

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, a federally recognized
Indian Nation, and LAKESIDE
ENTERPRISES, INC.,

Plaintiffs,

v.

NEW YORK STATE LIQUOR
AUTHORITY, LILY FAN, EDGAR DE
LEO, and JOHN MAYA,

Defendants.

No. 5:25-cv-1312
(ECC/TWD)

**MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

Plaintiff Cayuga Nation (the “Nation”) is a federally recognized Indian nation, and Plaintiff Lakeside Enterprises, Inc. (“Lakeside”) is a wholly owned Nation business and the applicant of record for the liquor license at issue. This action is brought against the New York State Liquor Authority (“SLA”), its Chair Lily Fan, and Commissioners Edgar De Leon and John Maya to enjoin their continuing violations of federal law that infringe upon the Nation’s federally protected rights. Specifically, the SLA has discriminated against the Nation by denying the Nation’s liquor license application for operations on its 64,015-acre federally recognized Reservation in the Finger Lakes region of New York (the “Reservation”), in contravention of federal law including 18 U.S.C. § 1161 and 42 U.S.C. § 1983.

Congress enacted section 1161 to replace a discriminatory federal prohibition on alcohol in Indian country with a cooperative framework: where an Indian nation adopts a valid alcohol ordinance approved by the Department of the Interior, liquor transactions on its lands are lawful so long as they also conform to generally applicable state law. The Nation has done exactly what federal law requires. It enacted a comprehensive Alcoholic Beverage Control Ordinance, secured federal approval, and, through Lakeside, applied for a retail liquor license to operate a modest store on its Reservation. Yet rather than administer that application neutrally, Defendants transformed the process into a discretionary veto grounded in suspicion of the Nation’s sovereignty and demands that no statute authorizes.

This action does not turn on any dispute over tax compliance. From the outset, the Nation represented that all excise taxes applicable at the wholesale level would be paid, and Defendants have never identified any failure or refusal to comply with any tax obligation imposed by federal law. Nor does New York law empower the SLA to condition a liquor license in Indian country on

the collection of state sales taxes. The denial at issue instead rests on demands wholly unrelated to any lawful licensing criterion, most notably, requirements that the Nation favor New York-made products, accept perpetual limits on the size of its premises, and provide assurances rooted in mistrust of the Nation's sovereign status.

Over the course of nearly a year, the SLA subjected Plaintiffs to shifting procedural hurdles, unexplained adjournments, and inconsistent directives about whether Nation leadership must appear in person. At successive hearings, Commissioners voiced unfounded and discriminatory concerns about “who was trafficking the alcohol,” questioned whether there was “appropriate fitness and character” despite the Nation's spotless licensing record, and suggested that the Nation's sovereign status made compliance inherently suspect because enforcement would be “in [the Nation's] hands.” At the final hearing, the Board conditioned approval on extra-statutory requirements, including pledges to favor New York-made products over products from other states and stipulations that the premises remain one size “forever,” with no possibility of future renovations or expansion. When the Nation declined to surrender its sovereignty or accept those terms, the SLA denied the application. This case seeks declaratory and injunctive relief to restore the cooperative regime Congress mandated and to vindicate the Constitution's guarantee that an Indian nation be treated on equal, non-discriminatory terms.

BACKGROUND

On September 26, 2024, Lakeside submitted an application to the SLA for a retail liquor license for a planned liquor store located on the Nation's Reservation. See Second Amended Complaint (“Am. Compl.”) at 9. The application stated Lakeside's intent to operate pursuant to the Nation's duly adopted Alcoholic Beverage Control Ordinance, certified by the Department of the Interior and published in the Federal Register, and to comply with generally applicable New

York health-and-safety requirements. *See id.* The Nation also had a proven compliance history: it held two SLA-issued beer licenses for separate Nation-owned establishments on the Reservation, both in good standing, with no violations. *See id.* at 8.

The SLA acknowledged receipt the same day. *See Am. Compl.* at 9. Over the following months, the SLA issued a deficiency letter and a series of follow-up requests, which Plaintiffs timely satisfied. *See id.* at 9-10. By April 2025, the SLA advised that the application had been reviewed by its Licensing Board and would be referred to the Full Board, requesting additional information that Plaintiffs promptly provided. *See id.* at 10.

On April 16, 2025, the SLA notified Plaintiffs that the application would be scheduled for review by the Full Board at its May 14, 2025 hearing. *See Am. Compl.* at 10. The SLA's notice stated: "If you are the applicant, you are *strongly encouraged* to appear to be heard in support of your case." *See id.* It did not state that personal appearance by a Nation principal was required.

Before the first Full Board hearing, Plaintiffs learned that two local competitors had submitted protest letters opposing the application. *See Am. Compl.* at 11. Those protests framed the Nation's application as "unfair" based on the Nation's sovereign status and alleged tax advantages, claiming the license would harm "tax-paying businesses." *Id.* A later letter escalated those themes by accusing the Nation of seeking a "tax-exempt one-stop shop" selling "untaxed fuel, untaxed cigarettes, unregulated cannabis, gambling, and liquor—all under one roof," and urged denial on grounds that the Nation's operations were "dangerous" and "unfair." *Id.* at 12.

At the May 14, 2025, Full Board hearing, Plaintiffs' counsel appeared, but the Nation principal did not attend due to prior commitments and the travel burden to New York City. *Am. Compl.* at 11-12. This was consistent with the SLA's April 16 notice, which merely "strongly encouraged" applicant participation and did not require a personal appearance. *See id.* at 10. Chair

Fan nonetheless stated, “With the utmost respect, I’m going to ask your clients to come. At least send representatives. I know that you guys have a way you do things, and we have a way we do things here. We always ask the applicant to come.” *Id.* at 12. The SLA then deferred consideration to June 4, stating that the applicant must appear in person to address “public convenience and advantage.” *Id.*

On June 4, 2025, counsel again appeared and explained that the Nation’s representative was unable to attend due to a scheduling conflict and that there is no statutory or regulatory requirement that a Nation principal appear in person. *See* Am. Compl. at 13. The SLA nevertheless denied the application. *See id.* Chair Fan questioned “who was trafficking the alcohol,” stated that she wanted “comfort that there’s appropriate fitness and character here,” and claimed she could not “assess the fitness and character” without a personal appearance. *Id.* Commissioner Maya characterized the Nation’s legal position as “provocative.” *Id.*

The Nation sought reconsideration and appeared again on August 6, 2025, through counsel and its Chief Operating Officer. *See* Am. Compl. at 14-15. During that hearing, Chair Fan made whispered disparaging remarks, including “Oh, this guy is not going to make it easy” and “we can say . . . I mean . . . I want to kick it.” *Id.* at 15. The Commissioners suggested that the Nation’s sovereign status made enforcement suspect because the State had “very limited enforcement power on the land” and compliance would be “sort of in [the Nation’s] hands.” *Id.* The SLA adjourned the matter and expressly instructed that no further appearance by a Nation representative was required; Chair Fan stated: “[Ms. Barringer,] you do not need to come back. Counsel can come back, but you do not need to come back . . . We’re good with the quality of the responses.” *Id.*

Despite those assurances, the SLA repeatedly adjourned the matter without explanation and reversed course. *See* Am. Compl. at 16-17. The SLA’s published agenda for a subsequent

hearing stated that “[o]nly the applicant’s attorney needs to appear,” but the SLA later emailed that “[i]t is also requested that the applicant appears as well,” contradicting both the August 6 direction and the published agenda. *Id.*

On September 17, 2025—after months of serial adjournments and shifting directives—Plaintiffs filed the complaint in this action to halt Defendants’ ongoing course of conduct. *See* Dkt. No. 1.

Notwithstanding the commencement of this action, SLA scheduled yet another hearing for October 29, 2025. *See* Am. Compl. at 18. Consistent with the SLA’s prior statements and published agenda, counsel appeared alone. *See id.* The Commissioners nonetheless treated the absence of a Nation representative as a negative factor and focused on issues untethered to statutory disqualification. *See id.* at 18-19. Chair Fan repeatedly pressed for a pledge to stock New York-made products, asking whether the Nation would “commit to selling say 20% of New York products,” and later “agree to 10% New York products.” *Id.* at 19. Commissioner De Leon stated, appearing sarcastically: “you really don’t have to do anything that we would request - you don’t have to collect taxes, you don’t have to make any commitments of any kind,” and asked, “why are you here with this application again?” *Id.* The Commissioners also demanded that the Nation stipulate that the premises would “forever” remain limited to 528.75 square feet. *Id.* Throughout, the Commissioners treated the Nation’s refusal to make voluntary, extra-statutory commitments as evidence of noncompliance, despite counsel’s explanation that the Nation would comply fully with applicable health-and-safety requirements. *See id.* at 19-21.

On October 29, 2025, the SLA voted to deny the application. *See* Am. Compl. at 21. On November 5, 2025, following the verbal denial, Plaintiffs filed an Amended Complaint with this Court. *See* Dkt. No. 10. On December 3, 2025, the SLA issued a formal written decision

reiterating, among other things, the Nation’s refusal to commit to New York–specific products and finding no “public convenience and advantage.” Am. Compl. at 22. Plaintiffs filed a Second Amended Complaint on December 17, 2025 to incorporate that final agency action. See Dkt. No. 16. That same day, Defendants moved to dismiss for failure to state a claim. See Dkt. No. 17.

Plaintiffs allege that this sequence—months of unpredictable demands, unexplained adjournments, and contradictory directives, followed by a hearing dominated by suspicion of the Nation’s sovereignty and demands for extra-statutory concessions—was not the product of neutral regulation. It culminated in a denial grounded in disparaging remarks, unfounded assumptions about the Nation’s fitness and compliance, and conditions no statute requires, such as pledges to favor New York-made products, promises to collect taxes the Nation is not required to collect, and stipulations that the premises remain fixed “forever.” Defendants transformed a cooperative federal framework into a discretionary veto, treating the Nation not as a lawful applicant entitled to equal consideration, but as an object of mistrust whose sovereign status itself became a basis for denial. This action seeks to halt that ongoing course of conduct and to restore the equal, non-discriminatory process federal law requires.

STANDARD OF REVIEW

“In resolving a motion to dismiss under Rule 12(b)(1), the district court must take all uncontroverted facts in the complaint . . . as true[] and draw all reasonable inferences in favor of the party asserting jurisdiction.” *Tandon v. Captain’s Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243 (2d Cir. 2014) (citation omitted).

ARGUMENT

I. PLAINTIFFS STATE A PROPER CLAIM UNDER 18 U.S.C. § 1161.

Section 1161 establishes a cooperative federal framework: alcohol sales in Indian country¹ are lawful when, and only when, they are authorized by a federally approved tribal ordinance and are consistent with state liquor law. *See* 18 U.S.C. § 1161. The statute does not, however, confer upon states unbounded authority to dictate whether an Indian nation may engage in alcohol sales at all. The law also does not allow states to discriminate against Indian nations. Rather, it reflects Congress’s judgment that regulation in Indian country must proceed on a joint basis, respecting both Indian self-government and legitimate state interests in alcohol control. *See id.*

18 U.S.C. § 1161 provides:

The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

What section 1161 does not permit is unilateral state obstruction of Nation commerce through discretionary or pretextual licensing regimes that function as vetoes over Nation economic activity. A state may apply neutral liquor rules of general applicability, but it may not wield licensing discretion in a manner that nullifies a federally approved tribal ordinance or renders Nation authorization meaningless. To allow that would nullify section 1161’s intent, transforming

¹ “Indian county” is defined to mean “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

a statute meant to replace federal prohibition with joint state-tribal regulation into one that places Nation alcohol sales entirely at the mercy of the State. *See Rice v. Rehner*, 463 U.S. 713, 727-28 (1983). Plaintiffs' claims allege that Defendants have used discretionary state-law standards to do what section 1161 forbids—block the Nation's ability to sell alcohol on its own land despite full compliance with federal and Nation law. Furthermore, this case does not involve any refusal to comply with lawful tax obligations. Plaintiffs affirmatively represented that all excise taxes applicable at the wholesale level would be paid, and neither section 1161 nor New York law authorizes the State to condition a liquor license in Indian country on the collection of state sales taxes; the obstruction here rests instead on extra-statutory demands, such as New York-product quotas and perpetual size limits, that bear no relationship to neutral liquor regulation.

A. Plaintiffs Properly State a Claim Under 18 U.S.C. § 1161.

Section 1161 was enacted by Congress in 1953 to eliminate a regime of discriminatory federal prohibition that applied uniquely to Indians and to replace that regime with a framework that legalizes liquor transactions in Indian country only when the Indian nation affirmatively authorizes them by ordinance. *See, e.g., United States v. Cowboy*, 694 F.2d 1228, 1236 (10th Cir. 1982). Originally proposed to lift the federal ban on alcohol in Arizona's Indian country, the statute was expanded nationwide to end differential treatment and restore local control and return control over liquor policy to local sovereigns rather than the federal criminal code. *See Rice*, 463 U.S. at 727-28. The legislative record reflects a clear intent to withdraw federal prohibition and to substitute a cooperative framework in which alcohol regulation in Indian country depends on the exercise of authority by both the State and the Indian nation, placing the Nation's ordinance at the center of the regulatory scheme and confirming that lawful liquor sales on Indian land begin with, and depend upon, Indian self-government. *See Hearings on H.R. 1055 Before the*

Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs 83d Cong., 1st Sess. (1953).

Congressional hearings preceding the enactment of section 1161 emphasized the desire to treat Indian nations on equal terms and to eliminate federal interference with local liquor policy. Commissioner Dillon Myer testified that the law would end discrimination while respecting state prerogatives. *See* Hearings on H.R. 1055 Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs 83d Cong., 1st Sess. (1953). Representative Patten, the bill’s sponsor, stressed that Indian nations could “regulate internally” but would still be required to “comply with State law[.]” *See id.* However, nothing in the hearings or statutory text conferred discretionary veto authority to states over Indian alcohol regulation. The statute presumes that once an Indian nation has acted by ordinance, state liquor laws apply as written; it does not authorize state officials to impose extra-statutory conditions, subjective policy judgments, or discretionary barriers that operate as a de facto power to block a Nation’s decision altogether.

In *Rice v. Rehner*, the Supreme Court confirmed that section 1161 legalizes liquor transactions in Indian country where both the State and the Indian nation affirmatively approve them. 463 U.S. at 727-28. The Court recognized that, by 1953, federal liquor restrictions targeting Indians were widely viewed as discriminatory and that Congress intended to delegate regulatory authority concurrently to States and Indian nations. *See id.* at 727. But *Rehner* did not hold that States possess unbounded regulatory authority in Indian country. To the contrary, Justice Blackmun’s dissent, grounded in established principles of federal Indian law, explained that section 1161 lifted federal prohibition conditioned on conformity with state law; it did not delegate wholesale state licensing power over tribal enterprises. *See id.* at 741 (Blackmun, J., dissenting). As Justice Blackmun observed, the statute and its legislative history are silent as to any intent to

authorize States to impose their discretionary licensing regimes on Indian nations. *See id.* at 742. Under settled law, such a grant of state regulatory jurisdiction must be explicit. *See, e.g., McClanahan v. Ariz. State Tax Comm'n*, 411 U.S. 164, 170-71 (1973) (“State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply”) (citation omitted); *Bryan v. Itasca Cnty.*, 426 U.S. 373, 390 (1976) (“[I]f Congress in enacting Pub. L. 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so[.]”). Absent clear congressional authorization, States may not subject Indian nations to discretionary approval schemes that intrude on Indian self-government.

Defendants’ motion rests on a false premise: that because section 1161 authorizes some degree of state involvement in liquor regulation in Indian country, it forecloses any federal claim when a State exceeds the authority the statute actually contemplates. *See* Dkt. No. 17-1 at 22. That is not the law. Plaintiffs do not dispute that section 1161 permits States to apply generally applicable liquor standards in Indian country. Plaintiffs allege instead that Defendants imposed a discretionary, one-sided licensing regime that exceeds the scope of authority Congress contemplated in section 1161 and unlawfully obstructs alcohol sales otherwise authorized under federal law. That claim is cognizable and should not be dismissed. *See Cayuga Nation v. N.Y. State Gaming Comm'n*, 775 F. Supp. 3d 651 (N.D.N.Y. 2025) (holding that a Nation may invoke federal jurisdiction to challenge state action that exceeds the scope of authority Congress conferred under federal Indian law).

On August 2, 2021, the Cayuga Nation enacted its Alcoholic Beverage Control Ordinance, which establishes a comprehensive regulatory framework governing the manufacture, sale, possession, and distribution of alcohol on the Reservation. *See* Cayuga Nation’s Alcoholic

Beverage Control Ordinance, published in the Federal Register at 86 Fed. Reg. 35326 (July 2, 2021). That Ordinance was approved by the United States Department of the Interior and published in the Federal Register, thereby satisfying the federal requirements of section 1161. *See id.* As a result, the Nation’s authority to regulate alcohol is anchored in its own duly adopted law and in federal law.

The State Liquor Authority’s refusal to issue the requested license, as well as its effective denial through serial delay and shifting discretionary demands, violates that federal framework. Section 1161 envisions joint regulation, not unilateral state obstruction. *See* 18 U.S.C. § 1161. Defendants’ approach renders the cooperative scheme one-sided and transforms a statute designed to end discrimination into a mechanism for state veto. If permitted to stand, Defendants’ position effectively deems section 1161 irrelevant, an outcome fundamentally inconsistent with the statute’s purpose.

1. *Federal Law Governing Indian Nation Liquor Regulation Supports Plaintiffs’ Claim.*

Defendants argue that section 1161 “does not confer a private right of action,” and therefore cannot be enforced in federal court. Dkt. No. 17-1 at 22. That argument misstates governing law. Plaintiffs seek relief to prevent state officials from enforcing state-law conditions that conflict with the federal limits imposed by section 1161. Federal courts have long recognized such actions as proper vehicles for enforcing federal statutory constraints on state authority. *See Flandreau Santee Sioux Tribe v. Gerlach*, 155 F. Supp. 3d 972 (D.S.D. 2015). That is precisely how the court treated § 1161 in *Flandreau Santee Sioux Tribe v. Gerlach*. *See id.* There, the Flandreau Santee Sioux Tribe alleged that South Dakota violated section 1161 by conditioning renewal of tribal liquor licenses on the remittance of state use taxes imposed on nonmember purchases, conditions the Tribe contended were unrelated to alcohol regulation and invalid in Indian country. *Id.* at 977-78.

The State moved for judgment on the pleadings, arguing, among other things, that section 1161 did not support such a claim. *Id.* at 976. The district court rejected that argument and held that the Tribe had “adequately plead to withstand” dismissal of its section 1161 claim. *Id.* at 1000.

Critically, the *Flandreau* court did not treat section 1161 as a mere background principle incapable of judicial enforcement. Instead, the court understood the Tribe’s section 1161 theory as a justiciable challenge to the State’s attempt to condition alcohol licensure on requirements that, because they were unrelated to alcohol regulation and implicated broader state taxation power in Indian country, fell outside what section 1161 permits. *Id.* at 998-1000. In other words, the court recognized that section 1161 sets enforceable federal limits on the state law conformity portion of the statute, and that a nation may seek prospective relief when state officials use liquor licensing as a lever to impose conditions federal law does not allow. That is the posture of Plaintiffs’ claim here.

Defendants’ citation of the Eighth Circuit’s later decision in *Flandreau Santee Sioux Tribe v. Noem*, 938 F.3d 928 (8th Cir. 2019), does not support dismissal. *See* Dkt. No. 17-1 at 22. That decision did not hold that section 1161 is unenforceable, nor did it reject the existence of a section 1161 claim. To the contrary, the Eighth Circuit conducted a substantive analysis under section 1161, expressly observed that the issue “is not that simple,” and proceeded to apply the *Bracker* balancing framework to evaluate the scope of permissible state authority. *Noem*, 938 F.3d at 938-39 (citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)). Only after undertaking that analysis did the court conclude that the tribal plaintiff had failed to meet its burden to demonstrate that South Dakota’s alcohol license requirement was not “reasonably necessary” to further the State’s interest in collecting valid state taxes. *Id.* at 939. That holding underscores, rather than undermines, the justiciability of section 1161 claims: the Eighth Circuit reached the

merits and resolved the dispute based on a fact-intensive analysis. The state's authority does not only reside under state law but also under section 1161.

Consistent with *Noem*, the governing framework here is the *Bracker* balancing test. See *Bracker*, 448 U.S. at 145. Under *Bracker*, courts do not apply “mechanical or absolute conceptions of state or tribal sovereignty,” but instead undertake a “particularized inquiry into the nature of the state, federal, and tribal interests at stake” to determine whether the challenged exercise of state authority is preempted. *Id.* at 145. The inquiry is informed by the “significant geographical component of tribal sovereignty” and by Congress’s longstanding policy of promoting tribal self-government and economic development. *Id.* at 143-45, 151. Even in the absence of an express congressional prohibition, state action is impermissible where federal regulation is comprehensive, Nation interests are substantial, and the State can point only to generalized interests that do not justify intrusion into a federal-tribal regulatory scheme. See *id.* at 144-45, 149-151. Thus, *Bracker* confirms that claims like Plaintiffs’ are inherently fact-intensive and not suited for dismissal at the pleading stage. Whether state conditions imposed under section 1161 impermissibly intrude on Indian self-government or conflict with federal policy turns on a contextual weighing of interests that cannot be resolved on the face of the complaint.

Defendants’ broader contention, that section 1161 “authorizes” application of state liquor laws in Indian country and therefore forecloses Plaintiffs’ claim, similarly ignores both the statute and *Rehner*. See Dkt. No. 17-1 at 22. While *Rehner* held that section 1161 permits States to require Nation sellers to comply with state liquor laws, it did not hold that States possess unbounded authority to impose any licensing standard or discretionary criterion they choose. See *Rehner*, 463 U.S. at 734-35. As Justice Blackmun explained in dissent, section 1161 incorporates state liquor-law standards; it does not grant States a blanket delegation of regulatory jurisdiction

over Indian country. *See id.* at 742-44 (Blackmun, J., dissenting). The statute ensures that transactions unlawful under state law remain unlawful in Indian country. It is silent on whether States may condition the very existence of Indian liquor operations on discretionary approval regimes.

That silence is consequential. As Justice Blackmun observed, the Supreme Court has consistently required clear congressional authorization before finding that federal statutes subject Indian country to state regulatory control, particularly where licensing and discretionary approval schemes are concerned. *See Rehner*, 463 U.S. at 742-44 (Blackmun, J., dissenting). Nothing in the text or legislative history of section 1161 reflects an intent to authorize States to wield open-ended, discretionary licensing standards untethered to substantive liquor regulation, much less to use such standards to obstruct alcohol sales approved by duly enacted tribal ordinances. In addition, Defendants do not cite to a single case where a court has declined to adjudicate whether a State has overstepped its bounds in enforcing regulations upon an Indian nation in this context.

2. *New York State Law, Properly Applied, Does Not Bar Plaintiffs' Liquor Sales.*

Defendants devote substantial space to describing the breadth of the New York State Liquor Authority's discretion under the Alcoholic Beverage Control Law ("ABCL") and to recounting the October 29, 2025, Full Board hearing. *See* Dkt. No. 17-1 at 24-28. That discussion, however, does not answer the federal question presented in this case. Plaintiffs do not dispute that, as a matter of New York law, the NYSLA is vested with discretion when regulating ordinary, non-Indian applicants. The issue here is whether those discretionary standards may be discriminatorily applied wholesale to an Indian nation seeking to engage in alcohol sales pursuant to a federally approved ordinance under 18 U.S.C. § 1161. Here, those standards were discriminatorily applied to the Nation.

Defendants’ reliance on ABCL §§ 2, 17, and 63 merely restates the scope of NYSLA’s authority under New York law. *See* Dkt. No. 17-1 at 24-25. It does not resolve the controlling federal question: whether Congress, in enacting section 1161, intended to permit States to deny Indian liquor operations based on subjective assessments of market saturation, competitor sales, or the perceived “need” for an additional store. Section 1161 is silent as to this. It speaks in terms of conformity with “laws of the State” governing liquor transactions, not discretionary veto power over whether an Indian nation may engage in alcohol sales at all after satisfying federal and Nation requirements. 18 U.S.C. § 1161. Nothing in the text or history of section 1161 suggests that Congress delegated to the States authority to decide whether Indian commerce in alcohol may occur.

The “public convenience and advantage” standard illustrates the problem. *See* ABCL § 2. That standard is not a neutral rule governing how alcohol is sold, such as age restrictions, hours of operation, or prohibited practices. It is an inherently discretionary judgment that empowers the NYSLA to decide whether a new entrant is needed in a given market and to protect existing licensees from competition. *See id.* Applied in Indian country without federal constraint, it allows the State to block Indian commerce altogether, as it did here, based on subjective policy preferences untethered to liquor safety or temperance. *See, e.g.,* Am. Compl. at 18-19, ¶ 84 (at the hearing which ultimately lead to the denial of Plaintiffs’ application, “the Commissioners focused primarily on issues unrelated to any statutory licensing criteria, such as the Nation’s sovereign status, its exemption from state sales-tax registration, its decision to not ‘commit’ to selling a fixed percentage of New York-made products, and its refusal to stipulate that the licensed premises would ‘forever’ remain limited to 528.75 square feet.”). These standards go to the very heart of the Nation’s sovereignty. If Defendants’ arguments were correct, a State could effectively veto

any Indian liquor operation by invoking vague market-saturation concerns, regardless of Nation authorization and federal approval. That interpretation would render section 1161's cooperative structure meaningless, and convert it into a way for unilateral state control.

Courts interpreting section 1161 have recognized this limit. As detailed above, in *Flandreau Santee Sioux Tribe v. Gerlach*, the district court held that while states may apply liquor laws of general applicability, they may not use licensure as a mechanism to impose conditions or achieve results that federal law does not permit. *See* 155 F. Supp. 3d at 977. The same principle applies here. The NYSLA's discretionary "public convenience and advantage" regime itself exceeds what section 1161 permits when an Indian nation seeks to engage in alcohol sales pursuant to a federally approved ordinance.

Defendants' emphasis on the October 29 hearing and the December 3 written decision therefore misses the point. *See* Dkt. No. 17-1 at 26-29. Whether NYSLA applied its own standards does not resolve whether those standards may be applied at all to Indian Nation applicants operating pursuant to a federally approved tribal alcohol ordinance. Plaintiffs allege that Defendants applied state-law criteria preempted or limited by section 1161. Plaintiffs are entitled to a federal forum to adjudicate the scope of that statute and the limits it places on state licensing discretion in Indian country.

3. Defendants' "No Preemption" Argument Misstates Plaintiffs' Claim and Overreads Section 1161.

Defendants next argue that Plaintiffs' section 1161 claim fails because section 1161 is "a delegation of authority to the state to regulate tribal liquor sales, not a preemption in favor of the tribes," and because Congress did not intend Indian nations to become "supercitizens" exempt from liquor regulation. *Squaxin Island Tribe v. State of Wash.*, 781 F.2d 715, 719-20 (9th Cir. 1986) (quoting *Rice v. Rehner*, 463 U.S. at 734); *see* Dkt. No. 17-1 at 31-32. Plaintiffs do not

contend that Indian nations are immune from neutral state liquor laws, or that section 1161 wipes away state authority over the manner of liquor transactions, particularly where sales to nonmembers are concerned. What Plaintiffs challenge is different: It is whether the State's regulatory interests, when evaluated, are sufficient to justify the state's authority if they conflict with an Indian nation's sovereignty or ability to self-govern. The state must demonstrate specific and significant interests to support its actions. Here, when carefully evaluated, Defendants' use of discretionary licensing criteria and extra-statutory conditions are not justified and conflict with the Nation's sovereignty.

Squaxin Island Tribe v. Washington underscores why Defendants' framing is wrong. *See* 781 F.2d at 719-20. The case involved Washington's asserted authority to regulate and tax tribal liquor sales to non-Indians in a monopoly-control system, and the Ninth Circuit held that state regulation and taxation of sales to nonmembers generally does not infringe tribal sovereignty. *See id.* But *Squaxin* did not hold that a state may impose any condition it wishes as a price of allowing Nation liquor sales, or that state officials may employ discretionary licensing mechanisms in a way that effectively nullifies the structure Congress enacted—state-law conformity and a duly adopted, federally approved Indian-nation ordinance. *See id.* Section 1161 is not an open-ended grant of regulatory authority; it defines when federal prohibitions fall away and the conditions under which liquor transactions in Indian country become lawful. Plaintiffs' claim fits squarely within that framework, alleging that Defendants treated New York's discretionary "public convenience and advantage" regime, along with a series of demands untethered to any statutory criterion, as an unchecked veto over whether the Nation may engage in federally authorized liquor sales at all. *See Am. Compl.* at 22-23.

Defendants’ Article 78 point likewise does not defeat Plaintiffs’ federal claim. *See* Dkt. No. 17-1 at 30. Article 78 review addresses agency action under state law. *See, e.g., Davis v. Halpern*, 813 F.2d 37, 38 n.1 (2d Cir. 1987) (“Article 78 is a method for challenging state administrative action.”); *Peacock v. De Simone*, No. 95-CV-3094 (JG), 1996 U.S. Dist. LEXIS 23181, at *19 (E.D.N.Y. July 1, 1996). Article 78 review does not resolve the distinct federal issue presented here—whether the State may apply discretionary licensing standards in Indian country in a way that defeats the federal framework of section 1161 and the Nation’s federally approved ordinance. The availability of state review of an agency’s discretion does not insulate state officials from federal judicial review where Plaintiffs allege that the officials’ approach is constrained, or prohibited, by federal law. *See Purcell v. N.Y. Inst. of Tech.*, 931 F.3d 59, 64 (2d Cir. 2019) (explaining that where a federal statute “clearly lay[s] out the standards for asserting a claim,” a State’s preference for channeling disputes into Article 78 review cannot “nullify a federal right or cause of action [it] believe[s] is inconsistent with [its] local policies,” and holding that the availability of Article 78 does not displace federal-court adjudication of independent federal claims); *see also Oss v. N.Y. State*, 783 F. Supp. 2d 681, 695 (S.D.N.Y. 2011) (holding that the mere availability of Article 78 review does not bar federal claims, because plaintiffs asserting federal or constitutional violations “have the right to sue in federal court without first resorting to state judicial remedies”).

Finally, Defendants’ reliance on New York cases like *White Plains Fine Wine* only reinforces the mismatch. *See* Dkt. No. 17-1 at 30-31 (citing *Matter of White Plains Fine Wine & Spirits LLC v. N.Y. State Liquor Auth.*, 184 A.D.3d 1068 (3d Dep’t 2020)). *White Plains Fine Wine* involved a conventional, non-Indian applicant operating wholly within New York’s general commercial market, and the sole issue was whether the SLA’s application of the “public

convenience and advantage” standard was arbitrary or capricious under state administrative law. *See White Plains Fine Wine*, 184 A.D.3d at 1069. The case did not involve an Indian nation, a federally approved tribal ordinance, or the overlay of 18 U.S.C. § 1161, and the court had no occasion to consider whether federal law limits the State’s ability to deploy that discretionary regime in a domain Congress structured around cooperative federal and Indian-nation authority. *See id.* It therefore answers only how New York courts review SLA decisions for ordinary applicants, not whether Congress intended to permit States to wield that same discretionary gatekeeping power to determine whether an Indian nation may engage in alcohol sales at all after satisfying both federal and Nation prerequisites.

Accordingly, Defendants’ “no preemption” argument provides no basis for dismissal. Plaintiffs do not seek exemption from liquor regulation; they seek to prevent state officials from using vague discretionary licensing tools and extra-statutory conditions to obstruct federally authorized liquor transactions on the Nation’s reservation in a manner section 1161 does not allow.

B. Plaintiffs’ Section 1161 Claim Is Not Barred by Sovereign Immunity or *Ex Parte Young*.

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. The Eleventh Amendment generally shields States, their agencies, and state officials sued in their official capacities from actions seeking monetary relief, absent an express waiver of immunity by the State. *See Daly v. Town of DeWitt*, No. 6:18-CV-845, 2019 U.S. Dist. LEXIS 149328, 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)). As Defendants note, 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. *See* Dkt. No. 17-1 at 33 (citing *Unkechaug Indian Nation v. N.Y. State Dep't of Env't Conservation*, 677 F. Supp. 3d 137, 147 (E.D.N.Y. 2023), and *Lapides v. Bd. of Regents*, 535 U.S. 613, 619 (2002)).

Defendants' Eleventh Amendment argument fails because Plaintiffs do not seek damages or retroactive relief against the State. They seek prospective, equitable relief to halt an ongoing course of conduct by state officials that allegedly exceeds federal law and will continue to govern the Nation's future applications unless enjoined. *See* Am. Compl. at 33-34. That claim fits squarely within *Ex parte Young*. *See* 209 U.S. 123 (1908).

1. Sovereign Immunity Does Not Shield the NYSLA From the Prospective Relief Plaintiffs Seek.

Defendants' authorities establish only the uncontroversial proposition that the NYSLA cannot be sued for damages and that Congress did not abrogate state immunity in section 1161. *See* Dkt. No. 17-1 at 32-34. However, Plaintiffs' claim is equitable and forward-looking. *See* Am. Compl. at 33-34. Plaintiffs allege that Defendants are applying a licensing regime that exceeds what section 1161 permits and that this unlawful framework will govern future applications. Where state actors are in violation of federal law, the Eleventh Amendment does not prevent federal courts from granting prospective injunctive relief. *See Emmons v. City Univ. of N.Y.*, 715 F. Supp. 2d 394, 407 (E.D.N.Y. 2010). Plaintiffs' section 1161 claim therefore falls within the settled exception recognized in *Ex parte Young*. *See id.* ("One narrow caveat to state sovereign immunity is the doctrine, first enunciated in *Ex Parte Young*, . . . that the Eleventh Amendment does not prevent federal courts from granting prospective injunctive relief against state officials to prevent a continuing violation of federal law because such conduct is not considered to be state action.") (citation omitted); *see also Cayuga Nation v. N.Y. State Gaming Comm'n*, 775 F. Supp.

3d at 663 (denying Eleventh Amendment dismissal where the Nation sought prospective declaratory and injunctive relief to halt an ongoing violation of federal law, explaining that *Ex parte Young* applies when the complaint alleges continuing unlawful conduct).

2. The NYSLA Chair and Commissioners Are Proper Defendants Under *Ex Parte Young*.

Plaintiffs' claims against the Chair and Commissioners fit within *Ex parte Young*. The Amended Complaint alleges that these officials, acting in their official capacities, administer and enforce the challenged licensing regime and that their ongoing practices exceed the authority conferred by section 1161. *See* Am. Compl. at 2. Plaintiffs seek an order requiring those officials to conform their future conduct to federal law, i.e., to cease applying discretionary, one-sided licensing standards that obstruct alcohol sales authorized by a federally approved tribal ordinance. *See id.* at 33-34; *see also Cayuga Nation v. N.Y. State Gaming Comm'n*, 775 F. Supp. 3d at 663.

Defendants mischaracterize this relief as retrospective. *See* Dkt. No. 17-1 at 34-35. Plaintiffs do not merely ask this Court to declare that Defendants "violated federal law in the past." *See id.* at 37 (citing *Ward v. Thomas*, 207 F.3d 114, 120 (2d Cir. 2000)). They allege that the challenged regime is ongoing and will continue to govern the Nation's future applications unless enjoined. *See* Am. Compl. at 2, 33-34. That allegation is dispositive. It distinguishes this case from *Ward*, where plaintiffs sought only to unwind a completed proceeding under a regime that no longer existed and had no realistic prospect of future application. *See* 207 F.3d at 120.

In *Ward*, the Second Circuit barred relief because there was "no 'claimed continuing violation of federal law' or 'threat of state officials violating the repealed law in the future,'" and "[a]ny declaration could say no more than that [the State] had violated federal law in the past." 207 F.3d at 120 (quoting *Green v. Mansour*, 474 U.S. 64, 73 (1985)). There, Congress had terminated the Aid to Families with Dependent Children ("AFDC") program, and the State's

policy was “now concededly in accord with federal law.” *Id.* That is the opposite of this case. The Nation remains subject to the same licensing framework and the same decisionmakers. The challenged interpretation of section 1161 is not a one-off event tied to a single vote; it is the State’s continuing position. Unless restrained, Defendants will apply the same discretionary “public convenience and advantage” standards to future applications by the Nation and its entities.

An injunction barring that practice would not merely “reverse” a past decision—it would govern Defendants’ future conduct and ensure that subsequent applications are processed in conformity with federal law. That is the paradigmatic use of *Ex parte Young*: relief “designed to end” an ongoing violation. *Ward*, 207 F.3d at 119.

Because Plaintiffs allege an ongoing violation of federal law and seek prospective relief to halt that violation, the Chair and Commissioners are proper defendants under *Ex parte Young*, and the Eleventh Amendment poses no bar to Plaintiffs’ section 1161 claim.

II. PLAINTIFFS HAVE STATED A CLAIM FOR RELIEF UNDER 42 U.S.C. § 1983.

Section 1983 provides a cause of action against any person who, acting under color of state law, “subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983. A plaintiff states a claim under section 1983 by alleging (1) that the challenged conduct was committed by a person acting under color of state law, and (2) that such conduct deprived the plaintiff of a right secured by the Constitution or laws of the United States. *See, e.g., Sykes v. James*, 13 F.3d 515, 519 (2d Cir. 1993).

Plaintiffs satisfy both elements. Defendants Fan, De Leon, and Maya are Commissioners of the New York State Liquor Authority who acted under color of state law in administering the liquor licensing process and enforcing the Alcoholic Beverage Control Law. *See Am. Compl.* at

23. Plaintiffs allege that, in doing so, Defendants deprived them of rights secured by the Fourteenth Amendment's Equal Protection Clause. *See id.*

The Fourteenth Amendment guarantees that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. AMEND. XIV. Government actors violate equal protection when they intentionally treat a plaintiff differently from others similarly situated, based on impermissible considerations or without a rational basis. *See Dibbs v. Roldan*, 356 F. Supp. 2d 340, 354 (S.D.N.Y. 2005) (“[E]qual protection claims can succeed where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.”) (citation omitted).

Plaintiff's Amended Complaint plausibly alleges that Defendants subjected the Cayuga Nation and its entities to discriminatory and unequal treatment in the liquor licensing process. *See Am. Compl.* at 23-25. Plaintiffs allege that Defendants relied on vague and subjective criteria not imposed on similarly situated non-Indian applicants; repeatedly demanded in-person appearances by Nation leadership despite the Nation's sovereign status and geographic remoteness and express notation that personal appearances were not required; and adjourned the Nation's application without explanation, imposing selective and unjustified delays. *See id.*

Most notably, Plaintiffs allege that Defendants expressed baseless concerns that the Nation would not comply with New York's alcohol laws, despite the Nation's existing SLA-issued licenses, its flawless compliance record under those licenses, and uncontroverted evidence of its regulatory and enforcement capacity. *See Am. Compl.* at 24. Chairperson Fan speculated about “who was *trafficking* the alcohol” (emphasis added), questioned whether the Nation would follow SLA rules, and asserted that she could not “get comfort that there's appropriate fitness and character here.” *See id.* These comments alone points to her unfounded discriminatory beliefs

regarding the Nation. Defendants also suggested that the Nation’s sovereignty rendered it incapable of policing underage drinking because “once it’s in your hands it’s sort of in your hands.” *See id.* These allegations plausibly reflect discriminatory and pre-conceived assumptions about Native nations, not neutral regulatory judgment.

Plaintiffs further allege that Defendants denied the application based on factors untethered to any statutory disqualification, including the Nation’s refusal to collect and remit sales tax from non-Nation customers, its refusal to commit to selling a fixed percentage of New York-made products, and its refusal to promise that the premises would remain the same size “forever.” *See Am. Compl.* at 25. The Amended Complaint plausibly alleges that these justifications were pretextual and that the denial was motivated by discriminatory assumptions rather than legitimate licensing criteria.

Taken as true, these allegations state an equal protection claim: state officials, acting under color of law, intentionally subjected Plaintiffs to heightened scrutiny, burdens, and denial based on who they are, a sovereign Indian nation, rather than on neutral and even-handed standards. Plaintiffs also plausibly allege an ongoing risk that future applications will be subjected to the same discriminatory regime absent injunctive relief.

At the pleading stage, Plaintiffs are not required to prove discriminatory intent; instead, they must plausibly allege it. *See Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 88 (2d Cir. 2015) (explaining that “for a § 1983 motion to dismiss, a plaintiff must plausibly allege [their] claim”); *see also Buon v. Spindler*, 65 F.4th 64, 83 (2d Cir. 2023) (“[W]ith respect to the issue of intent, ‘[t]he facts required . . . to be alleged in the complaint need not give plausible support to the ultimate question of whether the [conduct] was attributable to discrimination,’ but rather ‘need only give plausible support to a minimal inference of discriminatory motivation.’”) (quoting

Littlejohn v. City of N.Y., 795 F.3d 297, 311 (2d Cir. 2015)). The Amended Complaint does so in detail. *See* Am. Compl. at 23-25. Accordingly, Plaintiffs have stated a claim under 42 U.S.C. § 1983.

A. Sovereign Immunity Does Not Bar Plaintiffs’ § 1983 Claims for Prospective Relief, and the NYSLA Chair and Commissioners Are Proper Defendants.

Defendants’ invocation of sovereign immunity fails for the same fundamental reason it fails as to Plaintiffs’ section 1161 claim: Plaintiffs seek only prospective declaratory and injunctive relief to halt an ongoing violation of federal law. As explained above, under *Ex parte Young*, a plaintiff may sue state officers in their official capacities for forward-looking relief to prevent continuing violations of the Constitution. *See* 209 U.S. at 159-60.

That doctrine applies with full force here. Plaintiffs allege that Defendants Fan, De Leon, and Maya are presently administering a discriminatory licensing regime that subjects the Nation to unequal treatment in violation of the Equal Protection Clause. The Amended Complaint further alleges that, absent judicial intervention, future applications by the Nation and its instrumentalities will be governed by the same unlawful practices. *See* Am. Compl. at 33-34. Plaintiffs therefore seek relief that is quintessentially prospective: a declaration that Defendants’ discriminatory practices are unconstitutional and an injunction requiring that future applications be evaluated on equal terms with those of similarly situated non-Indian applicants. *See id.*

The Chair and Commissioners are proper defendants because they are the officials who administer the licensing process, conduct the hearings, impose the challenged requirements, and render the decisions at issue. An injunction directed to these officials would not operate against the State as sovereign; it would require those officers to conform their future conduct to the Constitution. *See Unkechaug Indian Nation v. N.Y. State Dep’t of Env’t Conservation*, 677 F. Supp. 3d 137, 152 (E.D.N.Y. 2023) (holding *Ex parte Young* permitted claims for prospective declaratory

and injunctive relief against the DEC Commissioner in his official capacity because the requested relief would merely require the State to conform its future enforcement conduct to federal law); *see also Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 254 (2011) (“[W]hen a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.”).

Nor does Plaintiffs’ claim reduce to an impermissible request for retrospective relief. Plaintiffs do not ask this Court merely to declare that Defendants acted unlawfully in the past. They allege an ongoing discriminatory regime and seek to prevent its continued application. Thus, because Plaintiffs allege an ongoing violation of the Equal Protection Clause and seek forward-looking relief to halt that violation, sovereign immunity does not apply, and the NYSLA Chair and Commissioners are proper defendants under *Ex parte Young*.

B. Plaintiffs Have Plausibly Alleged a Violation of the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs have plausibly alleged that Defendants’ conduct violates the Equal Protection Clause. The Fourteenth Amendment guarantees all persons within a state’s jurisdiction the equal protection of the laws. U.S. CONST. AMEND. XIV.

Defendants mischaracterize both the governing pleading standard and the allegations in the Amended Complaint. At the motion-to-dismiss stage, Plaintiffs need not prove discrimination. They must plausibly allege differential treatment and a discriminatory or bad-faith motive. *See Vega*, 801 F.3d at 88; *see also Buon*, 65 F.4th at 83. They have done so. The Amended Complaint does not rest on a bare assertion that Plaintiffs were “treated differently.” Instead, it pleads specific facts showing that Defendants subjected the Nation to scrutiny, suspicion, and procedural burdens not imposed on non-Indian applicants, grounded expressly in the Nation’s sovereign status and in unfounded assumptions about its ability to comply with the law. *See Am. Compl.* at 24-25.

The Amended Complaint alleges, among other things, that Defendants repeatedly demanded in-person attendance by Nation leadership, alternately describing it as optional, mandatory, unnecessary, and then again required, despite the Nation’s geographic remoteness and despite the routine practice of permitting representation by counsel for non-Indian applicants. *See* Am. Compl. at 24-25. The Amended Complaint alleges that Defendants expressed baseless concerns that the Nation would not comply with New York’s alcohol laws, including speculation about “who was trafficking the alcohol” and statements that they could not “get comfort that there’s appropriate fitness and character here,” even though the Nation already held two SLA-issued beer licenses in good standing, one renewed the day before the October 29 hearing. *See id.* The Amended Complaint further alleges that Defendants questioned the Nation’s capacity to police underage drinking because the premises were located on sovereign land, suggesting that “once it’s in your hands it’s sort of in your hands,” a concern never raised against non-Indian applicants.² *See id.*

These allegations plausibly plead discriminatory intent. *See La Bounty v. Adler*, 933 F.2d 121 (2d Cir. 1991). Courts in this Circuit have made clear that, at the pleading stage, a plaintiff need only allege facts that give “‘plausible support to a minimal inference of discriminatory motivation.’” *Vega*, 801 F.3d at 84 (quoting *Littlejohn*, 795 F.3d at 311); *see Agnew v. D’Amore*, No. 6:23-CV-1610 (AJB/ML), 2025 LX 11190, at *37-39 (N.D.N.Y. May 21, 2025) (holding plaintiff “cleared [the] low hurdle” at the pleading stage by alleging facts giving rise to an inference

² Moreover, the Nation has since obtained materials pursuant to a Freedom of Information Law (“FOIL”) request to the NYSLA seeking records of licensing conditions imposed on similarly situated retail applicants. The records produced do not reflect any instance in which other in-state operators were required to commit to stocking a specified percentage of New York-made products as a condition of licensure. That disparity reinforces the inference that the Nation was treated differently because of its status as an Indian nation and the Commissioners’ perception of its sovereign identity, rather than for any neutral, business-related reason.

of discriminatory intent). In *La Bounty*, the Second Circuit held that a complaint survives Rule 12(b)(6) where it alleges concrete facts showing differential treatment and permits a “fair inference” that the disparity is tied to an impermissible classification. *La Bounty*, 933 F.2d at 123. The plaintiff there was not required to prove discriminatory motive at the outset; it was enough that he alleged that similarly situated persons were treated differently and that the disparity plausibly flowed from race. *Id.* at 123-24 (holding that such allegations “paint[] a sufficient picture of [discrimination] . . . to survive dismissal at the pleading stage”).

Here, the Amended Complaint likewise alleges specific, non-conclusory facts showing that Defendants subjected the Nation, unlike non-Indian applicants, to suspicion, delay, and procedural hurdles, and that those burdens were expressly tied to the Nation’s sovereign status and identity. At the pleading stage, that is sufficient. *See Vega*, 801 F.3d at 87 (holding even “indirectly showing circumstances giving rise to an inference of discrimination” would satisfy the plaintiff’s burden); *see also Benjamin v. Town of Islip*, No. 20-CV-56 (ENV)(LB), 2021 U.S. Dist. LEXIS 152434 (E.D.N.Y. Aug. 12, 2021) (explaining that an Equal Protection claim is adequately pleaded where the complaint “present[s] facts sufficient to support an inference of intentional discrimination,” and recognizing that discriminatory intent is rarely susceptible to direct proof and may be inferred from circumstantial allegations). Thus, Plaintiffs’ allegations clear the Rule 12(b)(6) threshold and state a plausible claim that Defendants’ conduct was motivated by impermissible discrimination. Accordingly, Plaintiffs’ Equal Protection claim should not be dismissed.

III. PLAINTIFFS HAVE STATED A CLAIM FOR RELIEF UNDER 42 U.S.C. § 1981.

42 U.S.C. § 1981 guarantees that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be

parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. It further prohibits subjecting persons to unequal “punishment, pains, penalties, taxes, licenses, and exactions of every kind.” 42 U.S.C. § 1981. To sufficiently state a claim under section 1981, a plaintiff must allege: “(1) the plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute (i.e., make and enforce contracts, sue and be sued, give evidence, etc.).” *Mian v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 7 F.3d 1085, 1087 (2d Cir. 1993). Plaintiffs have done so.

The SLA’s liquor licensing regime constitutes a state-administered process by which individuals and entities enter into a regulatory and commercial relationship with the State of New York to sell alcoholic beverages. *See, e.g.*, ABCL §§ 2, 17, 100. Approval by the SLA is a necessary prerequisite to engaging in this business activity, and the license defines the legal terms under which the applicant may operate. *See id.* The Nation, through Lakeside, sought to enter into that relationship by applying for a retail liquor license to operate on its Reservation. That application constituted an effort to “make and enforce” a business and licensing relationship protected by section 1981.

Plaintiffs allege that Defendants interfered with that process by delaying action, imposing unnecessary and shifting procedural requirements, and ultimately signaling denial based on vague concerns unrelated to any statutory disqualification. *See Am. Compl.* at 26-27. In doing so, Defendants imposed burdens on the Nation that were not imposed on similarly situated white or non-Indian applicants. Those burdens included demands for in-person appearances by Nation principals, heightened scrutiny of zoning and compliance issues, reliance on objections lodged by incumbent non-Indian licensees, and repeated adjournments without justification. *See id.*

Plaintiffs further allege, upon information and belief, that this differential treatment was motivated, in whole or in part, by discriminatory intent based on race, ethnicity, ancestry, and Indian status. *See* Am. Compl. at 27. The Amended Complaint details how Defendants expressed unfounded concerns that the Nation would not comply with New York’s alcohol laws, notwithstanding the Nation’s existing SLA-issued licenses and spotless compliance record, and how Defendants treated the Nation’s sovereign status as a basis for suspicion rather than as a neutral jurisdictional fact. *See id.* Taken as true, these allegations plausibly support an inference of intentional discrimination.³

By obstructing the Nation’s ability to enter into the same contractual and licensing relationship available to non-Indian applicants, Defendants deprived Plaintiffs of rights secured by section 1981. As a direct and proximate result, the Nation has been denied equal participation in the State’s liquor licensing regime and the opportunity to operate a liquor store on its own territory on equal footing with non-Indian businesses. *See Quarterman v. City of Springfield*, 716 F. Supp. 2d 67 (D. Mass. 2009) (permitting claim under section 1981 to go to trial where the plaintiffs, a company and its owner, sued defendants, a city and a member of its board of license commissioners, for violations of 42 U.S.C §§ 1983 and 1981, when defendants denied plaintiffs’ request to transfer a liquor license).

Defendants’ attack on Plaintiffs’ section 1981 claim rests on the same two misconceptions that underly their Eleventh Amendment argument generally: first, that Plaintiffs seek relief only

³ As set forth *supra*, the SLA’s FOIL production confirms that the SLA has not imposed comparable burdens on any other retail liquor-license applicant. *See supra* note 2. The materials produced contain no instance in which non-Indian applicants were subjected to the same in-person demands, heightened scrutiny, repeated adjournments, or special conditions imposed on Plaintiffs. That disparity is probative and reinforces the plausibility that the differential treatment alleged here was intentional.

for a completed past wrong; and second, that sovereign immunity forecloses any claim for prospective relief against state officials. *See* Dkt. No. 17-1 at 41-42. Both premises are incorrect.

As with Plaintiffs’ Equal Protection claim, the section 1981 claim proceeds under *Ex parte Young* against the Chair and Commissioners in their official capacities for ongoing violations of federal law. Plaintiffs do not rely on congressional abrogation or state waiver. They allege that Defendants are presently enforcing and will continue to enforce a discriminatory licensing regime that interferes with the Nation’s ability to “make and enforce contracts” and to obtain licenses “on the same terms as white citizens,” in violation of 42 U.S.C. § 1981. The relief sought is forward-looking: an order barring Defendants from continuing to apply discriminatory standards and requiring that future applications by the Nation be processed on equal terms. *See* Am. Compl. at 33-34. That is precisely *Ex parte Young* relief. *See Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645-46 (2002) (where a plaintiff seeks injunctive relief against state officials for an ongoing violation of federal law, the Eleventh Amendment does not bar such a suit and the inquiry is “straightforward”); *see also Papasan v. Allain*, 478 U.S. 265, 277-82 (1986) (*Ex parte Young* permits relief to remedy “a continuing violation of federal law” and to “ensure compliance in the future with a substantive federal-question determination”). The fact that Plaintiffs also allege past injury does not convert a claim for prospective relief into a barred retrospective action. The Amended Complaint expressly pleads that the Nation “reasonably anticipates 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.” Am. Compl. at 25.

IV. PLAINTIFFS HAVE STATED A CLAIM FOR RELIEF UNDER 42 U.S.C. § 1985.

42 U.S.C. § 1985(3) prohibits conspiracies by two or more persons to deprive any person or class of persons of the equal protection of the laws or of equal privileges and immunities under

the law, where such conspiracies are motivated by discriminatory animus based on race or protected class status. In order to state a conspiracy claim under 42 U.S.C. § 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 the equal protection of the laws, or of equal privileges and immunities under the laws; (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 or privilege of a citizen of the United States.

Cine SK8, Inc. v. Town of Henrietta, 507 F.3d 778, 791 (2d Cir. 2007) (citing *Britt v. Garcia*, 457 F.3d 264, 270 n.4 (2d Cir. 2006)). Plaintiffs have done so here.

Defendants mischaracterize both the pleading standard and the substance of Plaintiffs' allegations. At this stage, Plaintiffs must plausibly allege facts permitting the inference of a meeting of the minds to accomplish an unlawful, discriminatory end. *See Gedney v. DolGen N.Y., LLC*, 763 F. Supp. 3d 356, 360 (W.D.N.Y. 2025). The Amended Complaint does that. *See* Am. Compl. at 27-28. It alleges that the Chair and Commissioners engaged in "shared discussions, coordinated actions, and mutually reinforcing decisions" to obstruct and ultimately deny the Nation's application on pretextual and discriminatory grounds, including jointly demanding personal attendance by Nation leadership despite no statutory requirement, repeatedly adjourning the application without justification, withholding votes, and applying subjective criteria in a manner that protected non-Indian competitors. *Id.* at 28. The Amended Complaint further alleges that, while questioning Plaintiffs' counsel, the Commissioners repeatedly recessed to confer among themselves before resuming, reinforcing that their actions were coordinated rather than independent. *Id.* at 18. Additionally, during one hearing, Chair Fan stated to another commissioner "Oh, this guy is not going to make it easy" and "we can say . . . I mean . . . I want

to kick it.” *Id.* at 15. These are not “vague” or “general” allegations. *Cf.* Dkt. No. 17-1 at 42-43. They describe coordinated conduct over time, from which an agreement may reasonably be inferred. *See Gorawara v. Caprio*, No. 3:19-cv-756 (MPS), 2021 U.S. Dist. LEXIS 185214, at *25-26 (D. Conn. Sep. 28, 2021) (holding that a plaintiff adequately stated a section 1985(3) claim by alleging that defendants “entered into a scheme” to harm him based on race, engaged in a campaign to intimidate, and treated similarly situated white tenants differently, because such allegations, taken together, “suffice to state a claim under § 1985(3)” at the motion-to-dismiss stage).

Nor does the intra-corporate conspiracy doctrine compel dismissal. That doctrine does not apply where officials are alleged to have acted “other than in the normal course of their corporate duties” or in pursuit of “personal interests wholly separate and apart from the entity.” *Ali v. Connick*, 136 F. Supp. 3d 270, 283 (E.D.N.Y. 2015) (quoting *Girard v. 94th St. & Fifth Ave. Corp.*, 530 F.2d 66, 72 (2d Cir. 1976)); *Cowan v. City of Mount Vernon*, 95 F. Supp. 3d 624, 650 (S.D.N.Y. 2015) (quoting *Castanza v. Town of Brookhaven*, 700 F. Supp. 2d 277, 292 (E.D.N.Y. 2010)). The Amended Complaint alleges that: not routine, good-faith regulatory deliberations, but a coordinated course of conduct in excess of statutory authority, including demanding extra-statutory appearances, repeatedly adjourning without justification, withholding votes, and applying subjective criteria, all undertaken to effectuate racial exclusion. *See* Am. Compl. at 27-28. Conduct undertaken to discriminate and to protect favored private interests is not the normal course of administering a neutral licensing regime. *See Vicente v. Ayotte*, No. 3:24-cv-844 (OAW), 2024 LX 16152, at *10 (D. Conn. Dec. 2, 2024) (declining to apply the intra-corporate conspiracy doctrine where correction officers allegedly coordinated to conceal their own misconduct, reasoning that such conduct was undertaken not in furtherance of any legitimate institutional

objective). At the pleading stage, those allegations suffice to invoke the personal-stake exception and defeat application of the intra-corporate conspiracy doctrine. *See Cooper v. Clancy*, No. 9:19-cv-362 (AMN/ML), 2023 U.S. Dist. LEXIS 197522, at *24-25 (N.D.N.Y. Nov. 3, 2023) (holding that the intra-corporate conspiracy doctrine does not bar a section 1985 claim where plaintiffs allege that officials entered into a race-based agreement to misuse their official authority to obstruct a plaintiff's rights, because such allegations plausibly plead that defendants acted "other than in the normal course of their corporate duties" and in pursuit of an improper, discriminatory objective).

Finally, Defendants' sovereign immunity argument fails for the same reasons addressed above. *See* Dkt. No. 17-1 at 44-45. Plaintiffs proceed under *Ex parte Young* against the Chair and Commissioners for ongoing violations of federal law. They seek only prospective declaratory and injunctive relief to prevent continued discriminatory obstruction of the Nation's applications. The presence of past injury does not convert a claim for forward-looking relief into a barred retrospective action. Because Plaintiffs plausibly allege a coordinated scheme, motivated by class-based discriminatory animus, to deprive them of equal protection and equal privileges under the law, and because they seek only prospective relief, the section 1985 claim is adequately pleaded and should not be dismissed.

V. PLAINTIFFS HAVE STATED CLAIMS UNDER ARTICLE I, SECTION 11 OF THE NEW YORK STATE CONSTITUTION.

Article I, Section 11 of the New York Constitution guarantees that no person shall be denied the equal protection of the laws of New York state or any subdivision thereof, and prohibits any discrimination in civil rights on the basis of race, color, creed, or religion, by the state or any agency thereof. As a sovereign Indian nation, the Cayuga Nation is entitled to the protections of

Article I, Section 11, including the right to be free from discrimination by the State and its agencies based on race, national origin, or Indian status.

This Court can exercise supplemental jurisdiction as this state law claim forms part of the same case or controversy in that it shares a “common nucleus of operative fact” with the federal claim. *See, e.g., Briarpatch Ltd., L.P. v. Phx. Pictures, Inc.*, 373 F.3d 296 (2d Cir. 2004). Under 28 U.S.C. § 1367(a), federal courts have supplemental jurisdiction to hear state law claims that are so related to federal question claims brought in the same action as to “form part of the same case or controversy under Article III of the United States Constitution.” A state law claim forms part of the same controversy if it and the federal claim “derive from a common nucleus of operative fact.” *Cicio v. Does*, 321 F.3d 83, 97 (2d Cir. 2003) (quoting *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 165 (1997), and citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)). All of Plaintiffs’ claims against Defendants unquestionably derive from a common nucleus of operative fact, because they all deal with the Defendants’ discriminatory statements and conduct against the Plaintiffs. In addition, the state law claim does not raise novel or complex issues of state law that this Court could not, in its discretion, adjudicate. The Court therefore has both the authority and a sound basis to adjudicate Plaintiffs’ state-law discrimination claim alongside their federal causes of action.

The Amended Complaint alleges that Defendants subjected the Nation to discriminatory treatment in the administration of a state licensing regime, imposing burdens, suspicions, and pretextual criteria not applied to non-Indian applicants. *See* Am. Compl. at 28-29. Those allegations state a straightforward claim under Article I, Section 11.

Defendants do not meaningfully dispute the substance of those allegations. Instead, they argue that the claim must be dismissed on Eleventh Amendment grounds under *Pennhurst State*

School & Hospital v. Halderman, 465 U.S. 89 (1984), because “a federal court may not grant declaratory or injunctive relief against a state agency or state officials on the basis of state law.” Dkt. No. 17-1 at 45-46. However, Defendants’ reliance on *Pennhurst* is misplaced. *Pennhurst* held that federal courts lack jurisdiction to grant injunctive relief against a State or state officials “on the basis of state law,” because such relief “does not vindicate the supreme authority of federal law” and instead constitutes “a greater intrusion on state sovereignty” by directing officials “how to conform their conduct to state law.” 465 U.S. at 106. The holding was driven by the character of the relief sought there, a decree effectively requiring Pennsylvania to restructure and fund its mental-health system, and the record finding that the defendants “acted in the utmost good faith . . . within the sphere of their official responsibilities,” had “nothing to gain personally,” and were not acting willfully or negligently. *Id.* at 107-08. That is very different from the allegations here, which target intentional discrimination and coordinated obstruction of a licensing application, conduct that New York law does not authorize and that Article I, Section 11 itself forbids.

Accordingly, Plaintiffs have plausibly stated a claim under Article I, Section 11 of the New York Constitution, and Defendants’ Motion should be dismissed.

VI. PLAINTIFFS HAVE STATED A CLAIM UNDER NEW YORK EXECUTIVE LAW § 296(1)(a).

Section 296(1)(a) of the New York Executive Law makes it an unlawful discriminatory practice for a licensing agency to discriminate against any individual, or entity associated with such individuals, based on race, national origin, citizenship status, or related protected characteristics. The SLA is a licensing agency within the meaning of the statute and is subject to its requirements. As argued directly above and for the same reasons, this Court can exercise supplemental jurisdiction as this state law claim forms part of the same case or controversy in that it shares a “common nucleus of operative fact” with the federal claim. *See supra* Section V.

Accordingly, Defendants’ motion to dismiss Plaintiffs’ claim under New York Executive Law § 296(1)(a) should be denied.⁴

VII. PLAINTIFFS HAVE STATED A CLAIM UNDER THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

The Commerce Clause of the United States Constitution prohibits states from enacting or administering regulations that unduly burden or discriminate against interstate commerce. *See* U.S. CONST. ART. I, § 8, cl. 3. Its “dormant” aspect limits state authority to impede free flow of goods and services across state or jurisdictional boundaries, or to favor in-state economic interests over out-of-state or federally regulated commerce. Plaintiffs allege that Defendants administered New York’s liquor licensing regime in a manner that penalized the Nation for declining to favor New York-made products, and treated the absence of such a pledge as a basis for denial. *See* Am. Compl. at 31-32. By conditioning market access on preferential treatment of in-state goods, Defendants burdened interstate commerce and advantaged local economic interests in violation of the Commerce Clause.

Defendants argue that Plaintiffs are simply unhappy with how the NYSLA applied a neutral licensing standard in this case. *See* Dkt. No. 17-1 at 54. They argue that the denial rested on routine considerations, such as the number of nearby stores, declining sales, and the lack of a distinctive business plan, and not on any effort to steer commerce toward New York products or

⁴ Defendants assert that Plaintiffs have not identified similarly situated applicants who were treated differently. *See* Dkt. No. 17-1 at 47. That is incorrect. As discussed *supra*, in response to the Nation’s FOIL request seeking records of licensing conditions imposed on comparable retail applicants, the SLA produced materials reflecting that surrounding non-Indian licensees were not required to commit to stocking New York-made products or subjected to any analogous condition as a prerequisite to licensure. *See supra* notes 2 and 3. That disparity reinforces the plausible inference that the Nation was treated differently because of its status as an Indian nation, not for any neutral business reason. At the pleading stage, Plaintiffs are not required to prove discrimination with evidentiary precision; they must allege facts supporting a reasonable inference of disparate treatment, which they have done. *See, e.g., Duchemin v. Vill. of E. Hampton*, 222 A.D.3d 715, 718 (2d Dep’t 2023) (holding that the plaintiff sufficiently alleged a discrimination cause of action under Executive Law § 296 (1)(a) where the complaint detailed circumstances giving rise to the inference of discrimination).

away from goods made elsewhere. *See id.* However, Defendants’ argument asks the Court to do on a Rule 12 motion what it cannot: credit Defendants’ preferred characterization of the record (i.e., that the “New York-made products” issue was merely “customary . . . encourage[ment]” and not part of the denial rationale), weigh competing inferences, and conclusively decide what actually motivated the denial. *Id.* at 52.

Plaintiffs have plausibly alleged that Defendants conditioned access to New York’s liquor-licensing market on criteria that favored in-state economic interests, most notably by pressing Plaintiffs to commit to stocking a specified percentage of New York-made products and then citing Plaintiffs’ refusal as part of the basis to deny the application.⁵ Defendants’ own written denial, issued on December 3, 2025, confirms this point, faulting Plaintiffs for declining to commit to carrying wines from the Finger Lakes region or to selling any particular share of New York–manufactured alcoholic beverages. *See* Dkt. No. 16-36 at 4 (“Although the location of the store is in the Finger Lakes wine region, the applicant’s counsel stated that the store would not necessarily sell any of the wines of the region, or any other alcoholic beverages manufactured in New York State and would not commit to selling a specific percent of New York State Products.”). That is sufficient to state a dormant Commerce Clause claim at the pleading stage.

A. Plaintiffs Plausibly Allege Discrimination and a Violation of the *Pike* Balancing Test.

At the pleading stage, Plaintiffs need only allege facts that permit a reasonable inference that Defendants’ actions either discriminated against interstate commerce or imposed a burden on interstate trade that is not justified by the local interests invoked. *See Sherwin-Williams Co. v.*

⁵ That allegation is now reinforced by records obtained through FOIL, which show that Defendants have not imposed any comparable requirement on other liquor license applicants operating within New York. *See supra* notes 2-4. The disparate treatment supports a reasonable inference that the New York-products demand was not incidental, but a meaningful condition applied uniquely to Plaintiffs.

Crotty, 334 F. Supp. 2d 187, 194 (N.D.N.Y. 2004) (denying dismissal where plaintiffs plausibly alleged that state regulations imposed an excessive and non-incidental burden on out-of-state manufacturers, sufficient to state a dormant Commerce Clause claim); *see also Allocco Recycling, Ltd. v. Doherty*, 378 F. Supp. 2d 348, 361-63 (S.D.N.Y. 2005) (holding that a Commerce Clause claim survives dismissal where the complaint plausibly alleges either discriminatory effect on out-of-state commerce or an incidental burden on interstate trade that outweighs any local benefit, and stressing that plaintiffs “need[] only allege, not prove,” those facts at the pleading stage). Plaintiffs have done so. The Amended Complaint alleges that, during the October 29 hearing, Commissioners repeatedly pressed Plaintiffs to commit to stocking a specified percentage of New York-made products and treated Plaintiffs’ refusal as a negative factor in the licensing decision. *See* Am. Compl. at 32. That allegation, taken as true, supports a straightforward inference: access to New York’s retail liquor market was conditioned on a willingness to favor in-state goods over products originating elsewhere. That is classic dormant Commerce Clause territory.

Defendants respond by reciting other grounds mentioned at the hearing, store proximity, sales trends, and the absence of a distinctive business model, and by insisting that any references to New York products were merely “customary . . . encourage[ment].” *See* Dkt. No. 17-1 at 50-54. But that framing improperly collapses the pleading standard into a merits determination. On a motion to dismiss, the Court must draw reasonable inferences in Plaintiffs’ favor, and not resolve factual disputes about what “really” motivated the denial. *See Sherwin-Williams Co.*, 334 F. Supp. 2d at 194. The Amended Complaint alleges that the Commissioners’ insistence on a New York-products pledge was not incidental but part of the rationale for denial, an allegation reinforced by the Agency’s own written determination, which expressly faults Plaintiffs for declining to commit

to selling New York-made products. *See* Am. Compl. at 31-32; *see also* Dkt. No. 16-36 at 4. That allegation suffices to plead discriminatory purpose or effect.

Even if the Court were to view the challenged conduct as facially neutral, Plaintiffs have also plausibly alleged a violation under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Under *Pike*, a regulation that does not openly discriminate nonetheless violates the dormant Commerce Clause where it “regulates even-handedly to effectuate a legitimate local public interest” but “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Id.* at 142. The Second Circuit has made clear that this inquiry asks whether the challenged action imposes burdens on interstate commerce that exceed those borne by intrastate commerce, and whether those excess burdens are unjustified by the asserted local interests. *See Freedom Holdings, Inc. v. Spitzer*, 357 F.3d 205, 217 (2d Cir. 2004) (“[U]nder the *Pike* balancing test, appellants must show that a statute enacted for a legitimate public purpose, although apparently evenhanded, actually imposes [1] burdens on interstate commerce that exceed the burdens on intrastate commerce, . . . and that [2] those excess burdens on interstate commerce are clearly excessive in relation to the putative local benefits.”) (citations omitted).

Here, Plaintiffs allege that Defendants conditioned market access on a pledge to privilege New York-made products, an operational constraint that skews inventory decisions and supply chains away from interstate commerce and toward in-state goods. *See* Am. Compl. at 31-32. That allegation plausibly describes a burden on interstate trade that is different from any burden imposed on purely intrastate commerce and that, under *Pike*, exceeds any local benefit asserted to justify it. At the pleading stage, nothing more is required. *See Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 94-96 (2d Cir. 2009) (reversing dismissal and holding that plaintiffs state a *Pike* claim by

plausibly alleging that a facially neutral policy “place[s] burdens on interstate commerce that exceed any local benefit,” which must be credited at the pleading stage).

Defendants’ reliance on post hoc explanations and on their own characterization of the hearing record cannot defeat that claim at the motion to dismiss stage. The New York-products demand was an operative condition, as reflected in the Defendants’ decision, and whether it materially influenced the denial is a factual question. *See* Dkt. No. 16-36 at 4. Plaintiffs have alleged enough to cross the plausibility threshold.

B. Defendants Provide No Basis to Dismiss Plaintiffs’ Claim Under the Extraterritorial Prong.

Defendants’ extraterritoriality argument does not warrant dismissal at the pleading stage. Even Defendants acknowledge the governing rule: a state action is invalid under the extraterritoriality strand of the dormant Commerce Clause if it has the practical effect of controlling commerce that occurs outside the state’s borders, regardless of whether the legislature intended such an effect. *See* Dkt. No. 17-1 at 55–56 (quoting *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336-37 (1989)). As the Supreme Court in *Healy* explained, the “critical inquiry” is the practical effect of the challenged regulation, i.e., whether the state is using its authority to control conduct beyond its own boundaries. *Healy*, 491 U.S. at 336-37.

That is what Plaintiffs plausibly allege here. The Amended Complaint alleges that, in administering New York’s licensing regime, the Commissioners repeatedly pressed Plaintiffs to commit 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. *See* Am. Compl. at 31-32. Those allegations describe more than ordinary in-state regulation, and instead state that Defendants used access to New York’s market as leverage to dictate how Plaintiffs would structure

their purchasing and inventory decisions, penalizing the Nation for declining to favor in-state producers and disfavoring the sale of goods originating outside New York. *See id.*; *see also* Dkt. No. 16-36 at 4. The practical effect of that conduct is to steer commerce and constrain business decisions that necessarily extend beyond New York's borders, including decisions about which out-of-state products may be sold.

At the pleading stage, Plaintiffs need not prove the full reach of that constraint. It is enough that the Amended Complaint plausibly alleges that Defendants employed New York's licensing power to influence interstate commercial conduct by conditioning market access on preferential treatment of in-state goods. *See Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 171-73 (2d Cir. 2005) (reversing dismissal because plaintiffs alleged that the practical effect of coordinated state efforts was to influence pricing beyond state borders, and emphasizing that at the motion-to-dismiss stage a court may not assume the effects are purely intrastate where the complaint pleads interstate spillover under *Healy*). That is the type of extraterritorial control the Commerce Clause forbids. The Nation has therefore plausibly alleged facts sufficient to satisfy this prong, and its Dormant Commerce Clause claim should not be dismissed.

CONCLUSION

For the reasons set forth in this memorandum, Plaintiff respectfully requests that the Court deny the Defendants' motion to dismiss.

Dated: January 28, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 28, 2026, he filed the foregoing document by electronically filing with the Clerk of the Court herein, using the CM/ECF system, which sent notification of such filing electronically to all counsel of record.

By: /s/ David G. Burch, Jr.
David G. Burch, Jr.