ARIZONA SUPERIOR COURT

MARICOPA COUNTY

Yavapai-Prescott Indian Tribe, Plaintiff, v. Doug Anthony Ducey, Jr., in his official capacity as Governor of the State of Arizona; Ted Vogt, in his official capacity as Director of the Arizona Department of Gaming, Defendants.	No. CV2021-013497 Decision Order Denying Motion for Preliminary Injunction

The United States Supreme Court held in 2018 that federal law could not prevent states from allowing sports gambling. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018). Many states moved to allow such gambling after *Murphy*. Toward that end, 11 representatives introduced H.B. 2772 in February 2021. Governor Ducey signed that legislation April 15, 2021, which took effect immediately because of an emergency declaration.

The Yavapai-Prescott Indian Tribe filed this challenge to the law 133 days later. The legislation allows certain gambling outside of Indian tribes' casinos. In this litigation, the Tribe singled out "event wagering" (*i.e.*, sports betting) as problematic. The Tribe asked the Court to enjoin the Arizona Department of Gaming from issuing event wagering licenses under H.B. 2772.

The Tribe bears the burden of showing H.B. 2772's unconstitutionality. The Court presumes the statute is constitutional, will uphold it unless it clearly is not, and prefers interpretations favoring constitutionality. *E.g.*, *Hall v. Elected Officials' Retirement Plan*, 241 Ariz. 33, 38 ¶ 14, 383 P.3d 1107, 1112 (2016); *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 5 ¶ 11, 308 P.3d 1152, 1156 (2013).

Preliminary Injunctions

As the party requesting an injunction, the Tribe must show:

- a strong likelihood of success on the merits,
- the possibility of irreparable injury if the Court does not grant the requested relief,
- a balance of hardships favoring the Tribe, and
- public policy favors granting the injunction.

E.g., *Ariz. Ass'n of Providers for Persons With Disabilities v. State*, 223 Ariz. 6, 12, ¶ 12, 219 P.3d 216, 222 (App. 2009).

Arizona courts evaluate a preliminary injunction request on a sliding scale. The moving party may establish either (1) probable success on the merits and the possibility of irreparable injury or (2) the presence of serious questions and that the balance of hardships tips sharply in its favor. The notion of "serious questions" relates to the claim's merits, not the gravity of the issue. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶¶ 10 & 13, 132 P.3d 1187, 1190 (2006).

The evidentiary rules are relaxed somewhat now. Courts may give inadmissible evidence some weight if warranted to prevent an irreparable harm before trial. For example, courts often consider hearsay at this stage. *E.g.*, *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009); 11A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE: CIVIL § 2949 (3d ed. Apr. 2021 update).[1]

I. LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Emergency Measure Challenge Is Not Likely To Succeed.

The Tribe argued that the Legislature and Governor improperly treated H.B. 2772 as an emergency measure.

Legislation generally isn't operative until 90 days after the legislative session closes. ARIZ. CONST. art. IV, pt. 1, § 1(3). But the Legislature may designate something as an emergency measure "to preserve the public peace, health, or safety." *Id.* Emergency measures are effective immediately. They must "state in a separate section why it is necessary to become immediately operative," pass with a two-thirds vote in both houses, and receive the governor's signature. *Id.*

[1] Arizona courts give great weight to federal interpretations of analogous rules. *E.g.*, *Sholem v. Gass*, 248 Ariz. 281, 286 ¶ 19, 460 P.3d 273, 278 (2020).

H.B. 2772 met all the Constitution's procedural requirements. The Tribe argued, however, sports wagering is not a true emergency, so the Court should upend the Legislature's designation.

The Court doesn't second-guess the Legislature's emergency designation under the Constitution. Emergency enactment "is a question of which the Legislature alone must be the judge, and, when it decides the fact to exist, its action is final." *Orme v. Salt River Valley Water Users' Ass'n*, 25 Ariz. 324, 347, 217 P. 935, 943 (1923) (quotation marks omitted).[2]

The Tribe suggested that the Court may evaluate the sufficiency of the Legislature's language in the emergency declaration. The declaration is standard verbiage: "This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law." H.B. 2772 § 9. Under the Tribe's argument, the Court cannot review the Legislature designating legislation as an "emergency" (*Orme*) but may critique how the Legislature did so. That is a distinction without a difference. Courts do not supervise wordsmithing legislative emergency declarations. *See* ARIZ. CONST. art. III ("no one of such departments [of State government] shall exercise the powers properly belonging to either of the others.").[3]

B. The Voter Protection Act Challenge Is Not Likely To Succeed.

The Tribe argued that H.B. 2772 impermissibly amended 2002's Proposition 202. If that is correct, H.B. 2772 violates the Voter Protection Act.

Through initiatives and referenda, citizens may pass laws—a power as broad as the Legislature's. ARIZ. CONST. art. IV, pt. 1 § 1(1). The people may do so long as the Constitution does not preclude such laws. And the 1998 Voter Protection Act limits the

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[2] Plaintiff's authority sometimes dealt with *statutory* emergency designations. *Hunt v. Norton*, 68 Ariz. 1, 11, 198 P.2d 124, 130 (1948) (Tax Commission's ability to impose emergency levy under *statute*). Another case explained that an appropriations bill did not need an emergency declaration for immediate effect; our Constitution says as much. *Garvey v. Trew*, 64 Ariz. 342, 354, 170 P.2d 845, 853 (1946) (referring to ARIZ. CONST. art. IV, pt. 1, § 1(3)). The Washington case noted the substantial deference to legislative emergency declarations; it found that declaration proper. *CLEAN v. City of Spokane*, 947 P.2d 1169, 1176-77 (Wash. 1997).

[3] Coincidentally, the Legislature passed the 1992 legislation that first allowed gambling at tribal locations as an emergency measure using the same language. 1992 Ariz. Legis. Serv. Ch. 286 § 5 (H.B. 2532) (WEST).

Legislature's power to modify such voter-approved laws. The Legislature cannot repeal such laws. It also cannot amend them "unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature" vote for the amendment. *Id.* § 1(6)(B) & (C).

Legislation doesn't have to mention a voter-approved law to violate the VPA. Instead, courts consider if new legislation affects the earlier voter-approved law. *Cave Creek Unified Sch. Dist.*, 233 Ariz. at 7 ¶ 23, 308 P.3d at 1158. The Legislature would improperly repeal or amend a voter-approved law "through 'repugnancy' or 'inconsistency.'" *Id.* ¶ 24. For example, legislation criminalizing medical marijuana possession on college campuses violated the VPA. That improperly amended the voter-approved Medical Marijuana Act by adding college campuses as prohibited locations. That was true although the legislation did not mention the Medical Marijuana Act. *State v. Maestas*, 244 Ariz. 9, 12-13 ¶¶ 13-18, 417 P.3d 774, 777-78 (2018).

When addressing VPA challenges, our Supreme Court has reviewed the initiatives' language, the ballot description of the initiative and the accompanying publicity pamphlet, and the challenged legislation's language. The point is to decide if the legislation conflicts with the initiative and voters' likely intent. *Ariz. Citizens Clean Elections Comm'n v. Brain*, 234 Ariz. 322, 325-27 ¶¶ 12-21, 322 P.3d 139, 142-44 (2014).

The Tribe argued that Proposition 202 was a comprehensive scheme for *any* gambling in Arizona. "[T]he public policy was set by voters when it permitted gaming in Arizona only if it were expressly limited to specific types of games and only if conducted by Indian tribes on Indian lands." [Mot. TRO & Prelim. Inj. (filed 08/26/2021) at 17:15-16.] Under that view, Proposition 202 forever defined the type and location of gambling permitted in Arizona; only the voters may alter that scope.

Proposition 202, however, did not purport to limit gambling to tribal casinos. Instead, it specified what gambling could occur at those casinos. Plaintiff did not cite language from the proposition indicating that Arizona would never expand gambling to different activities or locations.

In fact, Proposition 202 mentioned a narrow scope. Its declaration of purpose described it as correcting "technical deficiencies in current state law" to let the governor execute new compacts. And the only limits were on tribal gambling activities: "The Act maintains reasonable limits on Indian gaming and creates the opportunity for non-gaming tribes to benefit from Indian gaming." Nothing hints at forever limiting gambling to certain table games and machines at tribal casinos.

What is more, the proposition contemplated gambling expansions. The Legislative Analysis noted how future off-reservation gambling expansions could unshackle tribal gambling operations:

> If state law changes to allow anyone other than Indian tribes to offer slot machines *or other gambling* that is currently prohibited off of reservations, tribal obligations to make contributions to the state are reduced and the limits on slot machines, gaming facilities and gaming tables become null and void.

[Proposition 202 Legislative Analysis (emphasis added).] A.R.S. § 5-601.02(H) codified this part of Proposition 202. The proposition did not suggest that only voters could authorize "other gambling" off tribal lands.

The Tribe also argued that an *unsuccessful* initiative from 2002—Proposition 201—dooms H.B. 2772. But no cases apply the VPA based on an unsuccessful initiative. That isn't surprising. The VPA applies only to initiatives "approved by a majority of the votes cast thereon." ARIZ. CONST. art. IV, pt. 1, § 1(6)(A), (B), (C). A majority did not approve Proposition 201, so the VPA's protections don't attach.

The Tribe also inaccurately described Proposition 201. It would have allowed horse and dog tracks to operate slot machines. It did not otherwise expand gambling, so we can't interpret its defeat as a broad rejection of any gambling. Also, it would have required voter approval for other expansions of gambling. Thus, the *unsuccessful* Proposition 201 would have forever limited gambling without a popular vote—something that *successful* Proposition 202 did not do.[4]

C. The Special Law Challenge Is Not Likely To Succeed.

Our Constitution prohibits laws giving special privileges to small groups when a general law will accomplish the same end. ARIZ. CONST. art. IV, pt. 2, § 19. The Tribe argued that H.B. 2772 violated this provision.

Sports Franchise Owners may operate retail event wagering—like a casino sportsbook—plus mobile event wagering.[5] Ten event wagering licenses are available to Sports Franchise Owners. A.R.S. § 5-1304(A).

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[4] The text and legislative analysis for unsuccessful Proposition 201 are at https://apps.azsos.gov/election/2002/Info/pubpamphlet/english/prop201.htm.

[5] H.B. 2772 also lets venues hosting PGA and NASCAR events have event wagering licenses. *See* A.R.S. § 5-1304(A)(1). For simplicity, the Court uses "Sports Franchise

Tribes with gaming compacts have different options. They may operate retail event wagering on their land without a new license. A.R.S. § 5-1303(D). Also, ten retail event and mobile wagering licenses are available to tribes for operations off tribal land (so long as the tribes signed the latest compact). A.R.S. § 5-1304(A). And gamblers on a tribe's land can make an event wager only with that tribe's operation. A.R.S. § 5-1303(D).

The Tribe contended that the number of licenses disfavors tribes. The State may issue 10 licenses to Sports Franchise Owners; there are not 10 professional sports franchises here, so all could obtain a license. The State also is limited to 10 wagering licenses to tribes, but 21 tribes are here. Thus, the ratio of licenses to potential applicants is lower for tribes than for professional sports franchises.

Courts apply a three-part test to decide if a law is an improper "special law":

- The law (not just the classification) must rationally relate to a legitimate legislative objective;
- Any classification must be legitimate, encompassing all similarly situated members; and
- The classification must be elastic, allowing potential members to move in and out of the class.

Gallardo v. State, 236 Ariz. 84, 88 ¶ 11, 336 P.3d 717, 721 (2014).

States have many interests in overseeing and regulating gambling. They include public safety, morals, and crime prevention. That regulation on tribal lands is part of the State's police power; it is not just a contractual right under an IGRA compact. *Simms v. Napolitano*, 205 Ariz. 500, 503 ¶ 13, 73 P.3d 631, 634 (App. 2003). "[G]ambling attracts corruption and therefore requires a strong regulatory presence." *Id.* at 504 ¶ 21, 73 P.3d at 635. Congress also recognized states' economic interests in raising revenue when passing the IGRA. S. Rep. No. 100-446, at 13 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3083. Regulating gambling and dividing resulting revenue are legitimate legislative objectives. H.B. 2772 meets that purpose.

As to classifications, courts "defer to the legislature's assessment that there is a problem to be solved and its policy choice as to how to resolve it." *Gallardo*, 236 Ariz. at 90 ¶ 24, 336 P.3d at 723. There, legislation set different numbers and terms for community college district boards for counties with more than three million people (*i.e.*, only Maricopa

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Owners" to encompass professional sports teams/franchises and sports facilities under A.R.S. § 5-1301(7)(a).

County). "[T]hat a classification could conceivably be broader or benefit more people does not render it illegitimate." *Coleman v. Amon*, 2021 WL 3627099, *4 ¶ 18 (Ariz. Ct. App. Aug. 17, 2021), *as amended* (Aug. 25, 2021). It is not illegitimate to limit gambling to entities the Legislature found are equipped to handle the regulations and risks. That is, Sports Franchise Owners and Indian tribes with compacts. And that classification encompasses every entity so situated.

Class elasticity does not require any *probability* of members moving into or out of a class. It also does not have a temporal quality. If potential members who attain the characteristics may enter, and those who no longer have the characteristics leave, then the legislation satisfies this criterion. *Gallardo*, 236 Ariz. at 93 ¶ 35, 336 P.3d at 726.

Professional sports franchises can come and go. Major League Baseball expanded to include the Arizona Diamondbacks in 1998. The Arizona Coyotes existed as the Winnipeg Jets from 1972 until relocating here in 1996. Other professional sports leagues may form, expand into Arizona, contract, or fold, leading to members entering and exiting that class.

The federal government also may recognize new tribes or withdraw recognition of existing tribes via Congressional action. *See* Pub. L. 103-454, 108 Stat. 4791 (Federally Recognized Indian Tribe List Act); 25 C.F.R. §§ 83.1 to 83.46 (federal procedures to acknowledge tribes).[6] Every tribe that signs the most recent compact is part of this category; tribes may move in and out of it.

This challenge is unlikely to succeed based on the criteria in *Gallardo*.

D. The Equal Protection Challenge Is Not Likely To Succeed.

The Tribe argued that the Court must use strict scrutiny to evaluate the law under this argument. The Court disagrees. Tribes are quasi-sovereign nations. H.B. 2772 addresses the inter-governmental relationship between the State and the 21 tribes here. That is much different from a law that categorizes *individuals* based on race, religion, or ethnicity. And this legislation addresses *tribes'* gambling operations, not an individual operating a business.

The relationship is between two governments about commercial activity. The Indian Gaming Regulatory Act requires states to negotiate in good faith with tribes to form gaming compacts. 25 U.S.C. § 2710(d)(3)(A). And the compacts address issues like

[6] Proposition 202 defines "Indian Tribe" by referring to federal law (25 U.S.C. § 2703(5)). A.R.S. § 5-601.02(I)(4)(v).

criminal jurisdiction, regulatory cost assessments, taxation, and "remedies for breach of contract . . . ." 25 U.S.C. § 2710(d)(3)(C). It is a transactional relationship.

Courts evaluate such laws under the rational basis standard. That means "if a statute is reasonably related to the special government-to-government political relationship between the United States and the Indian tribes, it does not violate equal protection principles." *Brackeen v. Haaland*, 994 F.3d 249, 334 (5th Cir. 2021) (rational basis applies).[7] And courts defer to legislative bodies when addressing commerce with tribes. *E.g.*, *Am. Fed'n of Gov't Emps., AFL-CIO v. United States*, 330 F.3d 513, 520 (D.C. Cir. 2003). A tribe challenging legislation about gambling on tribal land faces a steep hurdle; it must show the law does "has no rational relationship to any legitimate purpose." *Narragansett Indian Tribe v. Nat'l Indian Gaming Comm'n*, 158 F.3d 1335, 1341 (D.C. Cir. 1998).

H.B. 2772 allows two categories of licensees: (1) tribes and (2) Sports Franchise Owners. Some differences exist in licensing and operations for each category. Tribes may operate retail event wagering on their land without new licenses; they also may seek one of 10 event wagering licenses for tribes in other locations. Ten retail event wagering and mobile event wagering licenses are available for Sports Franchise Owners. The Tribe argues that is different treatment because of the larger number of tribes and smaller number of sports franchises.

Equal protection means reasonably classifying and affording equal treatment to similarly situated people/entities. *Salt River Pima-Maricopa Cmty. Sch. v. State*, 200 Ariz. 108, 111 ¶ 9, 23 P.3d 103, 106 (App. 2001). It is reasonable to categorize tribes differently than Sports Franchise Owners. The IGRA applies to tribes; they are sovereign nations. And each tribe is treated similarly. So long as a tribe signs the most recent compact, it has the same ability to offer on-reservation event wagering and the same chance to apply for an event wagering license. With a rational basis review, the Tribe is not likely to succeed.

The Tribe expanded its equal protection argument from its Motion to its Reply. The Motion (at 13:17-14:27) centered on treating tribes and Sports Franchise Owners differently. Yes, the Motion included (at 14:12-15) one 42-word sentence about treating the Tribe differently than other tribes. But the Reply (at 9:7-10:12) included new

[7] State courts often apply the rational basis standard to similar situations. *See, e.g.*, *Flynt v. Cal. Gambling Control Comm'n*, 129 Cal. Rptr. 2d 167, 179-80 (App. 2002) (casino challenged gaming franchise awards to tribes); *N.Y. Ass'n of Convenience Stores v. Urbach*, 699 N.E.2d 904, 908 (N.Y. 1998) (taxing cigarette and gas sales on reservations); *Cheyenne River Sioux Tribe Tel. Auth. v. Pub. Utilities Comm'n of S.D.*, 595 N.W.2d 604, 613 (S.D. 1999) (utility commission decision about selling telephone exchanges to tribe).

arguments about 2016 compact negotiations and treating tribes in Maricopa and Pinal Counties differently.

Tribes using trust land for expanded gambling is a much different argument than H.B. 2772's treating tribes differently than Sports Franchise Owners. And that difference between tribes and sports franchises was the thrust of the Motion. The Tribe could not use its Reply to broaden the argument. Those may be legitimate and serious issues to explore in this litigation, but they do not justify the injunction the Tribe requested.

II. POSSIBILITY OF IRREPARABLE HARM.

Arizona courts examine whether there is a *possibility* of irreparable harm. But a *probability* of success on the merits must accompany that possibility. The Tribe did not show a probability of success on the merits. Without that probability, the Tribe must show the presence of serious questions and a balance of hardships tipping sharply in its favor.

The alleged "irreparable injury" to the Tribe is "eliminating its exclusivity to conduct" gaming under Proposition 202. [Pl.'s Mot. TRO & Prelim. Inj. at 15:15-16.] But Proposition 202 did not forever limit Class III gambling to tribal casinos. The proposition mentioned other forms of gambling in the future, which would reduce tribes' obligation to share revenue with the State. Also, the Tribe did not present a meaningful analysis of its revenue decreasing if other venues exist for event wagering. After all, tribal casinos offer other types of gambling that event wagering facilities cannot offer.

The Tribe's delay filing suit rebuts the notion of irreparable harm. H.B. 2772 was introduced February 3, 2021. Governor Ducey signed it April 15, 2021. The Tribe knew then that the legislation took effect immediately. Nonetheless, the Tribe waited more than four months to file suit; it filed only when this new gambling structure was about to launch. "A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016); *see also, e.g.*, *Snider Tire, Inc. v. Chapman*, 2021 WL 2497942, *4 (N.D. Ala. Apr. 27, 2021) (three-month delay); *Silber v. Barbara's Bakery, Inc.*, 950 F. Supp. 2d 432, 442-43 (E.D.N.Y. 2013) (five-month delay).

Yes, the Department asked the Tribe on August 26 to delay filing suit. But that was already 4.5 months after the law took effect. And the Tribe did not delay based on that entreaty—it filed that afternoon.

The Tribe cited *Western Sun Contractors Co. v. Superior Court*, 159 Ariz. 223, 766 P.2d 96 (App. 1988). That case didn't address a plaintiff's delay and irreparable harm, so it doesn't support the Tribe's argument. But note the timing there. A city awarded a

contract on July 26 and that plaintiff filed only seven days later. *Id.* at 227, 766 P.2d at 100. And a Ninth Circuit opinion the Tribe cited did not address delay *vis-à-vis* irreparable harm. It involved environmental injury, which money damages almost never can remedy. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

Finally, it is not clear that the Court could not grant effective relief if the Tribe shows improprieties in negotiating the latest compacts, too.

The Tribe did not establish a meaningful risk of irreparable harm based on speculative revenue decreases.

III. BALANCE OF HARDSHIPS.

The balance of hardships favors a party seeking a preliminary injunction if it establishes probable success on the merits and the possibility of irreparable harm. *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1991). The Court evaluates "the severity of the impact on defendant should the temporary injunction be granted and the hardship that would occur to plaintiff if the injunction should be denied." 11A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE: CIVIL § 2948.2 (3d ed. Apr. 2021 update). Courts will issue preliminary injunctions when a plaintiff shows even a temporary loss of a constitutional right, though. *Id.*

In the past four months, the Department, other tribes, and potential licensees acted to implement the legislation, create rules, and apply for licenses. Granting a preliminary injunction now would be very disruptive. The Tribe asked the Court to halt those activities. And those activities followed years of negotiations.

The Tribe argued that the hardship is losing the "exclusive right to gaming on Indian lands" under Proposition 202. [Pl.'s Mot. TRO & Prelim. Inj. at 16:16.] But Proposition 202 did not purport to freeze in perpetuity the scope of lawful gambling in Arizona. The Tribe also pointed to "the dire needs" of its members, suggesting "exclusive" gambling rights provide needed revenue to the Tribe and its members. [*Id.* at 16:20.] The Tribe's evidence, however, did not show that its revenue will decline. Instead, it speculated that it may not receive *added* revenue from *different* gambling (*i.e.*, event wagering off the Tribe's land).

The Tribe also pointed to Attorney General Opinion No. I21-004, which addressed the new legislation. The Opinion points to "serious questions about the lawfulness and constitutionality of H.B. 2772." [*Id.* at 16:3.] But that Opinion does not justify the injunction the Tribe requested.

The Opinion suggested that H.B. 2772 may impermissibly let the governor negotiate tribal compacts with "types of gaming expressly prohibited under Arizona law." [Att'y Gen. Op. No. I21-004 (04/19/2021) at 14.] That might conflict with Proposition 202. "[T]o the extent the Governor attempts to implement tribal gaming policy by promoting and signing legislation, the VPA may limit his ability to do so." [*Id.* at 15.] Indeed, the case the Opinion cited involved a governor signing compacts permitting *tribal* Class III gaming that state law prohibited. *Treat v. Stitt*, 473 P.3d 43, 45 (Okla. 2020).

The potential problem with H.B. 2772 under the Opinion's reasoning is tribal gambling beyond what Proposition 202 allowed. That is not the issue the Tribe raised now. It is unrelated to allowing Sports Franchise Owners to operate event wagering *off tribal lands*.

The balance of hardships tilts in favor of a party facing a loss of constitutional rights. But the Court found that the Tribe's constitutional challenges are unlikely to succeed.

IV. PUBLIC POLICY.

"A preliminary injunction is an extraordinary remedy never awarded as of right. . . . In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citations and quotations omitted).

The Tribe repeated its argument about Proposition 202 ostensibly limiting all gambling in Arizona. [Pl.'s Mot. TRO & Prelim. Inj. at 17:14-17.] The Court disagrees.

The Tribe asked to enjoin the Department from implementing legislation regulating gambling—unquestionably a topic for government oversight. Courts are cautious about enjoining such legislation. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., chambers order staying district court injunction). Government policies "developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly." *Otoe-Missouria Tribe of Indians v. N.Y. State Dep't of Fin. Servs.*, 769 F.3d 105, 110 (2d Cir. 2014) (refusing to enjoin state from regulating loans tribe offered) (quotation marks omitted).

Of course, courts enjoin laws that violate the VPA, constitutional rights, constitutional procedural requirements, and so forth. But courts are mindful of stopping the democratic process, too. Moreover, the Tribe did not show that H.B. 2772 likely violates the Tribe's rights regarding event wagering as compared to Sports Franchise

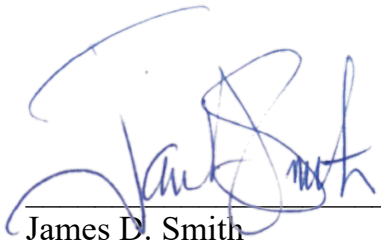
Owners. The Tribe did not show that public policy favors its requested injunctive relief.

IT IS ORDERED denying the Tribe's Motion for a Temporary Restraining Order and a Preliminary Injunction (filed 08/26/2021).

This is not a final, appealable judgment. But parties may appeal orders granting or dissolving an injunction or refusing to grant or dissolve an injunction. A.R.S. § 12-2101(F)(2). The Court signs this order to ensure that all involved know it is the order resolving Plaintiff's request for a preliminary injunction.

A final note unrelated to the merits. The Tribe filed its Complaint after 4:00 p.m. August 26, 2021. Over the next 11 calendar days, lawyers, legal assistants, legal secretaries, and witnesses worked diligently. Court staff and the Clerk accommodated this judicial officer's request to hold a hearing on Labor Day to ensure a ruling before the deadline for live event wagering. And this division's staff worked tirelessly while preparing for a one-month jury trial starting September 7. Two courtroom clerks, a court reporter, a Court Technology Services technician, and others forwent the Labor Day holiday. The Court truly appreciates those efforts and accommodations.

Dated: September 6, 2021.



James D. Smith
Arizona Superior Court Judge