

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

OXFORD CASINO HOTEL, *et al.*,
Plaintiffs,

v.

MILTON F. CHAMPION,
Defendant,

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

and

HOULTON BAND OF MALISEET
INDIANS, MI'KMAQ NATION,
PASSAMAQUODDY TRIBE, and
PENOBSCOT NATION,
Defendant-Intervenors.

THE WABANAKI NATIONS' REPLY IN SUPPORT OF SUMMARY JUDGMENT

Oxford Casino admits that federal laws directed at tribal nations are subject to rational basis review. Its equal protection challenge thus depends on the claim that state laws are different—that a classification subject to rational basis review when Congress enacts it is subject to strict scrutiny when the State of Maine draws the very same classification. That distinction is the whole of Oxford's case, and its implications are sweeping. If it were right, not only the Economic Opportunity Act, but the entire body of Maine Indian law would be presumptively unconstitutional.

Oxford Casino, however, is wrong for two independent reasons. *First*, Oxford's distinction fails because the Act is federally authorized. When a state legislates pursuant to a federal readjustment of jurisdiction over Indian affairs, its laws are subject to rational basis review under *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463 (1979). The First Circuit, in *KG Urban Enterprises, LLC v. Patrick*, has recognized that this *Yakima* rationale “states a sound argument where it applies.” 693 F.3d 1, 20 (1st Cir. 2012). And the Settlement Acts are just such a readjustment. They subject the Nations to the State's jurisdiction across a broad

range of subjects, which the First Circuit has said includes gaming. Oxford disputes none of that. Instead, it contends that *Yakima* applies only where Congress has called out by name the specific subject of the state law. But no such rule appears in *Yakima*, which upheld a state law addressing subject areas that the relevant federal law never expressly named.

Second, Oxford Casino’s distinction collapses for a more fundamental reason: tribal classifications are political—not racial—regardless of whether the federal government or a state legislates. Oxford treats *Morton v. Mancari*, 417 U.S. 535 (1974), and its progeny as holding that tribal classifications are racial but that Congress’s plenary power over Indian affairs permits it to engage in race discrimination. In fact, those cases hold that tribal classifications are “not . . . ‘racial’” at all, but rather “political . . . in nature.” *Id.* at 553 & n.24. The Eighth Circuit thus recently rejected the very argument Oxford Casino makes here. It explained that “the federal government’s absence” does not transform tribal classifications into racial discrimination. *Nare v. Omaha Discovery Tr.*, --- F.4th ----, No. 25-3175, 2026 WL 1813510, at *3 (8th Cir. June 24, 2026). Regardless of who acts, “tribal membership is a political classification.” *Id.* And this case, about tribal *governments*, is even more straightforward.

KG Urban, the principal authority upon which Oxford Casino relies, also cuts against Oxford. *KG Urban* recognized the *Yakima* rationale—a rationale amply satisfied here—and denied preliminary relief. In the end, Oxford cannot identify any case ever in the history of American law applying strict scrutiny to a state law directed at federally recognized tribal nations. There is no reason why this case should be the first.

Oxford Casino concedes the rest. It admits each of Defendants’ 242 statements of material fact and acknowledges, without qualification, that the Act satisfies rational basis review. Defendants are thus entitled to summary judgment on Oxford’s equal protection claim.

Oxford Casino’s Interstate Dormant Commerce Clause claim fails too. Oxford defends its standing by pointing to injury—but the Wabanaki Nations’ arguments are about traceability and zone of interests, which are separate standing requirements that Oxford never addresses. On the merits, Oxford agrees the Nations are governments, not private businesses. That is dispositive, as laws favoring governments do not discriminate against interstate commerce. Defendants are therefore entitled to summary judgment on Oxford’s Dormant Commerce Clause claim as well.

ARGUMENT

I. RATIONAL BASIS REVIEW GOVERNS OXFORD CASINO’S EQUAL PROTECTION CHALLENGE, AND OXFORD CONCEDES IT IS SATISFIED.

A. The Act Is Authorized Under Maine’s Unique Jurisdictional Scheme.

1. *Yakima* confirms that the Economic Opportunity Act is subject to rational basis review. Under *Yakima*, rational basis review is the standard for state statutes “enacted in response to . . . federal measure[s] explicitly designed to readjust the allocation of jurisdiction over Indians.” 439 U.S. at 501. The First Circuit, in *KG Urban*, has recognized that this rationale “states a sound argument where it applies.” 693 F.3d at 20. And it plainly applies here. Through the Settlement Acts, Congress established a unique jurisdictional arrangement in Maine that renders the Nations “subject to the laws of the State.” 30 M.R.S.A. § 6204; *see* Nations’ Mot. 8. That arrangement, subject to exceptions not relevant here, gives the State “authority to regulate Indian affairs.” *Great N. Paper, Inc. v. Penobscot Nation*, 770 A.2d 574, 584 (Me. 2001). And the First Circuit has said that this authority “cover[s] virtually the entire field of relationships between the State and the [Nations],” including gaming. *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 788 (1st Cir. 1996). Relying on that framework, the State has enacted scores of statutes singling out the Nations for distinct treatment, of which the Economic Opportunity Act is but the latest. The Act is thus subject to rational basis review.

2. Oxford Casino does not dispute that the Settlement Acts adjusted the allocation of jurisdiction over the Nations—the predicate that, under *Yakima*, accords rational basis review. *See* Pls.’ Resp. 16. Nor does it contest that *Passamaquoddy Tribe* said the jurisdiction allocated to the State includes gaming.¹ Oxford instead maintains that the Settlement Acts do not provide what *Yakima* requires because they do not call out tribal gaming by name. Pls.’ Resp. 13. But *Yakima* does not demand that Congress specifically enumerate every subject a state law may address. Public Law 280—the federal law at issue in *Yakima*—conferred state jurisdiction over “criminal offenses” and “civil causes of action.” 439 U.S. at 471-74 n.9. The state of Washington then exercised that general grant by enacting Chapter 36 and assuming jurisdiction over a range of specific subjects like operation of motor vehicles, domestic relations, and juvenile delinquency, none of which Public Law 280 explicitly named. *Id.* at 475-76 & n.16. The Court did not ask whether Congress had explicitly named each subject Chapter 36 addressed (it had not); it asked only whether Chapter 36 fell “within the scope of [Public Law 280’s] authorization.” *Id.* at 501.

Oxford Casino thus cannot benefit from *Yakima*’s description of Public Law 280 as granting “explicit authority” to Washington. Pls.’ Resp. 12, 14 (quoting *Yakima*, 439 U.S. at 501). For one thing, the “explicit authority” line is not part of *Yakima*’s equal protection analysis. It appeared in the Court’s disposition of a different claim: the Yakima Nation’s *fundamental-right* challenge, which argued that Chapter 36 abridged the Yakima Nation’s interest in tribal self-government. *Yakima*, 439 U.S. at 500-01. And regardless, the Settlement Acts *do* provide the State explicit authority by rendering the Nations “subject to the laws of the State,” 30 M.R.S.A. § 6204, with exceptions not relevant here. To get around this, Oxford reads “explicit” to mean *specific*. But

¹ Oxford’s failure to grapple with *Passamaquoddy Tribe* speaks volumes. Nowhere does Oxford acknowledge that the First Circuit said that Maine possesses jurisdiction under the Settlement Acts to regulate tribal gaming, let alone attempt to reconcile that case with its position here.

that is again foreign to *Yakima*, which was referring to Congress’s *general* grant of criminal jurisdiction to the State.

Oxford Casino’s rule also fails as a matter of logic. “[T]he presumed point of using general words is to produce general coverage” Antonin Scalia & Bryan A. Garner, *Reading Law* 101 (2012). Oxford’s theory would paradoxically mean that when Congress gives a state *more* power through broad language, as it did in the Settlement Acts, it authorizes *less* for purposes of the *Yakima* analysis due to lack of specificity. That is backwards.

Notably, no court applying *Yakima* has adopted the rule Oxford Casino urges. Under the *Yakima* framework, courts have upheld state laws governing tax enforcement, religious exemptions, and welfare administration, all without demanding an express delegation of federal authority over the specific subject matter. *See* Nations’ Mot. 22-23. Oxford ignores these decisions, because it has no answer to them.

3. As a fallback, Oxford Casino demands a different specificity. It says that even if the Settlement Acts do not have to call out *gaming* by name, Congress needed to expressly say that Maine can enact legislation to “preferenc[e]” the Tribes. Pls.’ Resp. 14. Oxford’s attempt to ground this requirement in *Yakima* fails for the same reason as before. And it is a requirement that again would be satisfied in any event: The Settlement Acts expressly recognize Maine’s authority to enact preferential state laws for the benefit of the Nations and their citizens. *See* P.L. 1979, ch. 732 (30 M.R.S.A. § 6206(1)) (acknowledging that services may be “provided exclusively to members of the respective tribe or nation pursuant to state or federal law”); *see also* P.L. No. 96-420, § 2(a)(9) (“Since 1820, the State of Maine has provided special services to the Indians residing within its borders”).

Oxford Casino’s contrary reading of the Settlement Acts, Pls.’ Resp. 14-15, is simply wrong. Oxford claims that Section 16(b) of MICSA—under which certain federal laws benefitting Indians “shall not apply” in Maine unless “specifically made applicable” in the state, Pub. L. No. 96-420, § 16(b)—*reserved* Congress’s authority to enact laws that benefit the Wabanaki Nations, and thus Congress “did not expressly grant to the State that same authority.” Pls.’ Resp. 14. But that is not what Section 16(b) does. Congress may continue to pass laws benefitting the Nations because *the Constitution*, not Section 16(b), reserves its power to do so despite its conferral of concurrent authority to the State. Section 16(b) serves a different end entirely: to “g[i]ve the State a measure of security *against* future federal incursions.” *Passamaquoddy Tribe*, 75 F.3d at 787 (emphasis added). As the First Circuit has explained, it ensures that the State’s Indian affairs authority shall not be “affect[ed] or preempt[ed]” by federal law unless a future Congress acts deliberately to override Maine’s jurisdiction. *Id.* at 789. Section 16(b) therefore *protects* the State’s jurisdiction over tribal gaming. It does not *restrict* the State’s power in this area.

Oxford Casino’s IGRA example proves the point. *See* Pls.’ Resp. 15. Oxford observes that, absent Section 16(b), the Nations would be “home free” under IGRA, and that the Passamaquoddy Tribe once argued IGRA applies in Maine and lost. *Id.* (quoting *Passamaquoddy Tribe*, 75 F.3d at 788). But the Passamaquoddy Tribe did not claim that gaming lay outside the State’s authority under the Settlement Acts to begin with. Its key argument was that IGRA, a later federal statute, had satisfied Section 16(b)’s clear-statement requirement and taken that jurisdiction back. *See Passamaquoddy Tribe*, 75 F.3d at 788-91. Critically, the First Circuit *disagreed*, stating that IGRA had *not* been “specifically made applicable” within Maine. *Id.* at 789-91. Thus, per *Passamaquoddy Tribe*, and quite contrary to Oxford’s premise, the Settlement Acts placed tribal

gaming within state jurisdiction in the first place. Otherwise, there would have been nothing for Section 16(b) to protect and no clear-statement hurdle for IGRA to overcome.

4. Oxford Casino's remaining points are readily dispatched. The State's authority over tribal gaming per *Passamaquoddy Tribe* does not swallow tribal sovereignty. *See* Pls.' Resp. 15. The Settlement Acts address the Nations' sovereignty directly. They preserve tribal sovereignty through a distinct set of provisions that recognize the Nations as separate, federally recognized governments with their own civil regulatory authority, criminal jurisdiction, courts, and law enforcement, and that secure the Nations' "power to control their internal affairs." *Akins v. Penobscot Nation*, 130 F.3d 482, 489 (1st Cir. 1997); *see, e.g.*, P.L. 1979, ch. 732 (30 M.R.S.A. §§ 6207, 6209, 6210); Pub. L. No. 96-420, § 6(f)-(g).

Nor do the Nations argue that the Act is authorized merely because a unique jurisdictional scheme *exists* in Maine. *See* Pls.' Resp. 16. *Yakima* is triggered because the Act falls "*within the scope*" of the state jurisdiction that is authorized. 439 U.S. at 501 (emphasis added). That makes this case easy to distinguish from *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). *See* Pls.' Resp. 16. The jurisdictional statute in *Cabazon* (Public Law 280, the same law at issue in *Yakima*), granted states only civil *adjudicatory* authority, not civil *regulatory* authority, and thus did not authorize state regulation of tribal gaming. *See Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 721 (9th Cir. 2003). But there is no such limitation on the State's jurisdiction under the Settlement Acts.

The Indian canons of construction, meanwhile, repudiate Oxford Casino's selective reading of the Settlement Acts. *See* Pls.' Resp. 17. They require "any ambiguity . . . be resolved . . . in favor of tribal sovereignty." *Id.* at 18. They thus confirm that the Settlement Acts empowered the State to enact tribe-specific laws like the Act that support tribal self-determination.

5. Oxford Casino never confronts the sheer destructive force of its argument. In the Settlement Acts, Congress expressly authorized the State to enact Indian affairs legislation going forward. In the four and a half decades since, the State has legislated as to the Nations again and again across a broad range of subjects. *See* Nations’ Mot. 11, 13; State’s Mot. 8-9. Under Oxford’s theory, the entire edifice of Maine Indian law—the scores of statutes built on this jurisdictional foundation—is constitutionally suspect. *Yakima* forecloses that result.

B. The Act Draws A Political Classification, Not A Racial One.

1. Rational basis review also applies for a broader, more fundamental, reason: the Act draws a political classification—not a racial one—because tribal nations are sovereign governments, not racial groups. From the Founding onward, tribal nations have been recognized as “distinct, independent political communities, retaining their original natural rights.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978). *Mancari* and its progeny thus recognize that tribal classifications are non-suspect and subject to rational basis review. That principle applies straightforwardly here, because the Act is directed at four sovereign governments: the Wabanaki Nations.

Oxford Casino’s admissions allow no other conclusion. Oxford acknowledges that the Nations are sovereign governments. Pls.’ Resp. 7-8 n.4. It does not dispute that the Nations’ revenues fund governmental services like roads, police services, and educational programs. *See, e.g.*, SMF ¶¶ 19, 69-70, 91, 102, 128, 135, 150, 167, 169, 177. And it therefore admits that those revenues benefit individuals of all races—including countless Mainers who are not tribal citizens but receive tribal services. *Id.* ¶¶ 23-28, 88, 91, 127, 130-31, 135, 138, 186. Those concessions foreclose the argument that the Nations are racial groups and that the Act prefers Indians as such.

2. Oxford Casino misreads the *Mancari* line of cases. It treats them as if they held that tribal nations *are* racial groups, but that the federal government’s plenary power over Indian affairs permits the federal government to engage in racial discrimination. In fact, those cases held something categorically more important: that tribal classifications are “not even . . . ‘racial’” in the first place. *Mancari*, 417 U.S. at 553. Rational basis applies not as a concession to federal power over a suspect classification, but because there is nothing racially suspect about the classification to begin with. Oxford’s federal-versus-state distinction therefore mistakes the question of the State’s *power* to act for the question of what scrutiny applies when it does. Whether a classification triggers heightened scrutiny is an independent inquiry, answered by the nature of the entity classified. *See Haaland v. Brackeen*, 599 U.S. 255, 272-80, 291-96 (2023). The Wabanaki Nations do not transform into racial groups when Maine, rather than Congress, enacts legislation that concerns them. Federal recognition confirms their sovereign status, full stop.

The Eighth Circuit’s recent decision in *Nare v. Omaha Discovery Trust* confirms these principles—and directly repudiates Oxford Casino’s position. There, the Eighth Circuit rejected a racial-discrimination challenge to a private museum’s policy granting free admission to members of federally recognized tribes. *Nare*, 2026 WL 1813510, at *1. The plaintiffs argued that the classification was racial, not political, because the federal government was absent. *See id.* at *3. But the Eighth Circuit dismissed the argument wholesale. It explained that “the federal government’s special relationship to Indian tribes merely function[s] as a plus-one factor rather than a central component” of the classification analysis. *Id.* Indeed, the Eighth Circuit noted that the Supreme Court itself “has recognized the political nature of tribal membership in a case where the federal government was not a party.” *Id.* (citing *Fisher v. Dist. Ct. of Sixteenth Jud. Dist. of Mont.*, 424 U.S. 382, 390 (1976)). The Eighth Circuit thus concluded that “the federal

government's absence from th[e] case [did] not undermine [its] conclusion that tribal membership is a political classification." *Id.* That conclusion applies equally here.

That conclusion also disposes of Oxford's alienage analogy. *See* Pls.' Resp. 9 n.5. Alienage classifications are "inherently suspect"—that is why the standard of review turns on who enacts them. *Graham v. Richardson*, 403 U.S. 365, 372 (1971). Tribal nation classifications, by contrast, are not suspect at any point. *See Nare*, 2026 WL 1813510, at *3. They are governmental classification embedded in the Constitution's own text, which places "the Indian Tribes" alongside "foreign Nations" and "the several States" as coordinate *sovereigns*. U.S. Const. art. I, § 8, cl. 3.

3. Indeed, this case is the clearest application of an already-clear principle. The Act is directed not at individual Native Americans but at sovereign tribal *governments*. Even as to individuals, courts generally apply rational basis to state tribal classifications. *See Livingston v. Ewing*, 455 F. Supp. 825, 832 (D.N.M. 1978) ("If, as Mancari holds, . . . an interest [in tribal self-determination] is legitimate, and a preference for Indians is constitutional for the federal government . . . , then the same must be true of a state government"); *Krueth v. Indep. Sch. Dist. No. 38*, 496 N.W.2d 829, 837 (Minn. Ct. App. 1993) (state classification "not racial but political"); *cf. Nare*, 2026 WL 1813510, at *3 (same as to private classification). A law directed at tribal governments presents a cleaner case still.

4. In the face of these cases, Oxford comes to this Court empty-handed. Its own authorities, Pls.' Resp. 19 n.8, do not support strict scrutiny: both *Tafoya v. City of Albuquerque*, 751 F. Supp. 1527 (D.N.M. 1990), and *Malabed v. North Slope Borough*, 42 F. Supp. 2d 927 (D. Alaska 1999), concerned individual Indians, not tribal governments, and *Malabed* was ultimately decided under Alaska's *state* constitution. *Malabed v. N. Slope Borough*, 70 P.3d 416, 420 (Alaska 2003). Nor can Oxford distinguish the decisions the Nations cite. For example, Oxford notes that both

Mancari and *Krueth* concerned employment preferences. Pls.’ Resp. 5. But employment preferences enjoy no special constitutional status, and the superficial overlap between *Krueth* and *Mancari* is no reason to subject every other state law touching tribes to strict scrutiny. In the end, the Nations identified the absence of any decision applying strict scrutiny to a state law directed at tribal governments, *see* Nations’ Mot. 3, 19, and Oxford has supplied none.²

C. *KG Urban* Confirms That Rational Basis Applies.

Oxford Casino relies principally on *KG Urban*, but that decision is fatal to its own claim. As explained above, *KG Urban* expressly recognized that *Yakima*’s rationale “states a sound argument where it applies,” 693 F.3d at 20, and that rationale is dispositive here. Indeed, *KG Urban* demonstrates why the case for rational basis review is so strong here. The court there expressed concern that IGRA did not merely fail to authorize, but affirmatively *prohibited*, the tribal gaming Massachusetts sought to enable. *See* 693 F.3d at 10-11, 21-24. Even still, the First Circuit found the question of federal authorization a close one. Here, by contrast, the Settlement Acts are broad federal statutes whose jurisdictional reach the First Circuit has already said squarely encompasses gaming. On these facts, *Yakima* plainly applies.

Oxford Casino also finds no help in *KG Urban*’s discussion of *Mancari*. Oxford claims that *KG Urban* “determin[ed]” strict scrutiny applies to tribal-specific state laws in the absence of federal authorization. Pls.’ Resp. 2. But that is precisely what *KG Urban* said it was *not* doing. The

² Amicus California Gaming Association (“CGA”) argues that even *Congress* cannot pass laws benefitting tribal nations—a position that Oxford itself has disavowed and that directly conflicts with the *Mancari* cases and the Constitution’s text. *See generally* Amicus Br. at 1-24. CGA’s members have already lost their arguments against tribal gaming in their own jurisdiction. *See Artichoke Joe’s*, 353 F.3d at 731-42. And the cases CGA cites about laws addressing individual Indians in *purely* racial terms, *see* Amicus Br. at 15, do not apply to the Act, which solely addresses tribal nations. *See Kornhaas Const. v. Oklahoma Dep’t of Cent. Servs.*, 140 F. Supp. 2d 1232, 1247 (W.D. Okla. 2001) (law that “broadly extend[ed] its bidding preference to several racial minority groups, *i.e.*, African Americans, Hispanics, Asian Americans, American Indians and Alaskan Natives”); *In re Santos Y.*, 92 Cal. App. 4th 1274, 1321 (Cal. Ct. App. 2001) (application of law based solely on “bloodline” and not “association with [a] [t]ribe”).

court did *not* apply strict scrutiny to the Massachusetts law. Rather, it described its own analysis as an “outline[]” of “weaknesses” in each side’s positions—not a resolution of the standard of review—en route to *denying* preliminary relief. *KG Urban*, 693 F.3d at 21, 25, 27. Oxford never acknowledges that framing. And it cannot downplay that the decision was made in an expedited posture, with minimal briefing on the *Mancari* issue, without tribal nation participation, and without any analysis of the difference between laws directed at individual Indians and laws directed at tribal governments—a distinction important to this case. *See* Nations’ Mot. 16. These constraints underscore that, despite expressing some “doubt[]” about *Mancari*’s scope, the First Circuit stopped short of resolving the standard that applies to state laws drawing tribal classifications absent *Yakima* authorization. 693 F.3d at 19. Indeed, the Eighth Circuit’s recent decision in *Nare* demonstrates that the full merits treatment that *KG Urban* called for and did not itself perform would have confirmed that the law there was not a racial classification either. *Nare*, 2026 WL 1813510, at *3.

D. Oxford Casino Concedes That Rational Basis Review Is Satisfied.

Because rational basis review applies, Oxford Casino’s equal protection claim fails. Oxford admits Defendants’ 242 statements of material fact and concedes—expressly and without qualification—that the Economic Opportunity Act satisfies rational basis review. Pls.’ Resp. 19. The Defendants are thus entitled to summary judgment on this claim.

All that is left is Oxford Casino’s objection that rational basis will not sufficiently protect the Nations. But rational basis review is not toothless: a law actually driven by invidious animus fails under rational basis review regardless of the classification’s surface character. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 447-48 (1985). Oxford never expressed qualms when the State disadvantaged the Nations to Oxford’s own benefit. That Oxford came to court to

preserve the historic exclusion of the Nations from Maine’s gaming market reveals Oxford’s theory for what it is: not a constitutional principle, but disagreement with the Maine Legislature’s policy choice.

II. OXFORD CASINO FAILS TO REBUT DEFENDANTS’ DORMANT COMMERCE CLAUSE ARGUMENTS.

Oxford Casino’s Interstate Dormant Commerce Clause claim founders at the threshold issue of standing and fails on the merits.

Standing. Oxford Casino asserts that “it has plainly alleged injury,” Pls.’ Resp. 21, but ignores that the Nations’ argument was about *traceability*—a separate requirement of Article III standing. *See* Nations’ Mot. 29-31; *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Here, Oxford’s alleged injuries arise not from any geographic restriction, but from the Act’s tribal-eligibility requirement. *Wine & Spirits Retailers, Inc. v. Rhode Island* is thus directly on point: plaintiffs lack standing because their alleged injuries arise “not in consequence of the residency requirements *per se*” but from an independent disqualification unrelated to location. 481 F.3d 1, 12 (1st Cir. 2007); *see Coal. for Competitive Elec. v. Zibelman (“Coalition II”)*, 906 F.3d 41, 58 (2d Cir. 2018). While Oxford cites *Houlton Citizens’ Coalition v. Town of Houlton*, 175 F.3d 178, 183 (1st Cir. 1999), that case holds only that in-state plaintiffs *may* bring Dormant Commerce Clause claims *if* their injuries are traceable to geographic discrimination against *someone*; it does not obviate the need to show traceability, as *Wine & Spirits* confirms.

Oxford Casino’s hypotheticals do not help its position. It first posits a law “restricting licenses to operate a liquor store to white Mainers” challenged by “a Hispanic resident of New Hampshire.” Pls.’ Resp. 22. But in that hypothetical the racial classification is obviously unlawful, whereas the Act does not unlawfully discriminate based on race. And on the second hypothetical, Oxford’s suggestion that “a private-equity-owned, decade-old, out-of-state fishing retailer” would

have standing to challenge a “law requiring that all fishing rods must be purchased at a family-owned outdoor business[] in operation for at least 100 years in Maine,” Pls.’ Resp. 22-23, runs headlong into *Wine & Spirits*’s holding that a plaintiff lacks standing if its injury is not traceable to a statute’s “residency requirements per se,” but instead to some other, non-geographic classification. 481 F.3d at 12.

Oxford Casino also ignores the Nations’ separate argument that its claim falls outside the Dormant Commerce Clause’s zone of interests. *See* Nations’ Mot. 31-32. Because Plaintiffs’ alleged injuries stem not from “any out-of-state characteristic of their business,” *Nat’l Solid Waste Mgmt. Ass’n v. Pine Belt Reg’l Solid Waste Mgmt. Auth.*, 389 F.3d 491, 500 (5th Cir. 2004), but from their non-tribal status, they cannot assert an Interstate Dormant Commerce Clause claim.

Merits. Oxford Casino fares no better on the merits. It agrees that “the [Nations] are governments, not private businesses,” Pls.’ Resp. 23, but does not address the implication: the Act, a law favoring governments, “do[es] not ‘discriminate against interstate commerce’” because it “treat[s] in-state private business interests exactly the same as out-of-state ones.” *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 345 (2007). *United Haulers* also answers Oxford’s attempt to recast *General Motors Corp. v. Tracy*, 519 U.S. 278 (1997), as looking only to *product*-level similarity. Pls.’ Resp. 23-24. The relevant question under *Tracy* is whether the classification *as a whole* discriminates against out-of-state business commerce—and laws that differentiate based upon the form or type of business do not have that forbidden effect. *See United Haulers*, 550 U.S. at 342 (“municipalities” and “private businesses” are not “‘substantially similar entities’” under *Tracy*). Oxford Casino attempts to cabin *United Haulers* to its precise facts, arguing that the case “is not applicable here because the Act does not establish a public facility providing a traditional public service” like “waste disposal.” Pls.’

Resp. 24. But *United Haulers* is not so limited. It announced a categorical rule that “[t]he [D]ormant Commerce Clause is not a roving license for federal courts to decide what activities are appropriate for state and local government to undertake, and what activities must be the province of private market competition.” 550 U.S. at 343-44 (emphasis added).

Nor does Oxford Casino get anywhere rehashing the point that the Act’s reference to tribal nations “in this State,” 8 M.R.S.A. § 1406(2), “draws an express distinction between in-state and out-of-state actors,” Pls.’ Resp. 24-25. Again, that language identifies the four Wabanaki Nations, just as the statute in *United Haulers* necessarily identified the benefited in-state public entities, *see* 550 U.S. at 334-37 & nn.1-2. The Legislature’s choice of syntax does not transform that fundamentally political classification into a geographic one. And the fact that *United States v. Garrett* arose in a different posture, *see* Pls.’ Resp. 24-25, does not change its core insight: because the Act here does not involve “unequal treatment vis-à-vis [Mainers] and residents of other states,” it does not violate the Dormant Commerce Clause. 122 Fed. App’x 628, 634 (4th Cir. 2005).

Indian Commerce Clause. Oxford Casino cannot reconcile its argument with the Indian Commerce Clause. It observes that the Clause “underscores the power of Congress . . . to regulate Indian affairs.” Pls.’ Resp. 25. But the point here is that, because the “extensive case law that has developed under the Interstate Commerce Clause . . . is not readily imported to cases involving the Indian Commerce Clause,” *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989), Oxford Casino must explain *why* the Interstate Dormant Commerce Clause applies here. It has not done so. No sensible reading of the Interstate Commerce Clause could prohibit Maine from enacting a law drawing a distinction that the Constitution itself draws. *See* Nations’ Mot. 34-35.

CONCLUSION

The Court should grant Defendants’ motions for summary judgment.

Respectfully submitted this 26th day of June, 2026.

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