indeed similarly situated for constitutional purposes." *Id.* at 299. Naturally, "the factual context in assessing who is similarly situated to whom" is key. *Ass'n To Pres. & Protect Loc. Livelihoods v. Sidman*, 147 F.4th 40, 61 (1st Cir. 2025).

The First Circuit's hypothetical in *American Trucking Associations, Inc. v. Rhode Island Turnpike & Bridge Authority*, 123 F.4th 27, 38 (1st Cir. 2024), is instructive. There, the First Circuit explained that a toll which applied only to motor vehicles but not to bicycles would not be impermissibly discriminatory, even if motor vehicles were more likely to come from out of state, because '[n]o one ... would seriously argue that motorists and bicyclists are 'substantially similar entities.'" *Id.* (quoting *Tracy*, 519, U.S. at 298-300).

Here, the Wabanaki Nations and Oxford are not similarly situated for the same reasons as articulated above. *See also* SMF ¶¶ 19, 70, 128, 170. Private companies and governments are not the same. Indeed, it is hard to see how any tribal government could be similarly situated to a private business for purposes of the Dormant Commerce Clause. The Commerce Clause "does

not elevate free trade above all other values." *Maine v. Taylor*, 477 U.S. 131, 151 (1986). As the Supreme Court has explained, "[l]aws favoring local government" "may be directed to any number of legitimate goals unelated to protectionism." *United Haulers*, 550 U.S. at 343. Oxford's approach "of treating public and private entities the same under the dormant Commerce Clause would lead to unprecedented and unbounded interference by the courts with state and local government." *Id.*

Although the Supreme Court was addressing a county-owned entity in *United Haulers*, there is no principled constitutional basis to apply a different analysis to a tribal government. In other words, "[t]he dormant Commerce Clause is not a roving license for federal courts to decide what activities are appropriate for state and local government" or a tribal government "to undertake, and what activities must be the province of private market competition." *Id.*; *see also Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127 (1978) (Commerce Clause does not protect "the particular structure or methods of operation" of a market).

C. The iGaming law does not discriminate against interstate commerce or burden interstate commerce in any cognizable way.

The Commerce Clause prevents states from creating protectionist barriers to interstate trade. *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 35 (1980). However, "[a]s long as a State does not needlessly obstruct interstate trade or attempt to place itself in a position of economic isolation, it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources." *Taylor*, 477 U.S at 151; *see also Lewis*, 447 U.S. at 36 ("[T]he States retain authority under their general police powers to regulate matters of legitimate local concern, even though interstate commerce may be affected."). A court's threshold inquiry is "directed to determining whether [an ordinance] is basically a protectionist measure, or whether it

can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental." *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978).

Here, Oxford cannot establish discrimination, in purpose or effect. The purpose of the iGaming law is clear from its title: to create economic opportunity for the Wabanaki Nations through internet gaming. P.L. 2025, ch. 538. That purpose is echoed in state statute. The Legislature found that "mobile gaming will, if conducted by federally recognized Indian tribes in the State, serve as an effective economic development tool for tribal governments and provide economic stimulus to rural areas of the State." 30 M.R.S.A. § 8001(1); *see also id.* (expressing legislative intent to ensure the Wabanaki Nations would "have the right to conduct all forms of mobile gaming newly authorized" in the future).

While the iGaming law only permits federally recognized tribes in Maine to apply for an operator license, the law otherwise applies equally to in-state and out-of-state businesses. That distinction is not material, however, because state law is discriminatory only when it affects similarly situated entities in a market by imposing disproportionate burdens on out-of-state interests and conferring advantages upon in-state interests. *See Or. Waste Sys., Inc. v. Dep't of Envtl. Quality of Or.*, 511 U.S. 93, 99 (1994) ("'[D]iscrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter."). As shown above, Oxford is not similarly situated to the Wabanaki Nations in any relevant way. The iGaming law "which treat[s] in-state private business interests exactly the same as out-of-state ones, do[es] not 'discriminate against interstate commerce' for purposes of the dormant Commerce Clause." *United Haulers*, 550 U.S. at 345.

Non-discriminatory laws like the iGaming law generally are analyzed under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), which weighs local public interests against effects on interstate

commerce. *See Sidman*, 147 F.4th at 64. "[I]f a local measure 'regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Id.* at 65 (quoting *Pike*, 397 U.S. at 142). Oxford has not challenged the iGaming law based on any alleged burden on interstate commerce, but any such attempt would be futile.

Internet gaming is not an economic activity that can lawfully move across state lines. Maine's iGaming law is only permitted to the extent that all "patron" activity occurs entirely with the State. 31 U.S.C.A. § 5362(10)(B). Accordingly, the iGaming law and the proposed implementing rules contain detailed requirements, including geolocation requirements, for ensuring that iGaming will be conducted entirely intrastate. SMF ¶¶ 236, 241-42.

Nevertheless, implementation of the iGaming law, which is markedly similar to mobile aspects of Maine's sports wagering law, will necessarily involve out-of-state businesses. The iGaming law includes two of the same types of licensees as the sports wagering law: supplier license and management services license. *Compare* 8 M.R.S.A. §§ 1208-09 (Supp. 2026) (detailing license requirements for supplier license and management services license for sports wagering), *with* 8 M.R.S. §§ 1408-09 (detailing license requirements for supplier license and management services license for iGaming). Currently, there are three licensed managements services companies and thirty-six (36) licensed suppliers under the sports wagering law. SMF ¶ 223. All of these thirty-nine (39) licensees are out-of-state entities with principal places of business outside of Maine. SMF ¶¶ 227, 229. At present, there are no similar in-state entities that are licensed to provide these services. SMF ¶¶ 228, 230. And Director Champion, who has nearly 40 years of experience in the gaming industry, is not aware of any Maine business that would be

able to provide supplier or management services under the sports wagering law or iGaming law. SMF ¶ 231. Accordingly, it is entirely predictable, if not inevitable, that implementation of the iGaming law will involve significant, if not exclusive, participation from out-of-state businesses with management services licenses and supplier licenses. SMF ¶ 231.

Maine's iGaming law is not a protectionist measure, but a reasonable exercise of the State's authority to legalize internet gaming in a way that generates revenue for the State and promotes economic development of tribal governments through a regulated, wholly intrastate market. The law does not violate the Dormant Commerce Clause.

CONCLUSION

For the reasons set forth above, Director Champion requests that summary judgment be entered in his favor on all counts of Plaintiffs' Amended Complaint.

DATED: May 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2026, I electronically filed this document and any attachments with the Clerk of the Court using the CM/ECF system and that the same will be sent electronically to registered participants as identified in the CM/ECF electronic filing system for this matter.

DATED: May 8, 2026

/s/ Kimberly L. Patwardhan

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