

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, a federally recognized
Indian Nation; and

LAKESIDE ENTERPRISES, INC.,

Plaintiffs,

-against-

5:25-CV-1312
(ECC/TWD)

NEW YORK STATE LIQUOR AUTHORITY;

LILY FAN, in her official capacity as the Chair
and Commissioner of the New York State Liquor Authority;

EDGAR DE LEON, in his official capacity as a
Commissioner of the New York State Liquor Authority; and

JOHN MAYA, in his official capacity as a
Commissioner of the New York State Liquor Authority,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6).**

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Defendants New York State Liquor Authority (“NYSLA”), and Lily Fan, in her official capacity as the Chair and Commissioner of the New York State Liquor Authority; Edgar De Leon, in his official capacity as a Commissioner of the New York State Liquor Authority, and John Maya, in his official capacity as a Commissioner of the New York State Liquor Authority (Chair and Commissioners) (collectively, “defendants”), respectfully submit this memorandum of law in support of their motion to dismiss plaintiffs’ second amended complaint (“SAC”) pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

PRELIMINARY STATEMENT

Plaintiffs, the Cayuga Nation (“the Nation”), and Lakeside Enterprises, Inc. (“Lakeside”), collectively (“plaintiffs”), seek to enjoin defendants from “continuing violations of federal law.” ECF No. 16 ¶ 1. Specifically, plaintiffs’ SAC alleges that following a Full Board meeting held on October 29, 2025, the NYSLA discriminated against the Nation by denying the Nation’s liquor license application for operations on its Reservation in contravention of federal law, pursuant to 18 U.S.C. § 1161, 42 U.S.C. § 1983, 42 U.S.C. § 1981, 42 U.S.C. § 1985, and Article 1, Section 8, Clause 3 of the United States Constitution; and in violation of New York state law, under Article 1, Section 11 of the New York Constitution and New York Executive Law § 296. See generally, id.

Defendants move to dismiss plaintiffs’ SAC pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Pursuant to the Eleventh Amendment, sovereign immunity deprives this Court of subject-matter jurisdiction to consider plaintiffs’ claims pursuant to 18 U.S.C. § 1161, 42 U.S.C. § 1983, 42 U.S.C. § 1981, and 42 U.S.C. § 1985 and plaintiffs’ state law claims. Further, 18 U.S.C. § 1161 does not confer a private right of action to enforce the rights plaintiffs assert, and plaintiffs’ SAC fails to state a claim under 42 U.S.C. § 1983, 42 U.S.C. § 1985 and Article 1, Section 8, Clause 3 of the United States Constitution.

STATEMENT OF FACTS

On September 17, 2025, plaintiffs commenced a federal civil action against the defendants. See ECF No. 1. Before defendants filed a responsive pleading, plaintiffs filed an amended complaint on November 5, 2025. ECF No. 10. With defendants’ consent, plaintiffs filed a second amended complaint (“SAC”) on December 17, 2025, to simply add paragraph 98 and attach the NYSLA’s written decision denying plaintiffs’ liquor store license application. See generally, ECF No. 16. For purposes of this motion to dismiss, the plaintiffs’ factual allegations are accepted as true.

In 1794, the United States entered the Treaty of Canandaigua with the Cayuga Nation, and certain other Indian nations in New York, to resolve significant disputes that existed between the United States and those Indian nations. ECF No. 16 ¶ 24, citing Treaty of Canandaigua, Preamble, 7 Stat. at 44. Plaintiffs’ SAC states that “[i]n the Treaty of Canandaigua, the United States recognized a federal reservation for the Cayuga Nation comprising 64,015 acres—located within what today are Seneca County, New York (which is located within the federal Western District of New York) and Cayuga County, New York (located within the federal Northern District of New York)—and pledged that the ‘reservation[] shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.’” Id. ¶ 25, citing Treaty of Canandaigua, art. II, 7 Stat. at 45.

After the Treaty of Canandaigua, New York State claimed to enter into two treaties directly with the Cayuga Nation. Id. ¶ 26. Specifically, in 1795, by the Treaty of Cayuga Ferry, the State claimed to acquire the Cayuga Nation’s entire Reservation, with the exception of a three square-mile area on the eastern shore of Cayuga Lake, in exchange for a promise to pay the Nation \$1,800 annually in perpetuity. Id. And pursuant to the 1807 Treaty with the Cayugas, the State claimed

to purchase the Cayuga Nation’s remaining three square-mile parcel for \$4,800. Id. Plaintiffs contend that because these two treaties with the State of New York “indisputably violated the Non-Intercourse Act, and were never subsequently approved through the federal treaty-ratification procedures,” as a matter of law they are void and never “had any effect on the legal status of the Cayuga reservation,” which remains fully intact. Id. ¶ 27, citing Cayuga Indian Nation of N.Y. v. Seneca Cnty., 260 F. Supp. 3d 290, 309–10 (W.D.N.Y. 2017) (collecting cases). Congress has not disestablished the Nation’s Reservation, nor authorized the sale of the Nation’s reservation lands, and “every federal court that has examined whether the Cayuga reservation was disestablished or diminished by Congress has answered that question in the negative.” Id. ¶ 28, citing Cayuga Indian Nation of N.Y. v. Gould, 14 N.Y.3d 614, 639 (2010) (collecting cases).

Plaintiffs’ SAC contends that the Cayuga Nation has exercised its sovereign authority to regulate alcohol sales on its Reservation through the enactment of the Cayuga Nation Alcoholic Beverage Control Ordinance (the “Ordinance”). Id. ¶ 30. The Ordinance establishes a “comprehensive regulatory scheme governing the manufacture, distribution, and sale of alcoholic beverages on Nation lands” and was duly adopted by the Cayuga Nation Council, the Nation’s governing body, and submitted to the United States Department of the Interior for certification pursuant to 18 U.S.C. § 1161. Id. ¶¶ 30-31. On July 2, 2021, the Bureau of Indian Affairs published notice of the Ordinance’s approval in the Federal Register. Id. ¶ 31, citing Cayuga Nation’s Alcoholic Beverage Control Ordinance, published in the Federal Register at 86 Fed. Reg. 35326 (July 2, 2021).

Plaintiffs’ SAC contends that on September 26, 2024, plaintiff Lakeside submitted an application to the NYSLA seeking the Nation’s first license to sell alcoholic beverages at a

proposed convenience store and gas station located on the Nation's Reservation.¹ Id. ¶ 34. Lakeside's proposed retail operation is located entirely within the Cayuga Nation's federally recognized Reservation. Id. ¶ 35. On January 31, 2025, the NYSLA issued a deficiency letter requesting clarification and supplemental documentation. Id. ¶ 38. On February 14, 2025, plaintiffs submitted a comprehensive response to the NYSLA's letter, addressing each of the requested items and informing the NYSLA of a recent corporate change. Id. ¶ 39. On February 21, 2025, the NYSLA responded via email, requesting additional amendments to the application materials, specifically in connection with the corporate change. Id. ¶ 40.

On February 28, 2025, plaintiffs submitted the requested amendments and provided further documentation. Id. ¶ 41. On March 12, 2025, plaintiffs sent a follow-up email enclosing a letter confirming approval of the corporate change and requesting confirmation that all outstanding items had been resolved. Id. ¶ 44. On April 3, 2025, the NYSLA informed plaintiffs via email that the application had been reviewed by the NYSLA Licensing Board and would be referred to the Full Board for final consideration and determination. Id. ¶ 45.

On April 16, 2025, the NYSLA notified plaintiffs that the application would be scheduled for review by the Full Board at its May 14, 2025, hearing and strongly encouraged the applicant to appear to be heard in support of their case. Id. ¶ 47. Two protest letters were submitted in opposition to the application. Id. ¶ 48. The NYSLA provided plaintiffs with the two letters of opposition—both from local competitors in the Seneca Falls area. Id. ¶ 50. On May 14, 2025, counsel for plaintiffs appeared before the NYSLA Board to present the application and respond to any questions, but none of the Cayuga Nation principals were able to attend. Id. ¶ 53.

¹ Notably, plaintiffs admittedly already hold two active NYSLA-issued licenses to sell alcohol on Reservation Land at convenience stores. ECF No. 16 ¶ 112; see e.g. ECF No. 16-2 at 19. The application that was denied and is relevant to the instant matter is plaintiffs' application for a liquor store license, New York State Application ID NA-0100-24-337401 (ECF No. 16-2)—not a liquor license for a convenience store and gas station.

The NYSLA expressed dissatisfaction with the absence of a Nation principal and deferred consideration of the application until June 4, 2025, stating that the applicant must appear in person to speak to “public convenience and advantage.” Id. ¶ 54. In response, the Nation prepared a supplemental submission dated May 28, 2025. Id. ¶ 55. On June 4, 2025, the NYSLA held a hearing on the application, but the Nation’s principal was unable to attend due to scheduling conflicts. Id. ¶ 58. The NYSLA Board ultimately denied the application. Id. ¶¶ 59, 60.

On July 2, 2025, upon the NYSLA’s recommendation, the Nation submitted a letter to the NYSLA requesting reconsideration of the application, accompanied by an affidavit from Michele “Missy” Barringer, Chief Operating Officer, in support of the request. Id. ¶ 61. On August 6, 2025, the NYSLA held a hearing and first voted to approve the request for reconsideration. Id. ¶ 66. Following questioning by the Chair and Commissioners on zoning, sales tax, management, and enforcement concerns, the Board announced that it would not reach a final determination that day and adjourned the matter to the August 26, 2025, hearing to allow its licensing staff to review additional information and data before rendering a decision. Id. ¶ 69. On August 25, 2025, plaintiffs were advised that their application would be adjourned to the September 18, 2025, Board hearing. Id. ¶ 71.

On September 17, 2025, counsel for plaintiffs was advised that the matter would not be considered until the Full Board hearing on October 29, 2025, and requested that the applicant appear again as well. Id. ¶ 74. On October 28, 2025, plaintiff’s counsel notified the NYSLA that he would be appearing alone before the Full Board. Id. ¶ 80. The Full Board hearing was completed on October 29, 2025. Id. ¶ 82. Ultimately, the Board voted to deny plaintiffs’ application. Id. ¶ 98.

STANDARD OF REVIEW

Federal courts construe Eleventh Amendment sovereign immunity as a bar to their subject-matter jurisdiction. See Brokamp v. James, 573 F. Supp. 3d 696, 707 (N.D.N.Y. 2021), aff'd, 66 F.4th 374 (2d Cir. 2023) (citing Brown v. New York, 975 F. Supp. 2d 209, 221 (N.D.N.Y. 2013) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 92-100 (1984))). As a result, a motion to dismiss on sovereign immunity grounds is evaluated pursuant to Federal Rule of Civil Procedure 12(b)(1), rather than 12(b)(6).

A case is properly dismissed for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) “when the district court lacks the statutory or constitutional power to adjudicate it.” Deadwiley v. N.Y. State Office of Children & Family Servs., 97 F. Supp. 3d 110, 114 (E.D.N.Y. 2015) (citing Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000)); Fed. R. Civ. P. 12(b)(1)). “Once challenged, the burden of establishing jurisdiction rests with the party asserting that it exists,” here, the plaintiffs. Id. In reviewing a motion to dismiss pursuant to Rule 12(b)(1), the Court “must accept as true all material factual allegations in the complaint, but [is] not to draw inferences from the complaint favorable to plaintiffs.” J.S. ex rel. N.S. v. Attica Cent. Sch., 386 F.3d 107, 110 (2d Cir. 2004) (citation omitted).

Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” Jackson v. Onondaga County, 549 F. Supp. 2d 204, 211 (N.D.N.Y. 2008); Fed. R. Civ. P. 12(b)(6). When addressing a motion to dismiss under this Rule, the Court accepts as true all of the factual allegations in the complaint and draws inferences from those allegations in the light most favorable to the plaintiff. Jaufman v. Levine, 2007 WL 2891987, at *5 (N.D.N.Y. 2007) (citing Albright v. Oliver, 510 U.S.

266, 268 (1994)). This presumption of truth, however, does not extend to legal conclusions. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted).

In order “to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft, 556 U.S. at 677-78 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting Twombly, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” Id. (quoting Twombly, 550 U.S. at 557). Ultimately, where a plaintiff has “not nudged [its] claims across the line from conceivable to plausible, the[] complaint must be dismissed.” Twombly, 550 U.S. at 550.

ARGUMENT

POINT I: PLAINTIFFS’ CLAIM PURSUANT TO 18 U.S.C. § 1161 SHOULD BE DISMISSED

Plaintiffs’ SAC alleges that pursuant to 18 U.S.C. § 1161 (“§ 1161”), alcohol transactions on Indian lands “are permitted only where conducted in conformity with both (1) the laws of the State in which such act occurs, and (2) an ordinance duly adopted by the Indian nation and certified by the Secretary of the Interior.” ECF No. 16 ¶ 100. The SAC contends that defendants have violated §1161, because they applied a “discretionary and one-sided licensing regime to the Nation’s liquor license application that exceeds the authority contemplated under § 1161.” Id. ¶¶ 103. In fact, plaintiffs explicitly allege that defendants’ reliance on the “public convenience and advantage” standard to deny plaintiffs’ application was improper because that discretionary

standard is “preempted both by federal law and the Nation’s sovereign authority, and therefore does not apply to Plaintiffs.” Id. ¶ 94.

A. Plaintiffs fail to state a claim pursuant to 18 U.S.C. § 1161

1. Federal Law And Its Application To The Present Matter

As an initial matter, to the extent that plaintiffs seek declaratory or injunctive relief against defendants based on violations of state law, they are barred from doing so. See Bad Frog Brewery, Inc. v. New York State Liquor Auth., 134 F.3d 87, 93 (2d Cir. 1998). Regardless, citing to only one case from a South Dakota trial court, plaintiffs’ SAC asserts that “[a] federal court has recognized that claims may proceed under § 1161 where a state attempts to impose unlawful conditions on alcohol licensure in Indian country.” ECF No. 16 ¶ 23, citing Flandreau Santee Sioux Tribe v. Gerlach, 155 F. Supp. 3d 972, 992 (D.S.D. 2015). In Flandreau, the State of South Dakota issued the Flandreau Santee Sioux tribe three alcohol licenses, conditioned on the Tribe’s remittance of the State’s use tax. Id. at 977. The Tribe sought renewal of the licenses, but their requests were denied because the applicable State tax statute mandated that their licenses were not to be reissued until use taxes incurred by nonmembers had been remitted. Id. The Tribe requested a hearing before the South Dakota Office of Hearing examiners to review the license denial. At the hearing, the Examiner concluded that all nonmember purchases were subject to the use tax scheme, that the Tribe failed to remit the use taxes, and, therefore, the Tribe was not entitled to alcohol license renewal. Prior to the final decision, the Tribe moved for a preliminary injunction seeking to enjoin the state action pursuant to the Examiner’s decision. Id. The Tribe asserted, *inter alia*, that the state tax remittance statute requirement violated 18 U.S.C. § 1161. The District Court ultimately held that the State may not condition renewal of alcohol beverage licenses on the Tribe’s remittance of use taxes imposed on nonmember purchases at the Store. Id. at 999-1000.

However, in a related case, the Eighth Circuit Court of Appeals reversed a prior District Court's decision in part, holding that the Tribe "failed to meet its burden to demonstrate that the State alcohol license requirement was not reasonably necessary to further its interest in collecting valid state taxes" and that the State *could* condition renewal of alcoholic beverage licenses on the Tribe's failure to remit validly imposed use taxes. See Flandreau Santee Sioux Tribe v. Noem, 938 F.3d 928, 931–32 (8th Cir. 2019). In its decision, the Eighth Circuit held that "Section 1161 provides the State with authority to regulate liquor on the reservation, just as the district court concluded it has authority to tax nonmember purchases of goods and services at the Store. But the question is whether the State's remedy for the Tribe's failure to collect and remit valid use taxes -- non-renewal of its liquor licenses -- is preempted by federal law." Id. at 938.

Regardless, here, plaintiffs assert that defendants have "obstructed Plaintiffs' ability to lawfully engage in alcohol sales under 18 U.S.C. § 1161." ECF No. 16 ¶ 96. But 18 U.S.C. § 1161 does not confer a private right of action to enforce the rights plaintiffs assert. To the extent that plaintiffs argue that the Flandreau decision supports their claim under 18 U.S.C. § 1161 and establishes that in general, "claims may proceed under § 1161 where a state attempts to impose unlawful conditions on alcohol licensure in Indian country," this assertion is incorrect. 18 U.S.C. § 1161 does not preempt state law regarding alcohol regulation on Indian lands, rather, it expressly contemplates and *authorizes* the application of state liquor laws.

Indeed, the Supreme Court held in Rice v. Rehner, 463 U.S. 713, 733 (1983) that Congress, when enacting 18 U.S.C. § 1161, intended to delegate authority to both the states and Indian tribes to regulate liquor transactions. Id. at 715, 728, 729; see also In re 17,325 Liters of Liquor, 918 F. Supp. 51, 55 (N.D.N.Y. 1996) (holding that § 1161 permits states to regulate the importation of Indian-owned liquor on the same terms as New York regulates other liquor importers, rather than

preempting such regulations); In Re Matter of 1,750 Cases of Liquor, 166 Misc.2d 739, 633 N.Y.S.2d 702 (N.Y.Sup.Ct.1995) (holding that “[f]ar from pre-empting state activity ... federal laws and the judicial glosses thereon make it clear ... that the State of New York may require Tribal alcoholic beverage distributors to comply with the same provisions of state registration ... which apply to any other person or entity within New York State who import alcoholic beverages.”). In 1,750 Cases, the court stated that “it is indisputable that § 1161 authorized rather than pre-empted state regulation of Indian liquor transactions including forfeiture as provided for in New York’s Tax Law.” Id. at 706.

Which makes sense, because in Rice, the Supreme Court “examined the history of liquor regulation in Indian country and observed that there was no tradition of tribal self-governance in liquor transactions; rather, “[t]he colonists regulated Indian liquor trading before this Nation was formed, and Congress exercised its authority over these transactions as early as 1802” and “imposed complete prohibition by 1832.” Furry v. Miccosukee Tribe of Indians of Fla., 685 F.3d 1224, 1230 (11th Cir. 2012) (citing Rice, 463 U.S. at 722). After establishing that the tribal sale of liquor was “not protected from regulatory oversight by historical notions of tribal self-governance, the Court then turned to the proper balance of regulatory authority between the federal government and the States. The Court noted that there was a ‘historical tradition of concurrent state and federal jurisdiction over the use and distribution of alcoholic beverages in Indian country.’” Id., citing Rice 463 U.S. at 724. Because of 18 U.S.C. § 1161, the Court determined that the application of California’s liquor licensing scheme to a tribal trader was not preempted by federal law. Id. at 725–26.

The Court noted that “[t]he legislative history of § 1161 indicates both that Congress intended to remove federal prohibition on the sale and use of alcohol imposed on Indians in 1832,

and that Congress intended that state laws would apply of their own force to govern tribal liquor transactions as long as the tribe itself approved these transactions by enacting an ordinance.” *Id.* at 726. The Court thus read Congress's enactment of § 1161 as having been “intended to delegate a portion of its authority to the tribes as well as to the States.” *Id.* at 733.

Plaintiffs explicitly allege that defendants’ reliance on the “public convenience and advantage” standard to deny plaintiffs’ application was improper because that discretionary standard is “preempted both by federal law and the Nation’s sovereign authority, and therefore does not apply to Plaintiffs.” ECF No. 16 ¶ 94. This is incorrect. In short, § 1161 grants tribes the authority to enact an ordinance to regulate liquor on their land but also ensures that states can regulate Indian liquor transactions within the State. It does *not* provide for a private right of action for Tribes to assert against the State for allegedly imposing “unlawful conditions” on alcohol licensure in Indian country. In other words, plaintiffs take issue with the NYSLA’s decision denying their liquor license application and request that a federal court determine that the decision-making standard used by a State agency pursuant to State law was flawed. 18 U.S.C. § 1161 does not provide for a right of action to do this.

2. New York State Law And It’s Application To The Present Matter

Pursuant to New York State Alcoholic Beverage Control Law (“ABCL”) § 17(1), the NYSLA has been granted wide discretion to issue or refuse to issue any license or permit provided for in that chapter. Indeed, the NYSLA was granted power to “limit in its discretion the number of licenses of each class to be issued within the state or political subdivision thereof, and in connection therewith to prohibit the acceptance of applications for such class or classes of licenses which have been so limited.” *Id.* § 17(2). Relevant to the instant matter, applications for liquor store licenses “shall be made in accordance with public convenience and advantage.” *Id.* §63(6)

(emphasis added). Indeed, pursuant to ABCL § 2, the NYSLA is empowered to determine whether “public convenience and advantage” will be promoted by the issuance of licenses to traffic in alcoholic beverages. See ABCL § 2. The “public convenience standard” is discussed in ABCL § 2, which declares that it is necessary for the State:

“to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law; for the primary purpose of promoting the health, welfare and safety of the people of the state, promoting temperance in the consumption of alcoholic beverages; and, to the extent possible, supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry; and which promotes the conservation and enhancement of state agricultural lands; provided that such activities do not conflict with the primary regulatory objectives of this chapter. It is hereby declared that such policies will best be carried out by empowering the liquor authority of the state to determine whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby, subject only to the right of judicial review provided for in this chapter. It is the purpose of this chapter to carry out these policies in the public interest.”

See ABCL § 2.

In short, “[p]ublic convenience’ necessarily refers to the accessibility of stores and involves considerations of distance, overcrowding of present facilities, etc.,” while “[p]ublic advantage’ is a broader term which brings into play social and similar problems, and involves the [s]tate's general policy as to the sale of alcoholic beverages for off-premises consumption.” White Plains Fine Wine & Spirits LLC v. New York State Liquor Auth., 184 A.D.3d 1068, 1069, 125 N.Y.S.3d 768 (2020) (citing Matter of Forman v New York State Liq. Auth., 17 NY2d 224, 230 (1966)). The NYSLA’s website explicitly informs potential applicants that to determine whether the public convenience and advantage will be served by issuing a liquor license, the NYSLA generally considers “whether the area is adequately served by existing wine stores or liquor stores. As part of that review, the Authority looks at, among other things, the proximity of the existing

licensed stores to the applicant's location, the gross sales of the nearest liquor stores...populations of demographic changes, and whether the applicant will offer products of services not currently provided by the existing licensees.”²

The NYSLA Full Board meetings are livestreamed on their YouTube channel and past meetings are archived.³ During the October 29, 2025, Full Board meeting, Commissioner De Leon noted that there were declining sales at nearby stores within the proximity of the location that was seeking licensure. See Full Board video at 14:40-15:25. Commissioner De Leon specifically questioned plaintiffs' counsel as to how those declining sales contribute to the public convenience and advantage. Id. at 15:25-15:29. The Board further reiterated that “to some extent, it goes to public convenience and advantage....treat everyone the same and look at the business plan, why we need another store when every neighboring store is essentially doing flat numbers...” Id. at 18:18-18:44.

At the conclusion of the hearing, the Board took a final vote and expressed the reason for their decision to vote in favor of denying the application. Commissioner De Leon stated that his initial denial was based on the gross sales numbers of the nearby businesses that were already established, and counsel failed to present any information at the hearing that contradicted his original decision. Further, plaintiffs did not represent that there would be anything distinguishable offered by their store in particular, such as educational services, taste testing or anything else

² See <https://sla.ny.gov/wine-storeliquor-store-quick-reference-0>. Defendants respectfully request the Court to take judicial notice of, and consider, “matters of public record,” including agency decisions, documents issued by an agency, and other information and material retrieved from an agency's official website. See Singleton v. Fifth Generation, Inc., No. 15-cv-474, 2016 WL 406295, at *2-*3 (N.D.N.Y. Jan. 12, 2016) (collecting cases); Simeone v. T. Marzetti Co., No. 21-cv-9111, 2023 WL 2665444, at *1-*2 (S.D.N.Y. Mar. 28, 2023).

³ A video and audio recording of the October 29, 2025, Full Board meeting (“Full Board video”) can be found at <https://www.youtube.com/watch?v=afigZPQvRdk>. Judicial notice may be taken of the meeting as a matter of public record. See Giraldo v. Kessler, 694 F.3d 161, 164 (2d Cir. 2012).

otherwise unique to that business. Ultimately, he did not find that the public convenience and advantage would be served by granting the application. See id. at 1:01:50-1:02:51.

Commissioner Maya also found that public convenience and advantage would not be served by granting plaintiffs' application, based on the proximity to a nearby town, Seneca Falls, and the proximity to other already established liquor store locations. See id. 1:02:51-1:03:42. Finally, Chair and Commissioner Fan agreed with the other Commissioners and voted to deny plaintiffs' application based on public convenience and advantage grounds. She noted that plaintiffs' counsel himself pointed out that the store did not have any distinguishable business plan, the applicant failed to offer any unique experience such as education or tastings, and the applicant would not stipulate or commit to limiting the size of the business. Commissioner Fan highlighted that there was no growth in sales numbers for the surrounding stores—and the closest store to the proposed location was a mere one mile away. She further noted that there were decreasing liquor sales across the state and there was no noted population growth in the area where the proposed business would be located. See id. 1:03:42-1:05:14.

While the Commissioners inquired as to the plaintiffs' intent to sell New York made products and whether they would commit to selling a percentage of New York made products in the store during the hearing, the Board indicated it was customary to simply encourage applicants to sell New York made products, see Full Board video at 14:03-14:37, 17:14-17:35, and the Board ultimately found that public convenience and advantage would not be promoted if the license requested were issued to the plaintiffs for the reasons that the Commissioners stated on the record, as discussed above. See Full Board video at 1:01:50-1:05:14.

A written formal decision was issued to plaintiffs on December 3, 2025. See ECF No. 16-36. The decision details the factors that were taken into consideration by the NYSLA when

rendering its decision to deny plaintiffs’ application. The decision highlighted that when evaluating whether the public convenience and advantage would be served by issuing the license, the NYSLA considers “whether the area is adequately served by the existing package stores.”⁴ As part of the review, “the Authority considers, among other things, the sales figures of the existing licensees over the last several years, increase or decreases in the population of changes to the community’s demographics, as well as whether the applicant will offer goods or services not readily available at the existing stores.” Id. at 1. With respect to the location of the store proposed by the plaintiffs, the NYSLA found that there were six other package stores currently operating within fifteen miles from the proposed site. Id. In fact, the two closest stores were located within the Town of Seneca Falls and were one mile and two and a half miles away. Id. Significantly, both stores protested plaintiffs’ application and argued that the existing stores already adequately served the area. Id. In fact, two of the closest package stores are already located on the Nation’s reserved land. Id. Additionally, the NYSLA considered that the protesting stores pointed out that that area had a saturated market given a declining population. Id.

The NYSLA’s decision noted that at the Full Board meeting on October 29, 2025, plaintiffs’ counsel confirmed that the proposed store had “no distinguishable business plan,” demonstrating that the proposed store does not offer anything unique that would distinguish it from other stores, such as educational offering, tastings, or unique products. Id. at 3. The decision mentioned that plaintiffs’ counsel stated the store would not necessarily sell any of the wines in the region or other alcoholic beverages manufactured in New York and would not commit to selling a specific percentage of New York State products. Id. Plaintiffs’ counsel further refused to stipulate to not making a request in the future to expand the location’s size. Id.

⁴ Plaintiffs applied for a “package store” license. See gen., ECF No. 16-2.

Ultimately, the NYSLA denied plaintiffs’ application. Citing ABCL §2, the NYSLA noted that there is a dual mandate “for the Authority to regulate and control the manufacture, sale and distribution of alcoholic beverages and, to the extent possible, support economic growth, job development, and the state's alcoholic beverage production industries. The applicant expressed no interest in providing to customers a product mix that included wines from the Finger Lakes region or other New York State liquor or wines or providing tastings or any educational offerings at the proposed location. The proximity of the closest stores and their stagnant or declining sales also confirms there is not a demand or need for an additional liquor store in the geographic area.” *Id.* at 3.

3. New York State Authority To Regulate Plaintiffs’ Liquor Sales Is Not Preempted by Federal Law

“Section 1161 of Title 18 is a delegation of authority to the state to regulate tribal liquor sales, not a preemption in favor of the tribes.” Squaxin Island Tribe v. State of Wash., 781 F.2d 715, 719–20 (9th Cir. 1986) (citing Rice, 463 U.S. at 726). “Congress did not intend to make tribal members ‘supercitizens’ who could trade in a traditionally regulated substance free from all but self-imposed regulations.” *Id.*, citing Rice, 463 U.S. at 734).

While plaintiffs assert broadly that the defendants’ decision to deny their application violated § 1161, plaintiffs fail to cite to any particular subdivision or particular provision within the statute that enables it to enforce these rights by way of an action in federal court. Where a statute does not explicitly do so, courts “begin with the presumption that Congress did not intend one.” Bellikoff v. Eaton Vance Corp., 481 F.3d 110, 116 (2d Cir. 2007). This presumption “places a heavy burden on the plaintiffs to demonstrate otherwise.” *Id.*, citing Olmsted v. Pruco Life Ins. Co. of N.J., 283 F.3d 429, 433 (2d Cir. 2002). When asserting a statutory right, the statute must allow for a private cause of action regardless of whether a plaintiff seeks declaratory and injunctive

relief. See Boylan v. Sogou Inc., No. 21 CIV. 2041 (PGG), 2021 WL 4198254, at *12 (S.D.N.Y. Sept. 13, 2021).

It should be noted that plaintiffs easily could have appealed the decision of the NYSLA in a proceeding pursuant to New York Civil Practice Law and Rules Article 78 (and are still within the applicable statute of limitations to do so), but perhaps declined to bring such an action because their petition would undoubtedly have been denied. As discussed above, it is well settled that ABCL § 2 provides that when determining an application for a liquor license, the NYSLA must consider “whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby.” See White Plains Fine Wine & Spirits LLC., 184 A.D.3d at 1069–71. “‘Public convenience’ necessarily refers to the accessibility of stores and involves considerations of distance, overcrowding of present facilities, etc.,” while “[p]ublic advantage’ is a broader term which brings into play social and similar problems, and involves the [s]tate’s general policy as to the sale of alcoholic beverages for off-premises consumption.” Id., citing Matter of Forman, 17 NY2d at 230. Notably, the NYSLA is “vested with broad discretion to determine an application for a liquor license.” Id., citing Matter of Pizzaguy Holdings, LLC v New York State Liq. Auth., 39 AD3d 1072, 1074 (2007); see also Matter of Stanwood Pub v New York State Liq. Auth., 82 AD2d 865, 865 (1981); see generally ABCL § 17(1). Courts are “required to sustain [its] determination unless it is arbitrary or capricious, an abuse of discretion or otherwise lacks a rational basis.” Id., citing Matter of Pizzaguy Holdings, LLC, 39 AD3d at 1073; see also Matter of BarFreeBedford v New York State Liq. Auth., 130 AD3d 71, 77-78 (2015).

In White Plains Fine Wine, supra, the Third Department found that the NYSLA’s decision to deny petitioners’ liquor license application “was not arbitrary, capricious or irrational.” Id. The

NYSLA had reasoned that the existing package stores in Westchester County were “sufficiently addressing the needs of consumers in the immediate area,” “that there was no demonstrated increase in demand for alcoholic beverages in Westchester County and that there was no basis upon which to conclude, as petitioner claimed, that the proposed store would be a regional destination.” Id. Further, evidence demonstrated only a small increase in population in Westchester County in the preceding eight years, “that there were more than 200 existing package stores in Westchester County (40 of which were within five miles of the proposed location and 50 of which were within a 10-minute drive of the proposed location)” and that there had been a recent downward trend in the gross annual sales of nearby package stores. Id.

Notably, even though the petitioner’s proposed store had committed to carrying a large variety of regional products, the Third Department found that the NYSLA reasonably concluded that the existing package stores in Westchester County, “taken together, [were] offering all the products and services that are sought by consumers in th[e] area.” Id. The Appellate Court further found that the NYSLA rationally concluded that, because the area was already being served by the three nearly identical stores, the addition of petitioner’s proposed store would not add to public convenience and advantage. While the petitioner argued that the NYSLA’s determination was based in part upon improper justifications, the Third Department was not “convinced that the alleged improper justifications contributed to or formed a basis for the SLA’s denial of petitioner’s application.” Id. at 1070. And even if the court “were to agree that the SLA’s determination was in fact partially based upon the improper justifications alleged by petitioner, we would find that any such consideration would not warrant annulment of the SLA’s determination, as the SLA invoked numerous other rational and proper justifications for its denial of petitioner’s application.” Id. (citing cases).

In sum, defendants' authority to regulate plaintiffs' liquor sales is *not* preempted by federal law. For the reasons stated above, plaintiffs' § 1161 claim should be dismissed.

B. Ex Parte Young Bars Plaintiffs' 18 U.S.C. § 1161 Claim

Plaintiffs cannot proceed with its action pursuant to § 1161 against the defendants in federal court because the Eleventh Amendment renders them immune from suit. The Eleventh Amendment provides that the "Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Indeed, the Eleventh Amendment to the United States Constitution immunizes the states, their agencies, and their officials acting in their official capacities from suits for damages except where a state has waived its immunity. Daly v. Town of DeWitt, No. 6:18-CV-845, 2019 WL 4170162, at *3–4 (N.D.N.Y. Sept. 2, 2019) (citing Morris v. N.Y. State Police, 268 F. Supp. 3d 342, 359 (N.D.N.Y. 2017)). "It is well settled that suits against state agencies and state officers acting in their official capacities are functionally equivalent to suits against the State." Sale v. Miranda, 830 Fed. Appx. 341, 346-47 (2d Cir. 2020), cert. denied, 141 S. Ct. 2643 (2021) (citing Pennhurst, 465 U.S. at 100-02).

When the State or an arm of the State, i.e., an agency or office of state government, is the defendant, sovereign immunity generally bars federal lawsuits against them *regardless of relief sought*. N.Y. State Corr. Officers & Police Benev. Ass'n v. New York, 911 F. Supp. 2d 111, 124 (N.D.N.Y. 2012) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984)). The NYSLA is a state agency for the purposes of the Eleventh Amendment. Cloister E., Inc. v. New York State Liquor Auth., 563 F. Supp. 3d 90, 102 (S.D.N.Y. 2021) (citing Tessler v. Paterson,

768 F. Supp. 2d 661, 672 (S.D.N.Y. 2011) (The Eleventh Amendment bars claims against the Division of Alcoholic Beverage Control, a/k/a the New York State Liquor Authority)).

The Eleventh Amendment does not bar suit against a state in federal court if: (1) a state waives its immunity; (2) Congress clearly abrogates state sovereign immunity; or (3) the suit is against a state official and seeks prospective relief. Unkechaug Indian Nation v. N.Y. State Dep't of Env't Conservation, 677 F. Supp. 3d 137, 147 (E.D.N.Y. 2023) (citing Va. Office for Protection & Advocacy v. Stewart, 563 U.S. 247, 254-55 (2011)); see also Lapides v. Bd. of Regents, 535 U.S. 613, 619 (2002). None of these exceptions apply here.

1. The NYSLA Is Immune from Suit for Any of the Relief Requested

a. The NYSLA is an arm of the State and has not consented to suit in federal court

Here, plaintiffs name the NYSLA as a defendant and seek to bind the NYSLA with a declaratory judgment and an injunction. However, plaintiffs cannot do so because the NYSLA is an arm of the State, as the Northern District of New York has already recognized in applying sovereign immunity to dismiss claims against it. See Cloister E., Inc., 563 F. Supp. 3d at 102; 333 E. 60th St., Inc. v. New York State Liquor Auth., No. 08 CIV. 4147 (RJS), 2008 WL 4104012, at *3 (S.D.N.Y. Aug. 29, 2008). New York has not expressly waived its sovereign immunity with respect to plaintiffs' § 1161 claim asserted in the SAC, and plaintiffs' SAC is silent on this point. As noted supra, it does not matter that plaintiffs do not ask the Court for damages. As an arm of the State, the NYSLA is equally entitled to sovereign immunity on claims for declaratory and injunctive relief and plaintiffs' § 1161 claim against it should be dismissed. See N.Y. State Corr. Officers & Police Benev. Ass'n, 911 F. Supp. 2d at 124 (regardless of type of relief sought (injunctive, declaratory or damages), Eleventh Amendment barred jurisdiction over claims asserted against State of New York and its agencies).

b. Congress did not abrogate state sovereign immunity

Congress has not expressly abrogated New York's sovereign immunity from suit by acting pursuant to a grant of constitutional authority for § 1161 claims. Plaintiffs' SAC is silent on this point as well.

2. The NYSLA Chair and Commissioners Are Not Proper Defendants

Plaintiffs cannot evade the reach of the Eleventh Amendment by naming the NYSLA Chair and Commissioners as defendants in their official capacities and assert against them the § 1161 claim that plaintiffs are barred from asserting against an arm of the State. Furthermore, the Chair and Commissioner defendants cannot be sued for a declaration of past unlawful activity.

a. The Claims Against the Chair and Commissioner Defendants Must be Dismissed Because Plaintiffs Are Seeking Retrospective Relief

Even if plaintiffs could rely on Ex parte Young to sue the Chair and Commissioner defendants in their official capacities, plaintiffs' § 1161 claim would still fail, because the relief requested is overbroad. As noted supra, the Ex parte Young legal fiction applies only to claims for prospective relief. The inverse is that the Eleventh Amendment bars federal courts from issuing retrospective declaratory relief against state officials for past violations of federal law. Szymonik v. Connecticut, 807 F. App'x 97, 101 (2d Cir. 2020) ("The Eleventh Amendment bars federal courts from issuing retrospective declaratory relief against state officials for past violations of federal law.").

Plaintiffs' SAC contends that they were denied a liquor license application following a Full Board meeting held on October 29, 2025. ECF No. 16 ¶ 95. Plaintiffs are requesting declaratory and injunctive relief for an event that has already occurred and their SAC reflects that. Consequently, "[a]ny declaration could say no more than that [defendants] had violated federal law in the past," a form of relief that is unavailable in federal court against state actors sued in their

official capacities. Ward v. Thomas, 207 F.3d 114, 120 (2d Cir. 2000); see also Clark v. Dinapoli, 510 F. App'x 49, 51 (2d Cir. 2013) (summary order) (holding that request for injunctive and declaratory relief for due process violations stemming from a retirement benefits hearing did not fall within *Ex Parte Young*); Doe v. Haas, 427 F. Supp. 3d 336, 347-48 (E.D.N.Y. 2019) (finding that student's discrimination complaint arising from a disciplinary hearing only sought retroactive relief where it sought a declaration that school violated student's due process rights and rights to be free from gender discrimination, and requested an injunction requiring information regarding the disciplinary proceeding to be removed from his record and transcript); Trapani v. Dagostino, No. 9:18-CV-0805 (DNH/CFH), 2019 WL 1054717, at *2 (N.D.N.Y. Mar. 6, 2019) (characterizing relief as retrospective where plaintiff merely sought a declaration that prosecutor's statements to grand jury violated his First and Fourth Amendment rights); Riccio v. Examsoft Worldwide, Inc., 794 F. Supp. 3d 73, 96 (D. Conn. 2025) (plaintiff sought retrospective relief where she sought reconsideration of the Connecticut Bar Examining Committee's decision concluding that she was not successful on the Connecticut Bar Exam); Cloister E., Inc., 563 F. Supp. 3d at 104 (holding that "this Court cannot avoid the conclusion that, for this particular plaintiff, there no longer is any ongoing violation which realistically could be remedied by injunctive relief staying the Suspension Order").

Plaintiffs attempt to sidestep this flaw by asserting that plaintiffs "reasonably anticipate that any future license applications submitted by the Nation or its entities will be subject to the same discriminatory and unlawful licensing regime, unless enjoined by this Court." ECF No. 16 ¶ 117.⁵ As an initial matter, to the extent that plaintiffs seek an injunction directing defendants to refrain from misconduct or other wrongdoing in the future (often referred to as "obey the law

⁵ Notably, plaintiffs admittedly already hold two active NYSLA-issued licenses to sell alcohol on Reservation Land at convenience stores, which undercuts their speculation. See ECF No. 16 ¶ 112; ECF No. 16-2 at 19.

injunctions"), because these "injunctions are vague, do not require defendants to do anything more than that already imposed by the law, subject the defendants to contempt rather than statutorily prescribed sanctions, and are not readily capable of enforcement," these injunctions "are not favored." See Burrell v. DOCCS, 655 F. Supp. 3d 112, 134 (N.D.N.Y. 2023) (citing Rowe v. N.Y.S. Div. of Budget, No. 11-CV-1150, 2012 WL 4092856, at *7 (N.D.N.Y. Sept. 12, 2012) (citing N.L.R.B. v. Express Pub. Co., 312 U.S. 426, 435–36 (1941))).

Regardless, in Ward v. Thomas, the Second Circuit rejected a similar attempt "to blur the distinction between prospective and retrospective relief." 207 F.3d 114, 119 (2d Cir. 2000). As in Ward, any violations of federal law alleged against the Chair and Commissioner defendants have already occurred, regardless of whether plaintiffs' describe the violations as ongoing or whether plaintiffs speculate that similar violations will happen in the future. In Oliveira v. Schwartz, No. 23-CV-07427 (PMH), 2025 WL 343609, at *5 (S.D.N.Y. Jan. 30, 2025), the plaintiff requested a declaration that a judge's firearm application decision, New York State's firearm licensing scheme, and the related disclosure requirements violated the Constitution. The Court held that plaintiff's requests were retrospective in nature because he did not allege that he had any firearm applications pending before that particular judge to which the licensing scheme would be applied in the future. Accordingly, the Court held, plaintiff's claims for declaratory relief were not properly characterized as "prospective" and did not warrant application of the Ex parte Young exception. See also Brokamp, 573 F. Supp. 3d at 708 ("[Declaratory] relief will not satisfy the second prong of the Ex parte Young analysis when it would serve to declare only past actions in violation of federal law."), aff'd, 66 F.4th 374 (2d Cir. 2023).

An injunction here would in substance reverse the NYSLA's prior determination as to plaintiffs' specific liquor license application. In other words, an injunction with respect to the

license application decision is nothing less than the annulment of the application determination on the ground that the Chair and Commissioners misapplied the law in the past. Using plaintiffs' logic, this would mean that any agency determination is an ongoing violation of federal law and federal courts would become *de facto* guardians of state administrative law. Because plaintiffs' claims for both declaratory and injunctive relief rest on the premise that the Chair and Commissioners "had violated federal law in the past," they seek retrospective relief that the Eleventh Amendment renders unavailable in federal court. Ward, 207 F.3d at 120; see also, e.g., Constantino-Gleason v. Unified Ct. Sys., No. 21-CV-6327 (JLS), 2023 WL 4052302, at *8 (W.D.N.Y. June 16, 2023).

For the reasons stated above, plaintiffs' § 1161 claim should be dismissed.

POINT II: PLAINTIFFS' 42 U.S.C. § 1983 CLAIM SHOULD BE DISMISSED

Plaintiffs' SAC alleges that defendants violated their Fourteenth Amendment right to equal protection pursuant to 42 U.S.C. § 1983 and that they are entitled to declaratory and injunctive relief to prevent further violations of their rights. ECF No. 16 at ¶¶ 107-118. Plaintiffs cannot proceed with their Section 1983 action against the defendants in federal court because the Eleventh Amendment renders defendants immune from suit and, in the alternative, the SAC fails to state a cause of action.

A. The NYSLA Is Immune From Suit For Any Of The Relief Requested

1. The NYSLA is an arm of the State and has not consented to suit in federal court

As discussed above under Point I (B)(1)(a), plaintiffs name the NYSLA as a defendant and seek to bind the NYSLA with a declaratory judgment and an injunction. However, plaintiffs cannot do so because the NYSLA is an arm of the State, as the Northern District of New York has already recognized in applying sovereign immunity to dismiss claims against it. See Cloister E., Inc., 563 F. Supp. 3d at 102; 333 E. 60th St., Inc., 2008 WL 4104012 at *3. New York has not expressly

waived its sovereign immunity with respect to the Section 1983 claim asserted in the SAC. Indeed, it is well-established that New York has not consented to § 1983 lawsuits in federal court. See Sanders v. New York State, No. 5:24-CV-1432 (ECC/TWD), 2025 WL 2645541, at *2 (N.D.N.Y. Sept. 15, 2025); Kellogg v. Nichols, 703 F. Supp. 3d 367, 373 (N.D.N.Y. 2023); Mamot v. Bd. of Regents, 367 Fed.Appx. 191, 192 (2d Cir. 2010). As noted supra, it does not matter that plaintiffs do not ask the Court for damages. As an arm of the State, the NYSLA is equally entitled to sovereign immunity on claims for declaratory and injunctive relief and therefore should be dismissed from the action. See N.Y. State Corr. Officers & Police Benev. Ass’n, 911 F. Supp. 2d at 124.

2. Congress did not abrogate state sovereign immunity

Congress has not abrogated New York's sovereign immunity from suit by acting pursuant to a grant of constitutional authority for Section 1983 claims. See Sanders, No. 5:24-CV-1432 (ECC/TWD), 2025 WL 2645541 at *2 (citing Dube v. State Univ. of New York, 900 F.2d 587, 594 (2d Cir. 1990); Sierotowicz v. N.Y. Div. of Hous. & Cmty. Renewal, No. 04-CV-3886, 2005 WL 1397950, at *1 (E.D.N.Y. June 14, 2005) (holding that 42 U.S.C. § 1983, 28 U.S.C. § 1343, and 28 U.S.C. § 1331 do not abrogate New York's Eleventh Amendment sovereign immunity).

B. The NYSLA Chair and Commissioners Are Not Proper Defendants

Plaintiffs cannot evade the reach of the Eleventh Amendment by naming the NYSLA Chair and Commissioners as defendants in their official capacities and assert against them the Section 1983 claims that plaintiffs are barred from asserting against an arm of the State. Furthermore, the Chair and Commissioner defendants cannot be sued for a declaration of past unlawful activity.

1. The Claims Against the Chair and Commissioner Defendants Must be Dismissed Because Plaintiffs Are Seeking Retrospective Relief

Even if plaintiffs could rely on Ex parte Young to sue the Chair and Commissioner defendants in their official capacities, plaintiffs' Section 1983 claims would still fail, because they seek retrospective relief, for the reasons previously discussed under Point I(B)(2)(1), supra.

C. Plaintiffs Fail to State a Cause of Action Under the Equal Protection Clause of the Fourteenth Amendment

Finally, even if plaintiffs' Section 1983 Fourteenth Amendment claim was not barred by the Eleventh Amendment, their claim still must fail. The Equal Protection Clause of the Fourteenth Amendment provides that a state may not "deny to any person within its jurisdiction the equal protection of the laws." Does 1-2 v. Hochul, No. 21CV5067AMDTAM, 2022 WL 4637843, at *14 (E.D.N.Y. Sept. 30, 2022) (citing U.S. CONST. amend. XIV, § 1). It therefore "requires that the government treat all similarly situated people alike." Id. citing Harlen Assocs. v. Incorporated Village of Mineola, 273 F.3d 494, 499 (2d Cir. 2001). In order to establish a claim of selective enforcement under the Equal Protection Clause, a plaintiff must plausibly allege that "compared with others similarly situated, [it] was selectively treated[,] and ... that such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person." In the Matter of the Application of Hampshire Recreation, LLC v. Vill. of Mamaroneck, No. 14-CV-7228 (CS), 2016 WL 1181727, at *6 (S.D.N.Y. Mar. 25, 2016), aff'd sub nom. Hampshire Recreation, LLC v. The Vill. of Mamaroneck, 664 F. App'x 98 (2d Cir. 2016) (citing LaTrieste Rest. & Cabaret Inc. v. Vill. of Port Chester, 40 F.3d 587, 590 (2d Cir. 1994) (internal citation marks omitted)). Such a claim requires pleading "more than selectivity in enforcement; it requires selective enforcement based on impermissibly discriminatory or malicious reasons." Id., citing Gray v. Town of Easton,

115 F. Supp. 3d 312, 320 (D. Conn. 2015). To state a viable claim, a plaintiff must plausibly show that it was “treated differently compared to others similarly situated.” *Id.*, citing Church of Am. Knights of the Ku Klux Klan v. Kerik, 356 F.3d 197, 210 (2d Cir. 2004). In selective enforcement cases, plaintiffs must, at a minimum, plausibly allege comparators that are “similarly situated in all material respects.” *Id.*, citing Sharpe v. City of N.Y., No. 11-CV-5494, 2013 WL 2356063, at *4 (E.D.N.Y. May 29, 2013) (internal quotation marks omitted), aff’d, 560 F. App’x 78 (2d Cir. 2014).

Here, plaintiffs’ SAC asserts in conclusory fashion that “[i]n reviewing the Nation’s license application, Defendants relied on vague and subjective licensing⁶ criteria not imposed on similarly situated non-Indian applicants.” ECF No. 16 ¶ 111. Plaintiffs provide no further detail and fail to point to any “similarly situated persons” who have been treated differently. Plaintiffs further fail to plausibly allege that any other alleged comparators were similarly situated in all material respects. Since there is no plausible claim of differential treatment, plaintiffs’ Equal Protection claim must fail.⁷

For the reasons stated above, plaintiffs’ Section 1983 claim should be dismissed.

POINT III: PLAINTIFFS’ 42 U.S.C. § 1981 CLAIM SHOULD BE DISMISSED

⁶ Notably, the criteria plaintiffs allege are “vague and subjective,” are set forth in New York State Law. See ABCL § 63. Plaintiffs fail to challenge this statute, and the time for bringing a statutory challenge has obviously long since passed. See, id., L 1934, ch 478, § 1, eff July 1, 1934; amd, L 1946, ch 179, eff March 22, 1946; L 1965, ch 1024, eff July 20, 1965; L 1973, ch 372; L 1984, ch 450, § 1; L 1988, ch 55, § 1; L 1988, ch 518, § 1; L 1989, ch 665, § 1; L 1990, ch 282, § 1, eff July 24, 1990; L 1991, ch 730 § 1, eff Dec 5, 1991; L 1992, ch 603, § 1, eff July 24, 1992; L 1994, ch 361, § 12, eff July 20, 1994; L 1995, ch 357, § 2, eff Dec 1, 1995, expired and repealed Jan 1, 1997; L 1995, ch 358, § 2, eff Dec 1, 1995, expired and repealed Jan 1, 1997; L 1998, ch 237, § 2, eff Sept 1, 1998, expired and repealed Jan 31, 2000; L 2003, ch 686, §§ 1, 4 (Part U), eff Oct 21, 2003; L 2004, ch 60, §§ 3, 6 (Part K), eff Aug 20, 2004; L 2016, ch 297, § 6, effective November 6, 2016; L 2017, ch 360, §§ 1, 2, effective October 23, 2017; L 2019, ch 58, § 3 (Part H), effective March 1, 2020; L 2023, ch 526, § 3, effective January 11, 2024; L 2024, ch 24, § 3, effective January 11, 2024.

⁷ Plaintiffs admittedly already hold two active NYSLA-issued licenses to sell alcohol on Reservation Land at convenience stores, see ECF No. 16 ¶ 112; ECF No. 16-2 at 19, which undercuts any claim that they have been treated differently than similarly situated non-Indian applicants.

Plaintiffs' SAC asserts that defendants imposed burdens on the Nation that were not imposed on similarly situated white or non-Indian applicants. ECF No. 16 ¶ 124. Consequently, plaintiffs allege, defendants violated their rights under 42 U.S.C. § 1981 by obstructing their ability to enter into the same contractual or licensing relationship available to non-Indian applicants. Id. ¶ 126. Plaintiffs request declaratory and injunctive relief to remedy "this unlawful interference." Id. ¶ 128.

Plaintiffs' Section 1981 claims against the NYSLA and the defendants Chair and Commissioners are barred because the Eleventh Amendment renders them immune from suit for the same reasons stated above under Points I and II, supra. Plaintiffs name as a defendant the NYSLA and seeks to bind the NYSLA with a declaratory judgment and an injunction. Specifically with respect to 42 U.S.C. § 1981, Congress has not passed any statutes abrogating New York's immunity. See Jennings v. Suny Health Sci. Ctr. at Brooklyn (Downstate Med. Ctr.), 201 F. Supp. 3d 332, 335 (E.D.N.Y. 2016) (citing Moore v. New York State Div. of Parole, No. 06 Civ. 1973 CPS (JO), 2008 WL 4394677, at *7 (E.D.N.Y. Sept. 23, 2008) ("Congress, in enacting § 1981 did not override New York State's Eleventh Amendment immunity."); Weems v. New York, No. 6:23-CV-6305 EAW, 2024 WL 4150397, at *4 (W.D.N.Y. Sept. 10, 2024) (plaintiff's Section 1981 claims against CUNY and Defendants in their official capacities are also dismissed because 'Congress did not abrogate states' sovereign immunity for 42 U.S.C. §1981 nor has New York waived immunity for those claims.' ").

Additionally, plaintiffs seek retrospective relief, which is barred by the Eleventh Amendment, as discussed above under Point I and Point II, supra. Indeed, plaintiffs' SAC asserts that as a result of the Full Board's decision, "the Nation has been deprived of equal participation in the State's liquor licensing regime and denied the opportunity to operate a liquor store on its

own territory...” ECF No. 16 ¶ 127. Plaintiffs’ SAC clearly seeks retrospective relief for the decision rendered by the Chair and Commissioner defendants, not prospective relief. Plaintiffs cannot make an “end run around the Eleventh Amendment[]” by seeking a declaration or an injunction based solely on past violations of federal law. Idlibi v. Burgdorff, No. 23-7384, 2024 WL 3199522, at *3 (2d Cir. June 27, 2024), cert. denied, 145 S. Ct. 547, 220 L. Ed. 2d 205 (2024) (citing Ward, 207 F.3d at 120). Accordingly, this claim should be dismissed.

POINT IV: PLAINTIFFS’ 42 U.S.C. § 1985 CLAIM SHOULD BE DISMISSED

Plaintiffs allege that the Chair and Commissioner defendants conspired in violation of 42 U.S.C. § 1985(3) to “obstruct, delay and ultimately deny the Nation’s application for a liquor license on discriminatory and pretextual grounds.” ECF No. 16 ¶ 132. Consequently, plaintiffs contend, they are entitled to declaratory and injunctive relief. Id. ¶ 136. 42 U.S.C. § 1985(3) prohibits two or more persons from conspiring for the purpose of depriving any person of the equal protection of the laws or of equal privileges and immunities under the laws. To adequately plead a claim under § 1985(3), a plaintiff must allege “(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws; [and] (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right of a citizen of the United States.” Grossman v. Von Blackensee, No. 19-CV-9191 (NSR), 2025 WL 563931, at *7 (S.D.N.Y. Feb. 19, 2025) (citing Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993). Furthermore, “[t]he conspiracy must also be ‘motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus.’” Id., citing Dolan v. Connolly, 794 F.3d 290, 296 (2d Cir. 2015) (quoting Cine SK8, Inc. v. Town of Henrietta, 507 F.3d 778, 791 (2d Cir. 2007)).

Here, plaintiffs’ SAC alleges that the Chair and Commissioner defendants conspired through “shared discussions, coordinated actions, and mutually reinforcing decisions” such as “jointly demanding a personal appearance from a Nation principal despite no statutory requirement, repeatedly adjourning the Nation’s application without justification, deferring or withholding votes, and applying vague and subjective criteria in a way that protected non-Indian competitors” to deprive plaintiffs of the equal access to a liquor license. ECF No. 16 ¶ 133.

“In order to maintain an action under Section 1985, a plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end.” Webb v. Goord, 340 F.3d 105, 110 (2d Cir. 2003) (internal quotation marks and citations omitted). Indeed, “[t]o survive a motion to dismiss, plaintiff must include some facts in his complaint tending to show that defendants acted in a willful manner, culminating in an agreement, understanding or meeting of the minds, that violated his rights, privileges, or immunities secured by the Constitution or federal courts.” Mihalitsas v. Howard, 102 F. Supp. 3d 471, 476 (W.D.N.Y. 2015) (citing Keitt v. Schun, 2014 WL 347053, at *4 (W.D.N.Y. 2014)). “A complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights must be dismissed.” Does 1-2, No. 21CV5067AMDTAM, 2022 WL 4637843 at *18. Plaintiffs’ general allegations that the Chair and Commissioner defendants acted in concert, without more, does not give rise to the inference that they agreed to engage in *unlawful conduct* against plaintiffs. See Walker v. O’Connor, No. 22 Civ. 581, 2022 WL 2341420, at *5 (N.D.N.Y. June 29, 2022).

But even if plaintiffs *had* properly pled a Section 1985 claim, their claim would fail under the intra-corporate conspiracy doctrine. Pursuant to this doctrine, “there is no conspiracy if the conspiratorial conduct challenged is essentially a ‘single act by a single corporation acting

exclusively through its own directors, officers, and employees, each acting within the scope of his employment.”” Minto v. Molloy Coll., 2021 WL 1394329, at *11–12 (E.D.N.Y. 2021), report and recommendation adopted, 2021 WL 804386 (E.D.N.Y. 2021) (citing Miranda v. S. Country Cent. Sch. Dist., 461 F. Supp. 3d 17, 27-28 (E.D.N.Y. 2020), reconsideration denied, 2020 WL 4287165 (E.D.N.Y. 2020); Williams v. County of Nassau, 2017 WL 1216566, at *6 (E.D.N.Y. 2017).

Where all alleged co-conspirators are employed by the same government entity, as they are in the instant matter, the intra-corporate conspiracy doctrine precludes a conspiracy claim. See Murphy v. City of Stamford, 634 F. App'x 804, 805 (2d Cir. 2015) (conspiracy claim barred where the defendants were employees or agents of Stamford, the alleged conspiratorial activities pertained to and were motivated by the defendants' respective public duties, and all of the alleged discriminatory conduct pertains to a single act); Grossman, No. 19-CV-9191 (NSR), 2025 WL 563931 at *8 (the intra-corporate conspiracy doctrine precluded plaintiff's Section 1985 conspiracy claim where defendants were all employed at a federal detention facility); Rolkiewicz v. City of New York, 442 F. Supp. 3d 627, 648 (S.D.N.Y. 2020) (quoting Ali v. Connick, 136 F. Supp. 3d 270, 282 (E.D.N.Y. 2015)); Trombley v. O'Neill, 929 F. Supp. 2d 81, 97 (N.D.N.Y. 2013).

This doctrine applies where, as here, the officers and employees are alleged to have been acting within the scope of their employment. See Nassau County Employee “L” v. County of Nassau, 345 F.Supp.2d 293, 304 (E.D.N.Y.2004); Caidor v. M&T Bank, 2006 WL 839547, at *12 (N.D.N.Y. 2006). Even if plaintiffs had properly pled their Section 1985 claim, plaintiffs would essentially be contending that the State of New York and its employees conspired amongst themselves, which is prohibited under the intra-corporate conspiracy doctrine.

Lastly, even if plaintiffs' claim was not prohibited under the intra-corporate conspiracy doctrine, it would be barred by the Eleventh Amendment. Congress has not abrogated state

sovereign immunity with respect to 42 U.S.C. § 1985, see Foy v. New York State Unified Ct. Sys., 740 F. Supp. 3d 136, 146–47 (E.D.N.Y. 2024), appeal dismissed, No. 24-2242, 2025 WL 2470039 (2d Cir. Mar. 12, 2025) (citing Allah v. City of N.Y., No. 15-cv-6852 (CBA), 2016 WL 676394, at *3 (E.D.N.Y. Feb. 17, 2016) (Sections 1983, 1985, and 1986), Murawski v. N.Y. State Bd. of Elections, 285 F. Supp. 3d 691, 696 (S.D.N.Y. 2018) (Sections 1985 and 1986), and plaintiffs seek retrospective relief, as discussed above under Points, I and II, supra. For the reasons stated above, plaintiffs’ claim pursuant to 42 U.S.C. § 1985 must be dismissed.

POINT V: PLAINTIFFS’ CLAIMS BROUGHT PURSUANT TO ARTICLE 1, SECTION 11 OF THE NEW YORK STATE CONSTITUTION SHOULD BE DISMISSED

Plaintiffs’ SAC alleges that all defendants violated Section 11, Article 1 of the New York Constitution, which guarantees that no person shall be denied the equal protection of the laws of New York State. See ECF No. 16 ¶ 138. Plaintiffs assert they are entitled to declaratory and injunctive relief as a result. Id. ¶ 144. However, it is well-established that “[t]he Eleventh Amendment bars federal suits against state officials on the basis of state law.” Emmons v. City Univ. of New York, 715 F. Supp. 2d 394, 419 (E.D.N.Y. 2010), modified (July 2, 2010) (dismissing plaintiff’s state law human rights law claims and common law claims) (citing Carvel v. Cuomo, 357 Fed.Appx. 382, 383 (2d Cir.2009) (quotation omitted)); see also Pennhurst, 465 U.S. at 106 (1984).

Significantly, federal courts unequivocally may not grant declaratory or injunctive relief against a state agency based on violations of state law. Bad Frog Brewery, Inc., 134 F.3d at 93 (citing Pennhurst, 465 U.S. at 106); see also Monserrate v. N.Y. State Senate, 695 F. Supp. 2d 80, 97 (S.D.N.Y. 2010) (“It is well settled that federal courts may not grant declaratory or injunctive relief against a state agency based on violations of state law.”) (quotation marks omitted). In

accordance with the well-established law cited above, plaintiffs' claim brought under Section 11, Article 1 of the New York State Constitution against the NYSLA is barred.

Additionally, plaintiffs' claims against the Chair and Commissioner defendants in their official capacities pursuant Section 11, Article 1 of the New York Constitution must also fail because "a federal court's grant of injunctive relief against a state official may *not* be based on violations of state law." Bonaffini v. City Univ. of New York, No. 20-CV-5118 (BMC), 2021 WL 2895688, at *2 (E.D.N.Y. July 9, 2021) (emphasis added) (citing Dube, 900 F.2d at 595); see also De Figueroa v. New York, 403 F. Supp. 3d 133, 152 (E.D.N.Y. 2019) (A federal court may not grant declaratory or injunctive relief against state officials, based on state law, for actions taken within the scope of the officials' authority); (quoting Bad Frog Brewery, Inc., 134 F.3d at 93, aff'd, 599 F.3d 148 (2d Cir. 2010)); Hughes ex rel. David v. Cuomo, 862 F. Supp. 34, 38 (W.D.N.Y. 1994) (finding that injunctive and declaratory relief based on alleged violations of state law against various state defendants was not available in federal court).

In Pennhurst State School & Hospital v. Halderman, 465 U.S. at 106, the Supreme Court held that "[a] federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law.... Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment." See also Fishman v. Daines, 743 F. Supp. 2d 127, 139 (E.D.N.Y. 2010) (dismissing plaintiff's claims brought pursuant to the New York State Constitution and New York State Social Services Law as barred by the Eleventh Amendment); Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. New York, No. 19-CV-11285 (KMK), 2020 WL 5667181, at *8 (S.D.N.Y. Sept. 23, 2020). The Ex parte Young exception does not apply to claims under state law. See Siani v. State Univ. of New York at Farmingdale, 7 F. Supp. 3d 304, 319–20 (E.D.N.Y. 2014) (citing Chinn v. City Univ.

of N.Y. Sch. of Law at Queens Coll., 963 F.Supp. 218, 227 (E.D.N.Y.1997) (“Whereas a federal court may award injunctive relief against a state official in an official-capacity action based on the Ex Parte Young ‘exception,’ the Eleventh Amendment bars even prospective injunctive relief based on violations of state law.”) (citing Pennhurst, 465 U.S. at 106). For the reasons discussed above, plaintiffs’ claim pursuant to Section 11, Article 1 of the New York Constitution, should be dismissed.⁸

POINT VI: PLAINTIFFS’ CLAIMS PURSUANT TO NEW YORK EXECUTIVE LAW § 296(1)(a) SHOULD BE DISMISSED

Plaintiffs’ SAC alleges that the NYSLA, as a licensing agency, violated plaintiffs’ rights under New York Executive Law § 296(1)(a), which makes it unlawful for a licensing agency to discriminate against any individual, or entity associated with such individuals based on race, national origin or other protected characteristics. ECF No. 16 ¶¶ 145-153. Plaintiffs demand injunctive and declaratory relief under the statute. Id. ¶ 153. As noted above under Point V, supra, federal courts unequivocally may not grant declaratory or injunctive relief against a state agency based on violations of state law. Bad Frog Brewery, Inc., 134 F.3d at 93 (citing Pennhurst, 465 U.S. at 106); see also Monserrate, 695 F. Supp. 2d at 97. The Ex parte Young exception does not apply to claims under state law. See Siani, 7 F. Supp. 3d at 319–20 (dismissing plaintiff’s NYHRL § 296(1) claims) (citing Chinn, 963 F.Supp. at 227). Consequently, plaintiffs’ claim requesting

⁸Even if this claim were not barred by sovereign immunity, plaintiffs fail to state a cause of action under this constitutional provision. “Federal courts in this circuit have [] uniformly held that no private right of action exists for violations of the New York State Constitution where the plaintiff has an alternative remedy under § 1983 for violations of parallel provisions of the U.S. Constitution.” Winnie v. Sinagra, No. 1:24-CV-00940 (BKS/PJE), 2025 WL 2391723, at *10–11 (N.D.N.Y. Aug. 18, 2025) (citing Alwan v. City of New York, 311 F. Supp. 3d 570, 586 (E.D.N.Y. 2018)). Furthermore, where as here, a plaintiff “has not identified any similarly-situated individuals with whom he was comparatively treated differently,” an equal protection claim must fail. Id., citing Facci-Brahler v. Montgomery County, 2020 WL 360873, at *3 (N.D.N.Y. Jan. 22, 2020) (holding that, “[e]ven assuming at this stage that [the p]laintiff ha[d] no alternative remedy for her equal-protection claims,” the plaintiff had not “sufficiently alleged [the d]efendants intentionally discriminated against her” nor “identified similarly-situated individuals with whom she was comparatively treated differently”).

declaratory and injunctive relief for alleged violations of New York Executive Law § 296(1)(a) is also barred and should be dismissed.

POINT VII: PLAINTIFFS' CLAIM PURSUANT TO THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION SHOULD BE DISMISSED

The Commerce Clause “vests Congress with the power to ‘regulate Commerce ... among the several States.’” Variscite NY Four, LLC v. New York State Cannabis Control Bd., 152 F.4th 47, 60 (2d Cir. 2025) (citing Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 368 (2023) (quoting U.S. Const. art. I, § 8, cl. 3)). It “not only vests Congress with the power to regulate interstate trade,” but also “contains a further, negative command, one effectively forbidding the enforcement of certain state economic regulations even when Congress has failed to legislate on the subject.” Id. (citation modified). “[B]y its own force,” the Commerce Clause “restricts state protectionism.” Id., citing Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504, 518, (2019).

Under the “dormant” Commerce Clause, “a law that clearly discriminates against interstate commerce is per se invalid unless the government has ‘no other means to advance a legitimate local purpose.’” Variscite NY Four, LLC., 152 F.4th 47 at 63 (citing Rest. L. Ctr. v. City of New York, 90 F.4th 101, 118 (2d Cir. 2024) (quotation omitted)). Discrimination “means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” N.Y. Pet Welfare Ass'n v. City of New York, 850 F.3d 79, 89 (2d Cir. 2017) (citation omitted). A law may discriminate against interstate commerce “on its face, harbor a discriminatory purpose, or discriminate in its effect.” Id. at 90.

The dormant Commerce Clause's scope is not “absolute.” Nat'l Shooting Sports Found., Inc. v. James, 144 F.4th 98, 113 (2d Cir. 2025) (citing Maine v. Taylor, 477 U.S. 131, 138 (1986)). Rather, states retain “broad power” to legislate and regulate, even in ways that may “bear adversely

upon interstate commerce.” *Id.*, citing H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 531–32 (1949). “And courts are not to wield the dormant Commerce Clause as ‘a roving license ... to decide what activities are appropriate for state and local government to undertake.’” *Id.*, citing Rest. L. Ctr., 90 F.4th at 118 (quoting Nat’l Pork Producers Council, 598 U.S. at 380 (Gorsuch, J., plurality opinion)).

Here, although not explicitly stated, it appears that plaintiffs are not asserting a facial challenge⁹ to the statutory framework empowering the NYSLA to issue or refuse to issue a liquor license, (i.e. whether public convenience and advantage will be promoted by the issuance of license) but rather an “as-applied” challenge regarding how the framework was specifically applied to them when the NYSLA denied their application. To be sure, plaintiffs’ SAC alleges that defendants applied liquor licensing criteria that discriminates against interstate commerce because the Chair and Commissioners “pressed counsel to commit the Nation to selling a specified percentage of New York-made products at its proposed store and cited the Nation’s refusal to make that commitment as a reason for denial.” ECF 16 ¶ 157. Specifically, plaintiffs contend that at the October 29th hearing, “repeatedly pressed counsel to commit the Nation to selling a specified percentage of New York-made product at its proposed store and cited the Nation’s refusal to make that commitment as a reason for denial.” ECF No. 16 ¶ 157. These actions violate the Commerce Clause of the United States Constitution, Article 1, Section 8, Clause 3 of the United States Constitution, plaintiffs contend, and as a result they are entitled to declaratory and injunctive relief as a result. *Id.* ¶¶ 155-160.

⁹ “Facial challenges are ‘disfavored for several reasons,’ not least of which being that they inevitably require decisions to be made “on the basis of factually barebones records.’” Jacoby & Meyers, LLP v. Presiding Justs. of the First, Second, Third & Fourth Departments, App. Div. of the Supreme Ct. of the State of New York, 118 F. Supp. 3d 554, 566–67 (S.D.N.Y. 2015), *aff’d sub nom. Jacoby & Meyers, LLP v. Presiding Justs. of the First, Second, Third & Fourth Departments*, App. Div. of the Supreme Ct. of New York, 852 F.3d 178 (2d Cir. 2017).

“In an as-applied challenge, the question is whether the statute was unconstitutional as applied to the facts of the case.” Vizio, Inc. v. Klee, No. 3:15-CV-00929 (VAB), 2016 WL 1305116, at *4 (D. Conn. Mar. 31, 2016) (citing Tsirelman v. Daines, 19 F. Supp. 3d 438, 447-48 (E.D.N.Y. 2014) aff’d, 794 F.3d 310 (2d Cir. 2015)). “[A] plaintiff generally cannot prevail on an *as-applied* challenge without showing that the law has in fact been (or is sufficiently likely to be) unconstitutionally *applied* to him.” Id., citing McCullen v. Coakley, 134 S. Ct. 2518, 2534 n.4 (2014). The dormant Commerce Clause prohibits laws that: (1) “clearly discriminate[] against interstate commerce in favor of intrastate commerce”; (2) violate the Pike balancing test by imposing “a burden on interstate commerce incommensurate with the local benefits secured”; or (3) “ha[ve] the practical effect of 'extraterritorial' control of commerce occurring entirely outside the boundaries of the state in question.” Id., citing Freedom Holdings, Inc. v. Spitzer, 357 F.3d 205, 216 (2d Cir. 2004).

A. Plaintiffs Failed To Plausibly Plead Clear Discrimination and Violation Of The Pike Balancing Test.

Plaintiffs’ SAC fails to plausibly plead the first two prongs of the dormant Commerce Clause analysis because it fails to allege any facts to support a reasonable inference that the applicable laws impose a disparate burden on interstate commerce. “The central issue in dormant Commerce Clause cases is whether the benefits of the state law outweigh its burdens on interstate commerce. The nature of the balancing test depends on whether the law discriminates against those outside of a state in favor of those within it or treats all alike regardless of residence.” Id. “Absent clear discrimination, however, ‘[w]here the statute 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., citing Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

Here, to provide context for the events preceding the October 29, 2025, meeting, plaintiffs' SAC indicates that on June 4, 2025, the NYSLA held a hearing to decide plaintiffs' liquor license application. ECF No. 16 ¶ 58. The NYSLA Board denied the application and on June 11, 2025, the NYSLA issued a preliminary notice of disapproval. *Id.* ¶¶ 59, 60. Plaintiffs submitted a letter on July 2, 2025, requesting that the NYSLA reconsider the application. *Id.* ¶ 61. On August 6, 2025, the NYSLA held a hearing, during which it voted to approve the request for reconsideration of its application denial. *Id.* ¶ 66. A Full Board hearing was conducted on October 29, 2025.

During the October 29, 2025, Full Board meeting, Commissioner De Leon noted that there were declining sales at nearby stores within the proximity of the location that was seeking licensure. *See* Full Board video at 14:40-15:25. Commissioner De Leon specifically questioned plaintiffs' counsel as to how those declining sales contribute to the public convenience and advantage. *Id.* at 15:25-15:29. The Board further reiterated that "to some extent, it goes to public convenience and advantage....treat everyone the same and look at the business plan, why we need another store when every neighboring store is essentially doing flat numbers..." *Id.* at 18:18-18:44.

At the conclusion of the hearing, the Board took a final vote and expressed the reason for their decision to vote in favor of denying the application. Commissioner De Leon stated that his initial denial was based on the gross sales numbers of the nearby businesses that were already established, and counsel failed to present any information at the hearing that contradicted his original decision. Further, plaintiffs did not represent that there would be anything distinguishable offered by their store in particular, such as educational services, taste testing or anything else otherwise unique to that business. Ultimately, he did not find that the public convenience and advantage would be served by granting the application. *See id.* 1:01:50-1:02:51.

Commissioner Maya also found that public convenience and advantage would not be served by granting plaintiffs' application, based on the proximity to a nearby town, Seneca Falls, and the proximity to other already established liquor store locations. See id. 1:02:51-1:03:42. Finally, Chair and Commissioner Fan agreed with the other Commissioners and voted to deny plaintiffs' application based on public convenience and advantage grounds. She noted that plaintiffs' counsel himself pointed out that the store did not have any distinguishable business plan; the applicant failed to offer any unique experience such as education or tastings and the applicant would not stipulate or commit to limiting the size of the business. Commissioner Fan highlighted that there was no growth in sales numbers for the surrounding stores—and the closest store to the proposed location was a mere one mile away. She noted that there were decreasing liquor sales across the state and no noted population growth in the area where the proposed business would be as well. See id. 1:03:42-1:05:14.

While the Commissioners inquired as to the Nation's intent to sell New York made products and whether they would commit to selling a percentage of New York made products in the store during the hearing, the Board indicated it was customary to simply encourage applicants to sell New York made products, see Full Board video at 14:03-14:37, 17:14-17:35, and the Board ultimately found that public convenience and advantage would not be promoted if the license requested were issued to the plaintiffs for the reasons that the Commissioners stated on the record, as discussed above. See Full Board video at 1:01:50-1:05:14.

A written formal decision was issued to plaintiffs on December 3, 2025. See ECF No. 16-36. The decision details the factors that were taken into consideration by the NYSLA when rendering its decision to deny plaintiffs' application. The decision highlighted that when evaluating whether the public convenience and advantage would be served by issuing the license, the NYSLA

considers “whether the area is adequately served by the existing package stores. As part of the review, the Authority considers, among other things, the sales figures of the existing licensees over the last several years, increase or decreases in the population of changes to the community’s demographics, as well as whether the applicant will offer goods or services not readily available at the existing stores.” Id. at 1. With respect to the location of the store proposed by the plaintiffs, the NYSLA found that there were six other package stores currently operating within fifteen miles from the proposed site. Id. In fact, the two closest stores were located within the Town of Seneca Falls and were one mile and two and a half miles away. Id. Significantly, both stores protested plaintiffs’ application and argued that the existing stores already adequately served the area. Id. In fact, two of the closest package stores are located on the Nation’s reserved land. Id. Additionally, the NYSLA considered that the protesting stores pointed out that that area had a saturated market given a declining population. Id.

The NYSLA’s decision noted that at the Full Board meeting on October 29, 2025, plaintiffs’ counsel confirmed that the proposed store had “no distinguishable business plan,” demonstrating that the proposed store does not offer anything unique that would distinguish it from other stores, such as educational offering, tastings, or unique products. Id. at 3. The decision mentioned that plaintiffs’ counsel stated the store would not necessarily sell any of the wines in the region or other alcoholic beverages manufactured in New York and would not commit to selling a specific percentage of New York State products. Id. Plaintiffs’ counsel further refused to stipulate to not making a request to expand the location’s size in the future. Id.

Ultimately, the NYSLA denied plaintiffs’ application. Citing ABCL §2, the NYSLA noted that there is a dual mandate “for the Authority to regulate and control the manufacture, sale and distribution of alcoholic beverages and, to the extent possible, support economic growth, job

development, and the state's alcoholic beverage production industries. The applicant expressed no interest in providing to customers a product mix that included wines from the Finger Lakes region or other New York State liquor or wines or providing tastings or any educational offerings at the proposed location. The proximity of the closest stores and their stagnant or declining sales also confirms there is not a demand or need for an additional liquor store in the geographic area.” *Id.* at 3.

Plaintiffs’ SAC fails to plausibly allege that defendants applied licensing criteria that placed any burden on interstate commerce, let alone demonstrate that the alleged burden on interstate commerce was outweighed by the benefits of the state law setting forth the statutory criteria. The NYSLA made clear that its decision was based on plaintiffs’ failure to demonstrate that granting the application would serve the public convenience and advantage—for a few reasons, including the proximity to other stores, declining sales in the region, and plaintiffs’ failure to distinguish itself from other package stores, such as offering education, tastings, or providing a product mix from the region. The decision to deny plaintiffs’ application was not based—solely or partially—on their refusal to sell a certain percentage of New York made product¹⁰.

There is no plausible inference from the SAC, or the exhibits incorporated by reference and judicial notice, that the NYSLA discriminated against anyone out of New York State in favor of those within it. “Absent clear discrimination....‘[w]here the statute 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.’” Vizio, Inc. v. Klee, No. 3:15-CV-00929 (VAB), 2016 WL

¹⁰ Even if plaintiffs had committed to selling New York made products in their store, plaintiffs’ application would not serve the public convenience and advantage for the several other reasons cited during the Full Board meeting and in the NYSLA’s written decision.

1305116, at *4, citing Pike, 397 U.S. at 142. Plaintiffs’ SAC offers no alleged facts demonstrating the “burden” allegedly imposed on commerce is “clearly excessive” in relation to putative local benefits.

B. Plaintiffs failed to plausibly plead the extraterritoriality prong

The third prong of the dormant Commerce Clause analysis—extraterritoriality—is “the most dormant doctrine in dormant commerce clause jurisprudence.” Vizio, Inc. v. Klee, No. 3:15-CV-00929 (VAB), 2016 WL 1305116, at *9 (D. Conn. Mar. 31, 2016) (citing Energy & Env’t Legal Inst. v. Epel, 793 F.3d 1169, 1170 (10th Cir.) (“EELI”) cert. denied, 136 S. Ct. 595 (2015); see also IMS Health Inc. v. Mills, 616 F.3d 7, 29 & n.27 (1st Cir. 2010) (extraterritoriality is “an infrequently applied strand of the dormant Commerce Clause” and “has been the dormant branch of the dormant Commerce Clause”) (internal quotation marks and citations omitted) abrogated on other grounds by Sorrell v. IMS Health Inc., 131 S. Ct. 2653 (2011). Indeed, “a [Supreme Court] majority has used [the] extraterritoriality principle to strike down state laws only three times.” Id., citing EELI, 739 F.3d at 1173.

In Healy v. Beer Inst., Inc., 491 U.S. 324, 336-37 (1989), the Supreme Court set forth the extraterritoriality analysis as follows:

“First, the Commerce Clause ... precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State, and, specifically, a State may not adopt legislation that has the practical effect of establishing a scale of prices for use in other states. Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State.

And, specifically, the Commerce Clause dictates that no State may force an out-of-state merchant to seek regulatory approval in one State before undertaking a transaction in another.

Plaintiffs' SAC does not plausibly plead *any* facts that satisfy the extraterritoriality prong analysis quoted above. Indeed, plaintiffs' SAC does not allege that the statutory framework "has the practical effect of establishing a scale of prices for use in other states;" directly controls commerce occurring wholly outside the boundaries of New York State; or constitutes "inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State" or "force[s] an out-of-state merchant to seek regulatory approval in one State before undertaking a transaction in another." Plaintiffs' dormant Commerce Clause claim should be dismissed for the reasons stated above.

CONCLUSION

Defendants respectfully request that the Court dismiss plaintiffs' SAC in its entirety and with prejudice, and grant such other and further relief as it deems just and equitable.

Dated: Syracuse, New York
December 17, 2025

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