

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

THE CHEROKEE NATION, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:20-cv-02167-TJK
	)	
UNITED STATES DEPARTMENT OF THE	)	
INTERIOR, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**COMANCHE NATION CHAIRMAN'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF NATIONS' MOTION FOR SUMMARY JUDGMENT ON
COUNT VIII [ECF NO. 223]**

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Plaintiff Nations’ Motion for Summary Judgment should be denied as to Count VIII because Plaintiff Nations have not established that the Chairman is exercising authority or taking any action that violates IGRA.

In Count VIII, Plaintiff Nations allege that the Comanche Chairman is engaged in “a continuing violation of federal law,” *i.e.*, IGRA, by “exercis[ing] authority . . . under the Agreement[]” and taking “actions in furtherance of [his] representations” that the 2020 Compact is valid under IGRA, including by engaging in Class III gaming. Second Am. Compl. ¶ 267. They seek a declaratory judgment that the Comanche’s 2020 Compact is invalid and not “in effect.” *Id.* ¶ 268.

Analogizing to the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), tribal immunity does not bar claims against tribal officers for prospective injunctive or declaratory relief to stop ongoing violations of federal law. *Vann v. Kempthorne*, 534 F.3d 741, 749–56 (D.C. Cir. 2008); *see also* Nov. 23, 2022 Mem. Op. & Order, ECF No. 157 at 41, n.17. For this immunity-exception to apply, however, the plaintiff must prove that the tribal official’s ongoing conduct—the specific actions the official is currently taking—transgresses a federal legal requirement. *Ex parte Young*, 209 U.S. at 159–60. If the official’s conduct is authorized by federal law, there is no violation, and *Ex parte Young* provides no basis for relief. Nor does the exception apply if the conduct is not “ongoing.”

On summary judgment, the moving party bears the burden of establishing “that there is no genuine dispute as to any material fact and the mov[ing party] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material fact is one “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute exists when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The Court must view the evidence in the light most favorable to the

nonmoving party and draw all justifiable inferences in that party's favor. *Id.* at 255. The moving party must point to evidence in the record demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

As the moving party on Count VIII, Plaintiff Nations bear the burden of establishing the absence of any genuine dispute that the Comanche Chairman's conduct constitutes an ongoing violation of federal law. To meet this burden, they must establish that the Comanche Nation's operation of Class III gaming violates IGRA's statutory requirements. Section 2710(d)(1) of IGRA sets forth three requirements for lawful Class III gaming on Indian lands: (1) authorization by a tribal ordinance or resolution adopted by the governing body and approved by the Chairman; (2) location in a State that permits such gaming for any purpose by any person, organization, or entity; and (3) conduct in conformance with a Tribal-State compact entered into by the tribe and State that is in effect.

Because Plaintiff Nations cannot establish a violation of any of these three requirements, their summary judgment motion on Count VIII fails.

ARGUMENT

I. The Comanche Nation has authorized Class III gaming by tribal ordinance.

The first requirement for Class III gaming on Indian lands examines whether the gaming activities are authorized by a tribal ordinance adopted by the tribe's governing body.

Section 2710(d)(1)(A) of IGRA requires that Class III gaming be "authorized by an ordinance or resolution that (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands, (ii) meets the requirements of subsection (b), and (iii) is approved by the Chairman" of the National Indian Gaming Commission ("NIGC"). Plaintiff Nations do not challenge the Comanche Nation's gaming ordinance or the NIGC Chairman's approval. Nor could they. The Comanche Nation's tribal ordinances satisfy all three requirements. The Comanche

Business Committee (“CBC”), which is the governing body of the Comanche Nation, adopted the most recent Gaming Ordinance by CBC Resolution 154-2024 on October 5, 2024 authorizing Class III gaming on Comanche Indian lands.¹ Gaming Ordinance (in relevant portion), Ex. 5. The Ordinance contains all provisions required by subsection (b) of IGRA, including provisions ensuring the Nation’s sole proprietary interest in gaming, restricting use of net revenues to authorized purposes, requiring annual audits, mandating background investigations of key employees and primary management officials, and establishing licensing standards. Gaming Ordinance §§ 104–06, 109, 111, 221–22, 301.

II. The Comanche Nation conducts only Class III gaming that is permitted by the State of Oklahoma in accordance with IGRA.

The second requirement examines whether the Class III gaming activities being conducted are located in a State that permits such gaming for any purpose by any person, organization, or entity. Here, Plaintiff Nations offer no evidence establishing Comanche’s actual gaming activities, while the undisputed record shows that the Comanche Nation conducts only gaming Oklahoma law permits.

A. Plaintiff Nations provide no evidence establishing what gaming activities the Comanche Nation actually conducts.

Under *Ex parte Young*, Plaintiff Nations must establish that the Comanche Chairman is engaged in ongoing conduct that violates federal law. As applied to § 2710(d)(1)(B), this requires proof of what gaming activities the Comanche Nation actually conducts at its facilities, not merely compact language. IGRA requires that Class III gaming activities be “located in a State that

¹ The NIGC Chairman first approved the Comanche Nation’s Gaming Ordinance on April 4, 1996 pursuant to the IGRA, 25 U.S.C. §§ 2710(b) and 2712(b). The Nation has amended, and the NIGC Chairman has approved, 16 subsequent amendments, the latest approved on December 10, 2024. Each of the Nation’s approved Ordinances is available on the NIGC website at <https://www.nigc.gov/office-of-general-counsel/gaming-ordinances/> (last visited Jan. 21, 2026).

permits such gaming for any purpose by any person, organization, or entity.” 25 U.S.C. § 2710(d)(1)(B). The phrase “such gaming” refers to the actual Class III gaming activities being conducted on Indian lands. The statute imposes a straightforward factual test that if the State permits the specific gaming activity that the tribe actually conducts for anyone, then the requirement is satisfied—that is, the tribal gaming activities satisfies this prong of IGRA.

Plaintiff Nations allege that the 2020 Compact violates IGRA by purporting to authorize the Comanche Nation to conduct event wagering, house-banked card games, and house-banked table games which are currently not otherwise permitted in Oklahoma “for any purpose by any person, organization, or entity.” Second Am. Compl. ECF No. 104 ¶ 247 (quoting 25 U.S.C. § 2710(d)(1)(B)); *see also* Pls’ MSJ 43–47 (describing the 2020 Compact provisions). To establish an “ongoing” violation of § 2710(d)(1)(B) on summary judgment, Plaintiff Nations must establish two undisputed material facts: (1) that the Comanche Nation actually conducts specific Class III gaming activities at its facilities in Oklahoma; and (2) that Oklahoma law prohibits those specific activities for all persons, organizations, and entities. The moving party on summary judgment bears the burden of showing “that there is no genuine dispute as to any material fact” and must support assertions “by citing to particular parts of materials in the record.” Fed. R. Civ. P. 56(a), (c)(1)(A). Plaintiff Nations must satisfy this burden with admissible evidence establishing the Chairman’s actual ongoing conduct, not with allegations or inferences drawn from compact language.

Plaintiff Nations present no evidence that the Comanche Nation actually offers event wagering, operates house-banked card tables, or conducts house-banked table games at any of its gaming facilities in Oklahoma. The record is entirely devoid of evidence describing Comanche’s actual gaming operations or the Chairman’s involvement therewith. Without evidence of actual

ongoing gaming operations, Plaintiff Nations cannot establish the Chairman's ongoing violation of § 2710(d)(1)(B) as a matter of law or undisputed fact.

B. The undisputed record establishes that Comanche Nation conducts only gaming permitted under Oklahoma law.

The undisputed evidence shows that the categories of Class III gaming Comanche conducts at its facilities are consistent with Oklahoma's Model Gaming Compact, which other Indian tribes in Oklahoma may utilize to conduct the same gaming activities. Oklahoma Model Gaming Compact provisions, ECF No. 54-9 and Ex. 4. These gaming activities include electronic gaming machines and non-house-banked card games such as poker, all of which Oklahoma permits Indian tribes to conduct under the Model Gaming Compact. ECF No. 54-9 and Ex. 4 at Part 4. These are the same categories of Class III gaming that Comanche lawfully offered under its prior 2005 Compact before entering into the 2020 Compact. Ex. 4 at Part 4.

Comanche does not conduct event wagering at any of its gaming facilities. Chairman SUF ¶ 18; Chairman Decl. ¶¶ 11—12, Ex. 2. Comanche does not offer house-banked card games at any of its facilities. Chairman SUF ¶ 18; Chairman Decl. ¶¶ 11—12. Comanche Nation does not conduct house-banked table games at any of its facilities. Chairman SUF ¶ 19; Chairman Decl. ¶¶ 11—12. In other words, Comanche does not conduct any of the three categories of gaming that Plaintiff Nations challenge as prohibited under Oklahoma law. Comanche conducts only those categories of Class III gaming that Plaintiff Nations themselves also conduct at their own gaming facilities and that Oklahoma expressly permits Indian tribes to conduct under the Model Gaming Compact.

Plaintiff Nations' challenge rests on their interpretation of the 2020 Compact language, not on evidence of actual gaming operations. They contend that because the 2020 Compact defines "Covered Games" to include event wagering, house-banked card games, and house-banked table

games, it “purports to authorize” these activities in violation of § 2710(d)(1)(B). Second Am. Compl. ¶ 247. But compact language alone does not establish an ongoing violation of federal law. What matters under *Ex parte Young* and § 2710(d)(1)(B) is the gaming that Comanche actually conducts in accordance with the Chairman’s actual duties, and the undisputed evidence establishes that Comanche conducts only gaming Oklahoma permits.

Moreover, the parties who negotiated and executed the 2020 Compact do not advance Plaintiff Nations’ construction. The Governor has explained that the 2020 Compact does not authorize Class III gaming activities that are not permitted under Oklahoma law, making clear that “if Oklahoma law does *not* allow others to engage in event wagering, house-banked card games, or house-banked table games, then the [Comanche Nation] cannot offer those activities either.” Gov. Stitt Mot. J. Pleadings 22, ECF No. 154-1. The Comanche Nation shares this understanding of the 2020 Compact’s scope. Chairman Decl. ¶¶ 9, 11–12. Plaintiff Nations—who are not parties to the 2020 Compact—urge a contrary reading in an effort to manufacture a statutory violation. But their interpretation finds no support in the actual understanding by either signatory and instead rests on a parsing of compact language different from how the 2020 Compact is understood and applied by those who entered into it. When interpreting a contract, courts look to the parties’ mutual understanding and the practical construction they have given the agreement and an interpretation that saves is preferred to an interpretation that destroys. *See* Restatement (Second) of Contracts § 203(a).

Because the undisputed evidence establishes that the Comanche Nation conducts only Class III gaming that Oklahoma permits other Indian tribes to conduct, Plaintiff Nations have failed to establish any ongoing violation of § 2710(d)(1)(B). The statutory requirement that

gaming be “located in a State that permits such gaming for any purpose by any person, organization, or entity” is affirmatively satisfied.

III. The Comanche Nation conducts Class III gaming in conformance with a compact that is “in effect.”

Finally, Section 2710(d)(1)(C) requires that Class III gaming be “conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.” To establish an ongoing violation of this requirement, Plaintiff Nations must prove on summary judgment that the Comanche Chairman’s gaming operations fail to satisfy the statutory standard. They cannot meet this burden because the undisputed facts establish that the Chairman operates gaming under a compact that federal law deems “in effect.”

A. The 2020 Compact is “in effect” under federal law.

IGRA defines when a compact is “in effect.” A compact approved by the Secretary “take[s] effect” when “notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.” 25 U.S.C. § 2710(d)(3)(B). If the Secretary does not affirmatively approve or disapprove a compact within forty-five days of submission, “the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of [IGRA].” *Id.* § 2710(d)(8)(C). The Secretary must then publish notice of the approval in the Federal Register. *Id.* § 2710(d)(8)(D). Once published, the compact takes effect. *Id.* § 2710(d)(3)(B).

The Comanche Nation’s 2020 Compact satisfies this statutory test. The 2020 Compact was submitted to the Secretary on April 23, 2020, and the 45-day review period expired on June 7, 2020, without action by the Secretary. *See* Defendant Chairman Forrest Tahdooahnippah’s Statement of Undisputed Material Facts in Support of Motion for Summary Judgment (“Chairman SUF”) ¶ 13; Pls’ SUF ¶¶ 27, 36. On June 29, 2020, the Assistant Secretary announced that the

Compact “is considered to have been approved” under § 2710(d)(8)(C) and published notice of approval in the Federal Register at 85 Fed. Reg. 38919. Chairman SUF ¶ 14; Pls’ SUF ¶ 37. The Compact took effect on June 29, 2020, and has remained in effect continuously since that date. Chairman SUF ¶ 14; Pls’ SUF ¶ 37. Plaintiff Nations do not contend that the Secretary failed to publish notice of approval. The Compact’s “in effect” status is thus established as a matter of undisputed fact and federal law.

Plaintiff Nations dispute whether the 2020 Compact should have been approved by the Secretary, not whether it is in effect. In Counts 1–3, they contend the 2020 Compact was not validly “entered into” under Oklahoma law. Second Am. Compl. ¶¶ 232–44. These are challenges to the Secretary’s decision to allow the 2020 Compact to be deemed approved. They go to whether the Secretary acted properly, not to whether the 2020 Compact is “in effect” under § 2710(d)(3)(B) for the purposes of establishing an ongoing violation of federal law. From a tribe’s perspective, IGRA requires only that a compact be “in effect” to conduct Class III gaming. Section 2710(d)(3)(B) defines that status based on Federal Register publication. And a compact can be “in effect” under § 2710(d)(1)(C) even while its validity is challenged in APA proceedings. *See* 5 U.S.C. § 705 (providing legal mechanism for postponing the effective date of agency action during judicial review).

B. State determinations do not override federal “in effect” status.

Plaintiff Nations’ theory depends on the proposition that state court rulings or state attorney general opinions about the Governor’s authority automatically negate whether a compact is “in effect” under federal law. This is incorrect. Whether a compact is “in effect” is a question of federal law answered by federal statute. Section 2710(d)(3)(B) conditions “in effect” status on federal administrative action: Secretary approval and Federal Register publication. The statute does not condition “in effect” status on the absence of state law disputes or state court rulings.

Consider *Detroit International Bridge Co. v. Government of Canada*, 192 F. Supp. 3d 54 (D.D.C. 2016), where the district court analogized a parallel provision on the effectiveness of federal approval of an intergovernmental agreement under the International Bridge Act of 1972, to the IGRA’s “in effect” provision requiring the Secretary of the Interior’s approval of a tribal compact, stating:

The effectiveness of such a compact is conditioned on the “approval by the Secretary [of the Interior]” and the publication of the “notice of approval . . . in the Federal Register.” . . . Courts have held that IGRA contains two independent substantive requirements: (1) “a compact ‘entered into’ by [a] tribe and [a] state [*i.e.*, validity of the compact] (2) which is in ‘effect’ [*i.e.*, effectiveness of the compact].” . . . In the same way that the purpose of congressional consent under the Compact Clause does not encompass a duty to ensure that states act in conformity with their own laws, the IBA cannot be read to require a similar obligation. The IGRA cases support this conclusion. [Citing and quoting authorities under IGRA].

Detroit Int’l Bridge Co. v. Gov’t of Canada, 192 F. Supp. 3d 54, 75-77 (D.D.C. 2016), *aff’d*, 875 F.3d 1132 (D.C. Cir. 2017), *amended and superseded*, 883 F.3d 895 (D.C. Cir. 2018) (citations omitted).

The Oklahoma Supreme Court’s decision in *Treat v. Stitt (Treat I)*, 2020 OK 64, 473 P.3d 43 addressed whether the Governor had authority under Oklahoma law to cause the State to enter into the 2020 Compact. That ruling determined a question of state law. It did not—and could not—determine whether the 2020 Compact is “in effect” under federal law for purposes of § 2710(d)(3)(B). Federal law determines when a compact takes effect, and state courts have no authority to override that federal determination. *See* U.S. Const. art. VI, cl. 2; *see also* S. Rep. No. 100-446, at 6 (1988) (noting that IGRA “is intended to expressly preempt the field in the governance of gaming activities on Indian lands”).

Plaintiff Nations’ theory—that state attorney general opinions or state court rulings automatically render federally approved compacts null—undermines IGRA’s structure and would

give states unilateral veto power over the federal compact approval process. Under their theory, a state attorney general could, long after a compact has been negotiated, signed, federally approved, and implemented, issue an opinion identifying a state law defect in the governor’s authority. That opinion, binding on the governor under state law, could then serve as the basis for immediately suing tribal officials in federal court under *Ex parte Young* to enjoin the tribe’s Class III gaming. The state court ruling on the state law question, so the argument goes, would be treated as dispositive in federal court, effectively allowing separate state officials to undo negotiations through separate state law procedures. This cannot be correct.

Such a regime would be contrary to IGRA’s text and structure. Congress enacted IGRA to establish federal regulatory authority over gaming on Indian lands and give the states a measure of control after *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221–22 (1987). IGRA established a federal scheme in which the Secretary—a federal official applying federal standards—reviews compacts for IGRA compliance before they take effect. If states could later invoke state law defects to automatically nullify a compact’s “in effect” status, this federal regulatory scheme would provide no certainty, and tribes would be perpetually vulnerable to state attempts to undo compacts through after-the-fact state law challenges.

C. Plaintiff Nations cannot establish an ongoing violation of IGRA.

Viewed from another angle, IGRA assigns compact review to the Secretary, not to tribal officials. The Secretary “is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State,” 25 U.S.C. § 2710(d)(8)(A), and “may disapprove a compact . . . only if such compact violates” IGRA, other federal law, or trust obligations, *id.* § 2710(d)(8)(B). Under circuit precedent, this includes determining whether a compact was validly “entered into” under state law. *See* Nov. 23, 2022 Mem. Op. & Order 35–36, ECF No. 157 (citing *Amador County v. Salazar*, 640 F.3d 373, 381 (D.C. Cir. 2011)).

For *Ex parte Young* purposes, the Comanche Chairman has no role in making this determination. It is the tribe's obligation under IGRA only to conduct Class III gaming in compliance with § 2710(d)(1)'s requirements, including that gaming be "conducted in conformance with" a compact that is "in effect." 25 U.S.C. § 2710(d)(1)(C). The statute does not require the Chairman to adjudicate whether the Secretary correctly determined that the compact was validly "entered into." It requires only that gaming be conducted under a compact "in effect"—a status that arises from the Secretary's approval and Federal Register publication. Plaintiff Nations must establish as a matter of undisputed fact that the Chairman's ongoing gaming operations violate § 2710(d)(1)(C). They cannot meet this burden. The 2020 Compact is "in effect" under § 2710(d)(3)(B). There is no ongoing violation.

Because the Chairman's gaming operations comply with all three requirements—tribal ordinance authorization², state permission for such gaming, and a compact "in effect"—Plaintiff Nations cannot establish the ongoing violation of federal law necessary to overcome tribal sovereign immunity. Summary judgment on Count VIII should be denied.

* * *

Taking a step back to return to the underpinnings of *Ex parte Young*, discussed above, Plaintiff Nations come nowhere close to satisfying those standards to overcome tribal sovereign immunity, which also bars Count VIII. Under *Ex parte Young*, Plaintiff Nations must establish that the Comanche Chairman's ongoing conduct violates federal law. They cannot meet this burden and thus cannot overcome tribal sovereign immunity.

Indian tribes possess sovereign immunity from suit. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Tribal sovereign immunity is a fundamental attribute of tribal

² Comanche Nation Amended Gaming Ordinance (NIGC Chair Approved 12-10-2024) Ex. 5

sovereignty. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788–89 (2014). Among the inherent powers tribes retain—unless Congress acts to limit them—is the sovereign’s traditional immunity from suit. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). This immunity is essential to tribal sovereignty and self-governance. *Three Affiliated Tribes of the Fort Berthold Rsrv. v. Wold Eng’g*, 476 U.S. 877, 890 (1986).

The Supreme Court has recognized that tribal sovereign immunity, like state sovereign immunity, is subject to a narrow exception analogous to the *Ex parte Young* doctrine. *See Bay Mills Indian Cmty.*, 572 U.S. at 796 (citing *Santa Clara Pueblo*, 436 U.S. at 59). Under this exception, tribal immunity does not bar suits against tribal officers—as opposed to the tribe itself—seeking prospective injunctive relief to stop ongoing violations of federal law. *Vann v. Kempthorne*, 534 F.3d 741, 749–56 (D.C. Cir. 2008); *see also* Nov. 23, 2022 Mem. Op. & Order, ECF No. 157 at 41 n.17. But the exception is limited and applies only when the plaintiff establishes that the tribal official’s conduct actually violates federal law and that the violation is ongoing. *Ex parte Young*, 209 U.S. at 159–60. The plaintiff bears the burden of proving both elements. If the official’s conduct is authorized by federal statute or does not constitute an ongoing violation, tribal sovereign immunity bars the suit.

Here, the Chairman’s conduct complies with IGRA’s statutory requirement. Plaintiff Nations cannot establish an ongoing violation of federal law, and so the *Ex parte Young* exception does not apply. In short, tribal sovereign immunity bars Count VIII. This constitutes an independent basis for denying Plaintiff Nations’ Motion for Summary Judgment as well as granting judgment to the Comanche Nation’s Chairman in addition to lacking standing and falling outside zone of interests.

CONCLUSION

The Court should deny Plaintiff Nations' Motion for Summary Judgment and grant summary judgment to the Comanche Nation's Chairman on tribal immunity, zone of interests, and standing grounds.

Dated: January 23, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on January 23, 2026, with the help of my legal assistant I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all individuals registered to receive this case's filings.

/s/ Mike McBride

D. Michael McBride III

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