

1 QUARLES & BRADY LLP
Luis A. Ochoa (#011027)
2 Nicole L. Simmons (#028947)
Renaissance One
3 Two North Central Avenue
Phoenix, Arizona 85004-2391
4 Telephone 602.229.5200
5 Email: Luis.Ochoa@quarles.com
Nicole.Simmons@quarles.com

6 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 YAVAPAI-PRESCOTT INDIAN TRIBE,

11 Plaintiff,

12 vs.

13 DOUG ANTHONY DUCEY JR., in his
14 official capacity as Governor of the State of
Arizona; and TED VOGT, in his official
15 capacity as Director of the Arizona
Department of Gaming.

16 Defendants.
17

NO. CV2021-013497

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

18 Plaintiff, by and through its attorneys, hereby alleges as follows:

19 **NATURE OF THE ACTION**

20 1. This action arises out of the Legislature's enactment of Arizona House Bill
21 2772 enacted by the Fifty-Fifth Legislature, First Regular Session in 2021 ("H.B. 2772"),
22 which completely eliminates the gaming exclusivity within the State of Arizona that the
23 Yavapai-Prescott Indian Tribe, among other tribes, enjoyed under their existing compacts
24 with the State of Arizona.

25 2. This lawsuit, however, is not just about gaming. Rather, this lawsuit is about
26 the critical economic lifeline gaming provides to Indian tribes in the State of Arizona, which
27 was recognized by Arizona voters when it passed Proposition 202, titled the "Indian
28 Gaming Preservation and Self-Reliance Act" in 2002, as codified in Title 5, Chapter 6,

1 Article 1, A.R.S. § 5-601.02, *et seq.* Indeed, Proposition 202 recognized that, “[f]or most of
2 the past century, Indians on reservations in Arizona lived in extreme poverty, welfare
3 dependency and economic despair.” This dire situation began to improve in 1988, when the
4 U.S. government enacted the Indian Gaming Regulatory Act of 1988 (“IGRA”), 25 U.S.C.
5 § 2701, *et seq.*, which required Arizona and Arizona Indian tribes, among others, to enter
6 into and execute gaming compacts to lawfully engage in Class III gaming. In Arizona,
7 because of those compacts, “[t]oday, those gaming facilities provide tribes with vitally
8 needed funds for education, housing, health care, clean water, and other basic services on
9 the tribal reservations,” as well as support for thousands of jobs on Indian lands and an
10 Arizona industry that generates hundreds of millions of dollars in and out of the Indian
11 lands.

12 3. As such, this lawsuit seeks judgment declaring H.B. 2772 is unconstitutional
13 because it violates the State’s Voter Protection Act, Ariz. Cons. Article IV, Part 1, § 1(6) ,
14 the legislature’s power to amend initiative or referendum, and Article IV, Part 2, § 19 as an
15 invalid and prohibited special law, and further declaring that the actions of the State of
16 Arizona and its Governor in undermining Proposition 202’s voter-protected approval and
17 authorization of gaming exclusivity within the State and defining the scope and forms of
18 gambling, for Arizona’s Indian tribes.

19 **PARTIES, JURISDICTION, AND VENUE**

20 4. The Yavapai-Prescott Indian Tribe (“YPIT”) is a federally recognized Indian
21 tribe located within the State of Arizona.

22 5. Defendant Governor Doug Ducey is the duly elected governor of the State of
23 Arizona and is sued in his official capacity.

24 6. Ted Vogt is the Director of the Arizona Department of Gaming, which is the
25 State’s executive department that regulates and monitors tribal gaming in and on behalf of
26 the State of Arizona. He is sued in his official capacity.

27 7. This action asserts claims under state law and the Arizona Constitution. This
28 Court has jurisdiction over this case pursuant to the Arizona Constitution, A.R.S. §§ 12-123

1 and 12-1831, *et seq.* This action seeks affirmative relief in the form of a declaratory
2 judgment and injunctive relief; therefore, there is no amount in controversy requirement for
3 Superior Court jurisdiction.

4 8. Venue in Maricopa County is proper pursuant to A.R.S. § 12-401(16) where
5 the above named officers are hold office and the seat of the government of the State of
6 Arizona is in Maricopa County.

7 **STATEMENT OF FACTS**

8 9. Prior to 1987, all forms of gambling in Arizona was greatly disfavored by the
9 general population, the State's public policies and illegal pursuant to its criminal code in
10 Title 13 of the Arizona Revised Statutes.

11 10. In 1987, the U.S. Supreme Court confirmed the right of Indian tribes to
12 operate gaming operations within their jurisdiction. *California v. Cabazon Band of Mission*
13 *Indians*, 480 U.S. 202, 222 (1987).

14 11. On October 17, 1988, and in recognition of an Indian tribes inherent
15 sovereignty over Indian lands to conduct gaming thereon, the United States Congress
16 enacted the Indian Gaming Regulatory Act of 1988 (“IGRA”) “for the benefit of Indian
17 tribes” and to provide a “statutory basis for the operation and regulation of gaming by Indian
18 tribes as a means to promotion tribal economic development, self-sufficiency, and strong
19 tribal governments,” among other objectives, on Indian lands. *See* 25 U.S.C. § 2701, *et seq.*

20 12. Indian lands pursuant to IGRA and as adopted by Title 5, Chapter 6 of the
21 Arizona Revised Statutes means “all lands within the limits of any Indian reservation” or
22 lands in which title is vested in the United States in trust for the benefit of Tribes or
23 individual Indians. 25 U.S.C. § 2703(4).

24 13. IGRA Act creates Class I, Class II and Class III divisions of gaming. Class I
25 gaming is defined as social gaming for prizes of minimal value and those traditional forms
26 of Indian gaming that are part of tribal ceremonies and celebrations. 25 U.S.C. § 2703(6).
27 Class II gaming relates to bingo and certain card games that are legally played within a
28 State, excluding banked card games and slot machines. 25 U.S.C. § 2703(7). Class III

1 gaming is all gaming that is not Class I or Class II gaming. 25 U.S.C. § 2703(8).

2 14. IGRA expressly permits Indian tribes to engage in and operate Class III
3 gaming on Indian lands, so long as that gaming is conducted pursuant to a Tribal-State
4 compact. 25 U.S.C. § 2710(d).

5 15. Prior to IGRA, most Arizona gambling activities regulated under IGRA as
6 Class III gaming, were illegal under Arizona's Title 13.

7 16. IGRA specifically requires in 25 U.S.C. § 2710(d)(3)(A), which has been
8 previously confirmed by Defendant, that "the only mechanism whereby a tribal-state
9 compact may come into existence is through negotiations on a case-by-case basis." *See,*
10 *e.g.*, Sen. Rep. 100-446 at 13 (finding that a negotiated compact between a tribe and State
11 is the "best mechanism to ensure the interests of *both* sovereigns are met.").

12 17. Furthermore, Congress expressly forbade States from usurping the compact
13 process to impose taxes upon Indian tribes seeking to engage in Class III gaming. IGRA
14 states as follows:

15 Except for any assessments that may be agreed to under paragraph (3)(C)(iii)
16 of this subsection [regarding regulatory costs], nothing in this section shall be
17 interpreted as conferring upon a State or any of its political subdivisions
18 authority to impose any tax, fee, charge, or other assessment upon an Indian
19 tribe or upon any other person or entity authorized by an Indian tribe to engage
20 in a class III activity. No State may refuse to enter into the negotiations
described in paragraph (3)(A) based upon a lack of authority in such State, or
its political subdivisions, to impose such a tax, fee, charge, or other assessment.

20 25 U.S.C. 2710(d)(4).

21 18. In response to IGRA, in 1992, the Arizona Legislature enacted Law 1992,
22 Chapter 286, § 2, entitled "Gambling on Indian Reservations," which is now Title 5,
23 Chapter 6, and permitted certain forms of Class III gaming on Indian lands only pursuant
24 to IGRA and a Gaming Compact.

25 19. Pursuant to Title 5, Chapter 6, YPIT and the State executed a Gaming
26 Compact in 1992 that authorized YPIT to conduct Class III gaming activities that included
27 but were limited to (1) gaming devices, (2) lottery, (3) off-track and pari-mutuel wagering,
28 and (4) horse racing and did not require YPIT to share its gaming revenues with the State.

1 20. In June of 1993, YPIT and the State entered into a second Tribal-State
2 Gaming Compact that authorized YPIT to conduct Class III gaming activities that included
3 but were limited to gaming devices (that now included slot machines), (2) keno, (3) lottery,
4 (4) off-track pari-mutuel wagering, (5) pari-mutuel wagering on horse racing, and (6) pari-
5 mutuel wagering on dog racing and did not require YPIT to share its gaming revenues with
6 the State.

7 21. On November 5, 2002, Proposition 202, known as the “Indian Gaming
8 Preservation and Self-Reliance Act,” was a voter initiative measure put to Arizona voters
9 that, in relevant part, amended Arizona’s Criminal Code - Title 13, A.R.S. § 13-3301, as
10 well as Title 5, Chapter 6, Article 2 of the Arizona Revised Statutes by repealing A.R.S. §
11 5-601.01 and adding § 5-601.02. (*See Exhibit A*).

12 22. Pursuant to the “Declaration of Purpose” in Proposition 202, the purpose and
13 intent of that initiative is as follows:

14 For most of the past century, Indians on reservations in Arizona lived in
15 extreme poverty, welfare dependency, and economic despair. The situation
16 began to improve in 1988, when federal law confirmed the right of Indian
17 tribes to conduct limited, regulated gaming on their own land for the purposes
18 of, among other things, providing jobs and funding services for tribal members.

19 The federal law **requires** that state governments and tribes **negotiate**
20 agreements, called tribal-state compacts, to establish the terms and conditions
21 of Indian gaming in each state. ... Today, those gaming facilities provide tribes
22 with vitally needed funds for education, housing, health care, clean water, and
23 other basic services on the tribal reservations. **The Act maintains reasonable
24 limits on Indian gaming**

25 (Emphasis added).

26 23. Proposition 202 permits Indian tribes to conduct specific enumerated and
27 non-mobile gaming activities, which included “gaming devices, keno, offtrack pari-mutuel
28 wagering, pari-mutuel wagering on horse racing, pari-mutuel wagering on dog racing,
blackjack, poker (including jackpot poker), and lottery” as “Regulated Gambling as defined
in A.R.S. § 13-3301,” but only where “the gambling is conducted in accordance with the
terms of a Tribal-State gaming compact.” A.R.S. § 5-601.02(C).

1 24. Consistent with the above, Proposition 202 then amended Arizona Criminal
2 Code - Title 13, A.R.S. § 13-3301, to define “Regulated gambling” to expressly include
3 “gambling conducted in accordance with a tribal-state gaming compact or otherwise in
4 accordance with [IGRA],” as a form of lawful gambling permitted in Arizona under § 13-
5 3302.

6 25. A.R.S. §§ 5-601.02(A), (E) and (G) in Proposition 202 permitted the
7 Governor to execute the New Standard Form of Tribal-State Gaming Compact, and
8 “negotiate and enter into amendments to new compacts” that are consistent with Chapter 6
9 and IGRA. Section 5-601.02(G) recognizes the “obligations of the State through the
10 governor, to negotiate additional compact terms.”

11 26. Proposition 202 also, in A.R.S. § 5-601.02(C), expressly limited gaming only
12 to “Indian Tribe[s]” and certain forms of regulated gambling, as defined in Proposition 202
13 and A.R.S. § 5-601.02(I)(6)(111)(A), to include “gaming devices, keno, offtrack pari-
14 mutuel wagering, pari-mutuel wagering on horse racing, pari-mutuel wagering on dog
15 racing, blackjack, poker (including jackpot poker), and lottery.”

16 27. Against this backdrop, voters approved via referendum Proposition 202,
17 which became effective November 25, 2002.

18 28. In the same November 5, 2002 election in which voters approved tribal
19 gaming on reservation, voters rejected Proposition 201, also known as the “Fair Gaming
20 Act,” that proposed to permit *non-tribal* gaming operators a limited number of permits (a
21 total of 10 as offered by H.B. 2772 at issue here, as discussed below).

22 29. The Fair Gaming Act was defeated by over 80% of the popular vote,
23 confirming Proposition 202’s approved intent to limit all forms of Class III gaming within
24 the State to on-reservation gambling by Arizona Indian tribes under the terms and
25 conditions set forth under the new Standard Form of Tribal-State Gaming Compact (the
26 “2003 Compact”).

27 30. In 2003, YPIT executed the 2003 Compact pursuant to and following the
28 enactment of Proposition 202.

1 31. YPIT’s 2003 Compact, among other things, gave YPIT the exclusive right to
2 operate Class III gaming on its Indian lands. In exchange for gaming exclusivity, YPIT
3 along with all of the other Arizona-based Indian Tribes who also executed a 2003 Compact,
4 agreed to pay the State a certain revenue-sharing fee. (*See* Exhibit B, Section 12).

5 32. Despite the fact that Arizona voters in 2002 had already declined to extend
6 gaming to non-tribal operators under proposition 201, on February 3, 2021, H.B. 2772 was
7 introduced at the Fifty-Fifth Legislature during the first regular session by Representative
8 Jeff Weninger, among other representatives, and signed into law only two months later.

9 33. No popular vote was taken to approve H.B. 2772.

10 34. On April 13, 2021, the Arizona House of Representatives transmitted H.B.
11 2772 to the Governor’s Office, who signed it into law the following day. (*See* Exhibit C).

12 35. H.B. 2772 has been codified as Chapter 234.

13 36. According to the Fact Sheet for H.B. 2772/S.B. 1797 by the Arizona State
14 Senate, Fifty-Fifth Legislature, First Regular Session (“H.B. 2772 Fact Sheet”), the purpose
15 of H.B. 2772 is to authorize “**electronic keno and mobile draw games outside the**
16 **jurisdiction of an Indian tribe** and ... event wagering and fantasy sports betting in Arizona
17 **... off of Indian lands,**” which are entirely new forms of gaming from that which is
18 provided under Proposition 202. (*See* Exhibit D (emphasis added)).

19 37. The foregoing gaming activities are entirely new forms of gaming not
20 included in Proposition 202 or the 2003 Compact and, thus, expanded the scope of gaming
21 authorized by and enacted into law in 2002 by Arizona voters under Proposition 202.

22 38. H.B. 2772 added an entirely new Chapter to Title 5, Arizona Revised Statutes
23 (Chapter 10, A.R.S. §§ 5-1201 - 5-1213), permitting *non-tribal* gaming operators to engage
24 in gambling involving Fantasy Sports Contests off Indian lands.

25 39. H.B. 2772 also added an entirely new Chapter to Title 5 (Chapter 11, A.R.S.
26 §§ 5-1301 - 5-1321), permitting *non-tribal* gaming operators to engage in gambling
27 involving Event Wagering off Indian lands.

28 40. H.B. 2772 also amended A.R.S. § 13-3301 to now include Event Wagering

1 as a form of “Regulated Gambling” permitted under A.R.S. § 13-3302.

2 41. With respect to Event Wagering, H.B. 2772, as codified at A.R.S. § 5-
3 1301(7)(a) and (b), expressly distinguishes between “an owner or operator of an Arizona
4 professional sports team or franchise” (“Sports Franchise Owner”) and “Indian tribe[s].”

5 42. Under A.R.S. § 5-1301(7)(a), H.B. 2772 grants Sports Franchise Owners the
6 right to offer sports event wagering **and** mobile event wagering anywhere in the State of
7 Arizona, including in brick and mortar locations located off of Indian lands.

8 43. Under A.R.S. § 5-1301(7)(b), H.B. 2772 limits Indian tribes to mobile event
9 wagering only, and does not grant them land-based brick and mortar locations located off
10 of Indian lands.

11 44. Sports Franchise Owners are required by H.B. 2772 to pay a 10% fee for
12 mobile wagering and a reduced fee of 8% for land-based wagering, the latter of which
13 Indian tribes cannot engage in; thus, Indian tribes are required to pay the higher fee of 10%,
14 despite H.B. 2772 eliminating exclusivity.

15 45. Sports Franchise Owners are not required to execute a compact to engage in
16 gaming under H.B. 2772.

17 46. Under A.R.S. § 5-1304, the Department is permitted to issue 10 licenses to
18 Sports Franchise Owners, which exceeds the number of professional teams or franchises in
19 the State.

20 47. Under § 5-1304, the Department is permitted to issue a total of 10 licenses to
21 Indian tribes, but **only if** the Indian tribe has executed the “most recent 2021 Tribal-State
22 Gaming Compact and any applicable appendices or amendments,” whether negotiated or
23 not.

24 48. There are at least 21 Indian tribes in the State of Arizona.

25 49. The ratio of licenses allotted to and granted by H.B. 2772 to Sports Franchise
26 Owners is over 1 license per Sports Franchise Owner whereas it is less than 0.5 licenses per
27 Indian tribe. Stated differently, a Sports Franchise Owner has a 100% likelihood of
28 receiving a license, if qualified, whereas an Indian tribe has less than 50% chance of

1 obtaining a license.

2 50. Indian tribes pay the same application fee as the Sports Franchise Owners of
3 \$100,000, *which is non-refundable*, despite the stark differences in likelihood of obtaining
4 a license.

5 51. Indian tribes are not publicly funded whereas Non-tribal Operators operate in
6 publicly funded arenas, stadiums, and locations.

7 52. H.B. 2772 excludes gaming on Indian lands and only seeks to regulate off
8 Indian land gaming in the open market. This is true because IGRA already grants Indian
9 tribes the inherent and sovereign right to operate gaming on Indian lands.

10 53. Notwithstanding this fact, H.B. 2772 charges Indian tribes higher fees, grants
11 less rights (e.g., only mobile gaming and not land-based gaming with no exclusivity), less
12 opportunity to obtain licenses, and less support to engage in gaming than Sports Franchise
13 Owners operating in the same regulatory class.

14 54. According to the Arizona's Department of Gaming website, it intends to
15 assign and issue licenses to be effective no later than September 9, 2021. *See* ADG FAQs,
16 Arizona Department of Gaming (az.gov), <https://gaming.az.org/about/faq> (last visited Aug.
17 18, 2021); ADG Timeline, <https://gaming.az.gov/event-fantasy-sports-contests> (last
18 visited Aug. 23, 2021).

19 55. Prior to or concurrently with the Arizona Legislature's passage of H.B. 2772,
20 Defendant created the 2021 Amended and Restated Gaming Compact ("2021 Amended
21 Compact").

22 56. YPIT was not involved in the negotiations of the 2021 Amended Compact,
23 which was presented to YPIT by the State as a non-negotiable, "take-it-or-leave-it"
24 proposition.

25 57. The 2021 Amended Compact proposed by Defendant without negotiation
26 amends YPIT's Exclusivity Provisions under its 2003 Compact by (1) allowing and
27 authorizing Arizona tribes that execute a 2021 Amended Compact to operate, in addition to
28 the gaming activities authorized under Proposition 202, baccarat, roulette, craps, Sic Bo,

1 Dealer Controlled Electronic Table Games, event wagering, fantasy sports contests and any
2 other unspecified future gaming activities that a tribe may propose pursuant to the
3 procedures set forth in the 2021 Amended Compact - all of which are not allowed under
4 Proposition 202. (See Dep't of Gaming, Amended Tribal-State Gaming Compacts: Fact
5 Sheet, attached hereto as Exhibit E).

6 58. The gaming activities authorized under the 2021 Amended Compact, together
7 with allowing non-tribal operators to engage in Fantasy Sports Contests and Event
8 Wagering under H.B. 2772, completely undermines and materially changes and amends the
9 purpose and intent of Proposition 202 and the very nature of YPIT's Exclusivity Provisions
10 under its 2003 Compact by eliminating the voter-approved benefits thereunder.

11 59. Despite this fact, the 2021 Amended Compact still attempts to tax YPIT in
12 the form of revenue sharing contributions/payments related to gaming exclusivity that no
13 longer exists as a result of H.B. 2772.

14 60. The above concerns have been raised to Defendants on numerous occasions
15 prior to the filing of this lawsuit.

16 61. As a result of Defendants' actions, YPIT is excluded from obtaining a license
17 to engage in gaming under H.B. 2772 and has lost exclusivity to conduct gaming under its
18 2003 Compact in the State of Arizona resulting in significant continuing harm that cannot
19 be calculated with any certainty.

20 **FIRST CLAIM FOR RELIEF**

21 (Violation of Voter Protection Act)

22 62. Plaintiff incorporates by reference paragraphs 1 through 60 as though fully
23 set forth herein.

24 63. Pursuant to the Arizona Constitution, art. IV, pt. 1, § 1(6)(B) (the "Voter
25 Protection Act"), the "legislature shall not have the power to amend an initiative measure
26 approved by a majority of the votes cast thereon, or to amend a referendum measure decided
27 by a majority of votes cast thereon, unless the amending legislation furthers the purposes of
28 such measure."

1 set forth herein.

2 72. Article IV, Part 2, Section 19 of the Arizona Constitution prohibits the
3 enactment of local or special laws in certain enumerated instances, including, in relevant
4 part, (i) “granting to any corporation, association, or individual, any special or exclusive
5 privileges, immunities, or franchises”; and (2) “when a general law can be made
6 applicable.” Rather, the Legislature must enact laws that apply equally to all individuals
7 who might benefit from the Legislature’s attempt to remedy a particular evil.

8 73. Special legislation prohibitions exist to prevent discrimination in favor of a
9 select group, and prevents the Legislature from providing special benefits or favors to
10 certain groups or localities. *See Petitioners for Deannexation v. City of Goodyear*, 160 Ariz.
11 467, 149 (1989). The smaller the class, the more likely it is that it will constitute a prohibited
12 special law. *Republic Investment Fund I v. Town of Surprise*, 166 Ariz. 143, 151 (1990).

13 74. H.B. 2772 has no rational connection with any legitimate public purpose.
14 Voters enacted Proposition 202 to permit Indian tribes to gamble on Indian lands to provide
15 a means to support Indian tribes and its tribal members where they have no other means to
16 do so. In the same election, by rejecting Proposition 201, voters expressly rejected
17 permitting non-tribal operators from engaging in gambling in furtherance of this purpose or
18 any other purpose.

19 75. Yet, H.B. 2772 provides only 10 licenses to Indian tribes, which constitutes
20 less than 50% of the Indian tribes in the State of Arizona, and only to those tribes who
21 executed the 2021 Amended Compact.

22 76. H.B. 2772 provides only 10 licenses to Indian tribes, which constitutes less
23 than 50% of the Indian tribes in the State of Arizona and only to those tribes located in the
24 Phoenix Metropolitan Area and Pima County. Indeed, § 5-1321 of H.B. 2772 expressly
25 states it is not effective until only those Tribes with gaming facilities in the Phoenix and
26 Tucson metropolitan areas has entered the 2021 Amended Compact. Notably, these are the
27 same tribes who participated in negotiations of the 2021 Amended Compact and, therefore,
28 are eligible for the special privilege of obtaining a sports wagering State license under that

1 special law favoring them.

2 77. All other non-Phoenix and Tucson metropolitan area tribes who executed the
3 2021 Amended Compact, including YPIT, were excluded from meaningful negotiations.

4 78. Many of those non-Phoenix and Tucson metropolitan area tribes were either
5 required to accept the one-sided terms of the 2021 Amended Compact as is or forego off-
6 reservation wagering licenses under H.B. 2772.

7 79. Meanwhile, H.B. 2772 provides 10 licenses to non-tribal sports owners or
8 franchises, which covers nearly 100% of those operators in the State of Arizona.

9 80. These sports owners or franchises were not required to enter a unilateral
10 contract with Defendant.

11 81. Thus, H.B. 2772 was clearly enacted to favor those Tribes who agreed to the
12 terms of Defendant and sports operators as a whole and, thus, should be declared a special
13 law barred by the Arizona Constitution.

14 **THIRD CLAIM FOR RELIEF**

15 (Unlawful Emergency Measure)

16 82. Plaintiff incorporates by reference paragraphs 1 through 80 as though fully
17 set forth herein.

18 83. Pursuant to Article IV, Part 1, Section 1 of the Arizona Constitution, “no act
19 passed by the legislature shall be operative for ninety days after the close of the session of
20 the legislature enacting such measure, except such as require earlier operation to preserve
21 the public peace, health, or safety, or to provide appropriations for the support and
22 maintenance of the departments of the state and of state institutions; provided, that no such
23 emergency measure shall be considered passed by the legislature unless it shall state in a
24 separate section why it is necessary that it shall become immediately operative.”

25 84. According to the H.B. 2772 Fact Sheet, that statute was enacted as an
26 emergency measure.

27 85. H.B. 2772 fails to state in a separate section why it is necessary that it become
28 immediately operative as an emergency measure.

1 86. Nor does the subject matter of H.B. 2772, namely gaming, meet the aims of
2 an emergency measure.

3 87. Thus, H.B. 2772, as an emergency measure and should be declared in
4 violation of Article IV, Part 1, Section 1 of the Arizona Constitution.

5 **FOURTH CLAIM FOR RELIEF**

6 (Violation of the Equal Protection Clause)

7 88. Plaintiff incorporates by reference paragraphs 1 through 86 as though fully
8 set forth herein.

9 89. Pursuant to Article II, Section 13 of the Arizona Constitution, “[n]o law shall
10 be enacted granting to any citizen, class of citizens, or corporation other than municipal,
11 privileges or immunities which, upon the same terms, shall not equally belong to all citizens
12 or corporations.”

13 90. If a statute discriminates among individuals based on a suspect class, it is also
14 subjected to strict scrutiny and be upheld only if it is necessary to promote a compelling
15 state interest.

16 91. H.B. 2772 on its face and in its plain language discriminates between race and
17 origin, namely, between Sports Franchise Owners and Indian tribes, which is a suspect
18 class.

19 92. As stated above, H.B. 2772 in effect discriminates between Sports Franchise
20 Owners and Indian tribes by requiring Indian tribes to execute a one-sided agreement to
21 obtain a license under H.B. 2772; (b) granting licenses in a greatly reduced proportionate
22 share to Indian tribes than those licenses granted to Sports Franchise Owners; (c) requiring
23 Indian tribes to pay a significant non-refundable fee for the mere chance to obtain a license,
24 which is incredibly unlikely based on the proportionate share of licenses granted; and (d)
25 granting Indian tribes greatly reduced rights to engage in gaming off Indian lands than those
26 rights granted to Sports Franchise Owners, despite requiring Indian tribes to pay the same
27 or similar fees as Sports Franchise Owners, among other reasons.

28 93. H.B. 2772 also discriminates against YPIT, as opposed to other origins of

1 Indian tribes, by excluding YPIT from negotiations of the 2021 Amended Compact and
2 permitting it, under the plain language of H.B. 2772 a license thereunder only if it executes
3 the 2021 Amended Compact, for which YPIT was excluded from all negotiations and under
4 which YPIT's gaming exclusivity granted in its 2003 Compact is eliminated.

5 94. The provisions in H.B. 2772 favoring Sports Franchise Owners goes against
6 decades of practice in the State of Arizona for regulating gaming and is expressly contrary
7 to voter intent and public policy; thus, it is highly irregular.

8 95. Gaming is not a compelling state interest.

9 96. The distinctions between classes is subordinate to any legitimate interest.

10 97. Thus, H.B. 2772 violates the Equal Protection Clause of the Arizona
11 Constitution and should it be declared unlawful.

12 **FIFTH CLAIM FOR RELIEF**

13 (Injunctive Relief)

14 98. Plaintiff incorporates by reference paragraphs 1 through 96 as though fully
15 set forth herein.

16 99. YPIT seeks temporary and preliminary injunctive relief preventing
17 Defendants from issuing licenses and allowing Event Wagering and Fantast Sports
18 Wagering from commencing under H.B. 2772 and any related law to maintain the *status*
19 *quo* during the pendency of this action while this Court determines whether H.B. 2772 is
20 lawful.

21 100. As detailed above, YPIT will likely be successful on the merits that H.B. 2772
22 is in violation of the Voter Protection Act because it is directly and implicitly contrary to
23 the plain language, intent and purpose of Proposition 202 approved by Arizona voters, an
24 is an impermissible special law, and/or an impermissible emergency measure.

25 101. YPIT has no adequate remedy at law and will be irreparably injured if the
26 licenses called for by H.B. 2772 are issued.

27 102. These issues raise serious questions as to Defendants' actions, and the
28 lawfulness of H.B. 2772 and issuance of licenses thereunder.

1 103. YPIT cannot apply for an Event Wagering license absent executing the 2021
2 Amended Compact, for which YPIT was not involved in negotiating and expressly obviates
3 YPIT's right to gaming exclusivity enjoyed under its current 2003 Compact, as authorized
4 by Proposition 202.

5 104. Defendants' enactment and issuance of licenses under H.B. 2772 – to YPIT's
6 and many other Indian tribes' exclusion – will result in direct, substantial and uncertain
7 injury to YPIT by eliminating exclusivity it has under its existing 2003 Compact and
8 reducing critical revenue received from such exclusivity to provide needed tribal
9 government programs, social programs, clean water, education and other valuable resources
10 to YPIT's tribal members that would not otherwise be had but for such exclusive gaming.

11 105. Public policy favors issuing injunctive relief limiting gaming to Indian tribes,
12 such as YPIT, to provide for such critical life sustaining needs, as was originally intended
13 when voters approved Proposition 202.

14 106. The Court should issue injunctive relief permitting the issuance, maintenance
15 and operation of gaming under any license issued under H.B. 2772. All other gaming
16 conducted directly under a compact on Indian lands need not be enjoined.

17 **WHEREFORE**, Plaintiff requests that this Court:

18 a. Enter judgment pursuant to A.R.S. § 12-1831, *et seq.*, declaring that
19 H.B. 2772 violates Article IV, Part 1, Section 1(6) of the Arizona Constitution
20 because it conflicts with and does not advance the purpose of the 2002 voter-
21 approved Proposition 202.

22 b. Enter judgment pursuant to A.R.S. § 12-1831, *et seq.*, declaring that
23 H.B. 2772 violates Article IV, Part 2, Section 19 of the Arizona Constitution
24 prohibiting the enactment of special laws.

25 c. Enter judgment pursuant to A.R.S. § 12-1831, *et seq.*, declaring that
26 H.B. 2772 is an improper emergency measure.

27 d. Enter judgment pursuant to A.R.S. § 12-1831, *et seq.*, declaring that
28 H.B. 2772 violates the Equal Protection Clause of the Arizona Constitution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

e. Enter a temporary restraining order, preliminary injunction, and ultimately a permanent injunction enjoining any issuance to, maintenance or operation of licenses under H.B. 2772.

f. Award YPIT its reasonable attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 26th day of August, 2021.

QUARLES & BRADY LLP

By /s/ Luis A. Ochoa
Luis A. Ochoa
Nicole L. Simmons
Attorneys for Plaintiff

ORIGINAL of the foregoing e-filed with Maricopa County Superior Court using AZTurboCourt this 26th day of August, 2021.

Courtesy CONFORMED copies to be delivered to:

Arizona Attorney General Mark Brnovich
Sen. Karen Fann, Arizona Senate President
Mr. Russell Bowers, Speaker of the House,
Arizona House of Representatives

/s/ Dawn McCombs

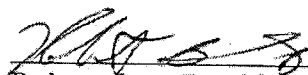
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Robert Ogo, declare as follows:

I am the President of the Yavapai Prescott Indian Tribe ("YPIT"). I am authorized to make this Verification for an on behalf of YPIT. I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I attest that such contents are true to the best of my actual knowledge, information and belief. As to those matters stated therein upon information and belief, I believe them to be true.

Executed on this 26 day of August, 2021.



Robert Ogo, President
Yavapai-Prescott Indian Tribe