STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

BROWN COUNTY TAXPAYERS ASSOCIATION
P.O. Box 684
Green Bay, WI 54305

CITIZENS DEFENDING LIBERTY
1241 North Franklin Place
Milwaukee, WI 53202

Plaintiffs,

v.

TONY EVERS, in his official capacity as Governor of Wisconsin,
115 East, State Capitol
Madison WI 53702

KATHY BLUMENFELD, in her official capacity as Secretary of the State of Wisconsin Department of Administration,
101 E. Wilson Street, 10th Floor
Madison WI, 53703

JOHN DILLETT, in his official capacity as the Administrator of the Wisconsin Division of Gaming,
3319 W Beltline Hwy.
Madison, WI 53713

JESSIE DUSHEK, in her official capacity as the Indian Gaming Audit Director for the Office of Indian Gaming and Regulatory Compliance,
3319 W Beltline Hwy.
Madison, WI 53713

Defendants.

Declaratory Judgment
Case Code: 30701
Case No. 26-CV-

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 515 W. Moreland Blvd. Waukesha, WI 53188, and to the Wisconsin Institute for Law & Liberty, Plaintiffs' attorneys, whose address is 1241 N. Franklin Pl. Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: August 5, 2026

Respectfully Submitted,

WISCONSIN INSTITUTE FOR
LAW & LIBERTY

Electronically signed by
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Defendants.

COMPLAINT

Plaintiffs complain as follows against Defendants:

INTRODUCTION

1. Thirty-three years ago, Wisconsinites adopted a constitutional amendment that bars the Legislature from "authoriz[ing] gambling in any form," except for (1) bingo and raffles licensed by the state; (2) pari-mutuel on-track betting, and (3) the state lottery.

2. Wisconsinite opinions have not changed. A recent Marquette University Law School poll found that 64% of respondents opposed legalizing online sports betting.

3. Contrary to the People's plain directive in the Constitution and their unchanged sentiments, the Wisconsin Legislature passed and Governor Evers signed into law 2025 Wisconsin Act 247 (Act 247), purporting to legalize mobile sports betting throughout Wisconsin, so long as it is run by Indian tribes.

4. These statutory changes in Act 247 violate the Wisconsin Constitution's unequivocal restriction on the Legislature's ability to authorize gambling.

5. Further, any amendments to existing State-Tribal compacts designed to carry out this law—as Governor Evers is contemplating—would be *ultra vires*.

6. The Act also creates a benefit for some—not all—which it distributes based on membership in an Indian tribe, i.e., based upon race. This violates the

United States Constitution's Guarantee of Equal Protection under the Fourteenth Amendment.

PARTIES

7. Plaintiff Brown County Taxpayers Association (BCTA) is an unincorporated association organized under the laws of the State of Wisconsin. BCTA's business address is P.O. Box 684, Green Bay, Wisconsin 54305.

8. BCTA has over 100 dues-paying members who pay state tax, including individuals, businesses, and organizations.

9. BCTA and its members advocate for the rule of law and the state government's compliance with the dictates of the Wisconsin Constitution.

10. Plaintiff Citizens Defending Liberty is an unincorporated association organized under the laws of the State of Wisconsin. Citizens Defending Liberty's business address is 1241 North Franklin Place, Milwaukee, Wisconsin 53202.

11. Citizens Defending Liberty has 8 members, all of whom pay state tax. Citizens Defending Liberty does not collect dues from its members.

12. Citizens Defending Liberty and its members advocate for protecting constitutional rights at the state level, for maintaining constitutional separation of powers, and advancing the rule of law.

13. As taxpayers, BCTA and Citizens Defending Liberty members' taxes will be used to implement this illegal gambling scheme.

14. "In Wisconsin, taxpayers may challenge the illegal expenditures of public funds." *Rabiebna v. Higher Educ. Aids Bd.*, 2026 WI 20, ¶ 18, 420 Wis. 2d 562,

36 N.W.3d 611. In other words, when "[t]axpayers allege that public funds are being expended pursuant to an unconstitutional statute," they "have standing" to challenge that statute. *See id.* at ¶ 20.

15. Specifically, Plaintiffs here allege that Act 247 constitutes an illegal expenditure of public funds because state officials would have to create new enforcement architecture to administer it.

16. Whether funds would be generated by the program does not matter for purposes of the taxpayer-standing analysis. *See Thompson v. Kenosha Cnty.*, 64 Wis. 2d 673, 680 n.9, 221 N.W.2d 845 (1974) (citing *Democrat Printing Co. v. Zimmerman*, 245 Wis. 406, 410, 14 N.W.2d 428 (1944) as holding "that it was immaterial whether the illegal expenditures resulted in a net saving").

17. Governor Evers is responsible for negotiating compact amendments between the State of Wisconsin and Indian tribes, including compact amendments to provide for mobile sports betting operations statewide. He is sued in his official capacity.

18. Kathy Blumenfeld, as Secretary of the Department of Administration ("DOA"), is responsible for working with the Indian tribes in Wisconsin on gaming and oversees all twelve divisions at the DOA, including the Division of Gaming and, within the Division of Gaming, the Office of Indian Gaming and Regulatory Compliance. She is sued in her official capacity.

19. John Dillett, as Administrator of the Division of Gaming, is responsible for coordinating the regulatory activities under State-Tribal compacts relating to tribal gaming. He is sued in his official capacity.

20. Jessie Dushek, as the Indian Gaming Audit Director for the Office of Indian Gaming and Regulatory Compliance, is responsible for coordinating concurrent regulation by both the State and the Indian tribes with respect to Class III gaming. She is sued in her official capacity.

JURISDICTION AND VENUE

21. This is an action for declaratory and injunctive relief under Wis. Stat. § 806.04.

22. Plaintiffs designate this county as the appropriate venue pursuant to Wis. Stat § 801.50(3)(a), because the sole defendants are state officers, employees, or agents in their official capacities.

BACKGROUND

23. The Wisconsin Constitution provides that "Except as provided in this section, the legislature may not *authorize gambling in any form*." Wis. Const. art. IV, § 24. (emphasis added).

24. From this broad prohibition on authorizing gambling, the amendment provides for narrow exemptions, which do not apply and are not relevant for this action: (1) bingo and raffles licensed by the state; (2) pari-mutuel on-track betting, and (3) the state lottery. *See* Wis. Const. art. IV, sec. 24(3)–(6).

25. By way of 2025 Wisconsin Act 247, the Legislature authorized gambling in the form of mobile sports betting. That law purports to authorize anyone located anywhere in the State of Wisconsin to place sports bets on a mobile device, so long as the mobile device is connected to servers located on American Indian lands that manage gambling operations pursuant to a gaming compact. Those changes violate the Wisconsin Constitution.

History of Gambling in Wisconsin

The Wisconsin Constitution

26. At statehood, the Wisconsin Constitution originally provided "The legislature shall never authorize any lottery or grant any divorce." Wis. Const. art. IV, § 24 (1848).

27. Under that original provision, "lottery" was interpreted to mean anything that has "a prize, chance, and a consideration." *See, e.g.*, *State ex rel. Cowie v. La Crosse Theaters Co.*, 232 Wis. 153, 286 N.W. 707, 710 (1939); *see also State ex rel. Regez v. Blumer*, 236 Wis. 129, 294 N.W. 491, 492 (1940); *State v. Laven*, 270 Wis. 524, 524, 71 N.W.2d 287 (1955); *Kayden Industries, Inc. v. Murphy*, 34 Wis. 2d 718, 724, 150 N.W.2d 447 (1967).

28. That original ban on lotteries has been amended six times: 1965, 1973, 1977, 1987, 1993, and 1999.[1]

[1] The information in paragraphs 18–24 is sourced from the State Democracy Research Initiative at the University of Wisconsin Law School, available at: https://50constitutions.org/wi/constitution/section-amendment-id-69201.

29. The first amendment in 1965 permitted certain kinds of promotional contests. It clarified that watching a television program or listening to a radio program, filling out a coupon or entry blank, or visiting an establishment, without being required to make a purchase or pay an admittance fee, does not constitute "consideration," which is an element of a lottery.

30. The 1973 amendment authorized charitable bingo.

31. The 1977 amendment permitted raffles.

32. The 1987 amendment authorized pari-mutuel wagering and a state-run lottery.

33. The 1993 amendment, in relevant part, changed the language of the general legislative prohibition from "authoriz[ing] any lottery" to "authoriz[ing] gambling in any form."

34. The most recent amendment to this section, in 1999, clarified that moneys received by the state under this section "shall be used for property tax relief for residents of this state as provided by law."

Federal Law Developments

35. Amidst these constitutional amendments, the legal landscape governing American Indian gaming was evolving as well.

36. First, at the federal level—just before Wisconsin voted to ratify the 1987 amendment—came the United States Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

37. In *Cabazon*, Indian tribes challenged California's authority to enforce its own laws regulating bingo and poker games on Indian reservations. The Court held that a state can enforce gaming laws on reservations if those laws are "criminal in nature," but not if they are "civil/regulatory." If a state banned *all* forms of gambling, its scheme was considered *criminal*; while states that allowed *some* forms of gambling were considered to have a *civil/regulatory* scheme. Because California did not prohibit all forms of gambling, the Court reasoned the laws at issue were civil/regulatory in nature. As a result, those laws could not be applied to reservation activities.

38. In response to *Cabazon*, Congress passed the Indian Gaming Regulatory Act (IGRA), codified at 25 U.S.C. § 2701, *et seq*. The key provision of IGRA provides that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." 25 U.S.C. § 2701(5). If state law allowed such activity, IGRA required states to negotiate with tribes over gaming compacts.

39. Under IGRA, gaming is divided into three "classes." The Seventh Circuit in *Wisconsin v. Ho-Chunk Nation*, 784 F.3d 1076, 1077–78 (7th Cir. 2015) describes the three types as follows:

A. Class I gaming "includes social games and traditional Indian gaming; it is regulated exclusively by Indian tribes." *Id.* at 1077.

B. Class II gaming "includes bingo and certain nonbanked card games that are 'explicitly authorized by the laws of the State, or ... are not explicitly prohibited by the laws of the State and are played at any location in the State.'" It "is enforced exclusively by the tribes and the National Indian Gaming Commission[.]" *Id.* at 1077–78.

C. Class III "is a residual category that covers 'all forms of gaming that are not class I gaming or class II gaming.'" And it "is regulated pursuant to tribal-state compacts." *Id.* at 1078.

Developments in Wisconsin Caselaw

40. Back in Wisconsin, questions arose about whether IGRA required Wisconsin to negotiate with tribes over gaming compacts. Then-Attorney General Donald J. Hanaway issued an opinion in 1990 determining that Class III games were prohibited in Wisconsin with the exception of lotteries and pari-mutuel on-track wagering. 79 Op. Wis. Atty. Gen 14. As a result, the state refused to negotiate with tribes on any Class III gaming compacts.

41. In response to the state refusing to negotiate compacts for Class III gaming, tribes sued Wisconsin under IGRA. *See Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (1991). In that case the state had argued—consistent with A.G. Hanaway's opinion—that, because Wisconsin law does not permit that type of Class III gaming, Wisconsin had no duty to negotiate the compacts.

42. Disagreeing with the state, the district court held that Wisconsin's treatment of Class III gaming was "civil/regulatory" under the *Cabazon* framework. The court determined the amendments to the Wisconsin Constitution "evidence[d] a state policy toward gaming that is now regulatory rather than prohibitory in nature." *Lac du Flambeau*, 770 F. Supp. at 486. As a result, the district court reasoned, Wisconsin could not apply its gaming laws against reservation gaming and had to negotiate with tribes concerning the compacts. *Lac du Flambeau*, 770 F. Supp. at 486.

43. The state's attorneys filed an appeal in *Lac du Flambeau*, but missed the deadline, leaving the decision to stand unchallenged. *Lac du Flambeau Band of Superior Chippewa Indians v. State of Wis.*, 957 F.2d 515 (7th Cir. 1992).

44. A few years later, the United States Supreme Court cast serious doubt on the *Lac du Flambeau* court's jurisdiction to have heard that case at all. In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), the Supreme Court held that the provision of IGRA allowing tribes to sue states to enforce the negotiation requirement—what *Lac du Flambeau* was brought under—violated the Eleventh Amendment.

Compact Negotiations and the 1993 Amendment

45. Nonetheless, the *Lac du Flambeau* decision prompted Wisconsin's then-governor to negotiate and subsequently enter compacts with all eleven federally recognized Indian tribes in the state. Those initial compacts were signed between 1991 and 1992, each for seven-year terms.

46. These compacts—or more precisely, the stage they set for full-scale, casino-style gaming operations—were the backdrop for Wisconsin voters considering the 1993 amendment to the Wisconsin Constitution.

47. The actual question on the ballot for voters to consider whether to adopt the amendment read: "Gambling expansion prohibited. Shall article IV of the constitution be revised to clarify that *all forms of gambling are prohibited* except bingo, raffles, pari-mutuel on-track betting and the current state-run lottery and to assure that the state will not conduct prohibited forms of gambling as part of the state-run lottery?" 1993 Enrolled Joint Resolution 3 (emphasis added); *see also*, Wis. Atty. Gen. Op. 96-02 at 4–5 (explaining the same).

48. The amendment passed and the prohibition on the legislature authorizing gambling "in any form" has been in place since.

2025 Wisconsin Act 247 And Its Infirmities

49. Under Wisconsin's criminal code, making a "bet" is generally illegal. Wis. Stat. § 945.02(1).

50. Specifically, placing a "bet" is a Class B misdemeanor. Wis. Stat. § 945.02 (intro).

51. This statute has been in place for decades and was in place when the anti-gambling constitutional amendment was adopted in 1993.

52. 2025 Wisconsin Act 247, however, carves out an exception for certain "bets" that would otherwise be illegal.

53. The Act exempts bets that would otherwise be subject to Wisconsin's criminal code if: (1) the person making the bet is located in Wisconsin; and (2) the person is using a mobile or other electronic device to place the bet; (3) the server or other device used to conduct the bet is located on tribal lands; and (4) the wager is conducted pursuant to a gaming compact entered into before April 1, 1993.

54. By decriminalizing this type of mobile betting, the Act "authorize[s] gambling" in that particular form.

55. But the People of Wisconsin explicitly took away the Legislature's power to do that when they amended Article IV, Section 24, in 1993.

56. As such, the Act is an unlawful exercise of legislative power.

57. The Act itself, and on its face, violates the Wisconsin Constitution.

58. But, in order to facilitate mobile sports betting actually happening, the compacts between the State of Wisconsin and Indian tribes will need to be amended to allow the tribes to run these statewide sports betting operations.

59. Indeed, Governor Evers said in a statement—issued the same day he signed the bill into law—that he intends to negotiate compact amendments with Indian tribes to put this scheme into effect. Gov. Tony Evers, *Signing Statement on 2025 Assembly Bill 601* (Apr. 9, 2026), https://www.wpr.org/wp-content/uploads/2026/04/AB-601-Signing-Statement_signed.pdf.

60. Since then, Governor Evers has taken steps toward securing these amendments. Specifically, upon information and belief, Governor Evers met with

tribal leaders on June 1, 2026, to begin negotiations on how the tribal gaming compacts would be amended to allow for mobile sports betting under Act 247.

61. Contrary to his apparent plans, the Governor has no authority to negotiate to allow anyone to violate Wisconsin law. And thus, all attempts by the Governor to negotiate compact amendments that purport to allow and facilitate statewide sports betting based upon the illegally adopted Act 247 would be *ultra vires*.

62. Finally, the Act runs afoul of the Fourteenth Amendment's guarantee of equal protection.

63. The Act provides a benefit to some—not all—based on, at bottom, race.

64. All eleven Indian tribes recognized in Wisconsin have blood quantum requirements or direct lineal descendant requirements for membership.[2]

[2] Bad River Band of Lake Superior Chippewa Indians, Constitution and By-Laws, https://www.badriver-nsn.gov/constitution-and-bylaws/ (last visited Aug. 4, 2026); Forest County Potawatomi Community, https://thorpe.law.ou.edu/constitution/fcpot1982.html (last visited Aug. 4, 2026); Ho-Chunk Nation, Tribal Enrollment and Membership Code, https://ho-chunknation.com/wp-content/uploads/2020/05/06.20.17-Enrollment-Code-with-DOJ-Enrollment-and-other-comments-Clean.pdf (last visited Aug. 4, 2026); Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Citizenship Code § CTZ.1.4.020, https://law.lco-nsn.gov/us/nsn/lco/council/code/CTZ.1.4.020 (last visited Aug. 4, 2026); Lac du Flambeau Band of Lake Superior Chippewa Indians, Tribal Code Chapter 10 Membership Ordinance, https://www.ldftribe.com/uploads/files/Court-Ordinances/Chap10%20Membership%20Ordinance.pdf (last visited Aug. 4, 2026); Menominee Indian Tribe of Wisconsin, Tribal Code Chapter 69: Enrollment, https://ecode360.com/11986412 (last visited Aug. 4, 2026); Oneida Nation, Enrollment Application Information and Instructions, https://oneida-nsn.gov/wp-content/uploads/2021/05/Enrollment-Application-2018-07-03.pdf (last visited Aug. 4, 2026); Red Cliff Band of Lake Superior Chippewa Indians, Tribal Enrollment, https://www.redcliff-nsn.gov/government/tribal_court___legal_dept/enrollment.php (last visited Aug. 4, 2026); Sokaogon Chippewa Community, Constitution and By-Laws, https://www.govinfo.gov/content/pkg/GOVPUB-I20-e42a7f4968cb6209f6e43bbe647f703d/pdf/GOVPUB-I20-e42a7f4968cb6209f6e43bbe647f703d.pdf (last visited Aug. 4, 2026); St. Croix Chippewa

65. The Fourteenth Amendment prohibits the government from discriminating on the basis of race. While Congress has some ability to provide special benefits to Indian tribes because of its treaty obligations and the Indian Commerce Clause, that privilege has never been afforded to states. *See generally Rice v. Cayetano*, 528 U.S. 495, 520 (2000) (citing *Morton v. Mancari*, 417 U.S. 535 (1974)).

CAUSES OF ACTION

CLAIM ONE:

DECLARATORY JUDGMENT THAT THE ACT VIOLATES ARTICLE IV, SECTION 24 OF THE WISCONSIN CONSTITUTION

66. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

67. Article IV, section 24, of the Wisconsin Constitution provides: "Except as provided in this section, the legislature may not authorize gambling in any form." Wis. Const. art. IV, § 24(1).

68. The narrow exemptions in article IV, section 24, do not apply to the type of gambling being authorized by Act 247.

69. Wisconsin's criminal code makes it a Class B Misdemeanor to "[m]ake[] a bet," Wis. Stat. § 945.02(1), consistent with the constitutional language of article IV, section 24.

Indians of Wisconsin, Enrollment, https://stcroixojibwe-nsn.gov/government/enrollment/ (last visited Aug. 4, 2026); Stockbridge-Munsee Community, Constitution and By-Laws, https://law.mohican.com/us/nsn/mohican/council/constitution (last visited Aug. 4, 2026).

70. The statutes define "bet" as "a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement." Wis. Stat. § 945.01(1).

71. Under Wisconsin law before Act 247, it would be illegal for anyone in Wisconsin to make a "bet" on their mobile device.

72. The Act at hand, however, carves out an exception as to what qualifies as a "bet." Specifically, it adds the following language as to what is not included in the definition of "bet":

> An event or sports wager made by a person physically located in this state using a mobile or other electronic device if the server or other device used to conduct such event or sports wager is physically located on a federally recognized American Indian tribe's Indian lands located in this state and if the event or sports wager is conducted pursuant to an Indian gaming compact under s. 14.035 originally entered into prior to April 1, 1993. Such event or sports wagers are deemed to have taken place on those Indian lands in this state on which the server or other device used to conduct such event or sports wager is physically located.

73. Under Wisconsin law, "gambling" means anything in which there is "a prize, chance, and a consideration." *See, e.g.*, Wis. Atty. Gen. Op. 96-02; *State ex rel. Cowie v. La Crosse Theaters Co.*, 232 Wis. 153, 286 N.W. 707, 710 (1939); *State ex rel. Regez v. Blumer*, 236 Wis. 129, 294 N.W. 491, 492 (1940); *State v. Laven*, 270 Wis. 524, 524, 71 N.W.2d 287 (1955); *Kayden Industries, Inc. v. Murphy*, 34 Wis. 2d 718, 724, 150 N.W.2d 447 (1967).

74. The Act authorizes an activity in which there is a prize, chance, and consideration.

75. The Act authorizes an activity that does not fall within any of the exceptions enumerated in article IV, section 24.

76. By carving out an exception to what qualifies as a "bet," the Act authorizes a form of gambling, which the Legislature has no power to do under article IV, section 24, of the Wisconsin Constitution.

77. This Court should declare Act 247 to be unconstitutional and enjoin Defendants from taking any action in furtherance of it, including, but not limited to, negotiating for an amendment to any gaming compact.

CLAIM TWO:

DECLARATORY JUDGMENT THAT GOVERNOR EVERS LACKS AUTHORITY UNDER STATE LAW TO NEGOTIATE COMPACT AMENDMENTS IMPLMENTING THE ACT

78. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

79. 2025 Wisconsin Act 247 permits sports betting "if [it] is conducted pursuant to an Indian gaming compact under s. 14.035 originally entered into prior to April 1, 1993."

80. In a statement issued on the same day he signed the bill into law, Governor Tony Evers contemplated amendments to the tribal compacts that would follow the Act's passage and discussed his expectations for those compact amendments. Gov. Tony Evers, *Signing Statement on 2025 Assembly Bill 601* (Apr. 9, 2026), https://www.wpr.org/wp-content/uploads/2026/04/AB-601-Signing-Statement_signed.pdf.

81. The compact negotiations Governor Evers's statement contemplates are based upon an unlawful act of the Legislature. The Governor has no authority to authorize gambling throughout Wisconsin in this manner.

82. Thus, any attempt by Governor Evers to enter tribal compact amendments to enforce 2025 Wisconsin Act 247 would be *ultra vires*.

CLAIM THREE:

VIOLATION OF THE FOURTEENTH AMENDMENT'S GUARANTEE OF EQUAL PROTECTION

83. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

84. The Fourteenth Amendment of the United States Constitution prohibits states from discriminating against any citizen because of his or her race. *Gibson v. State of Mississippi*, 162 U.S. 565, 591 (1896).

85. The Fourteenth Amendment not only restricts states from imposing *burdens* based on race; it also prevents them from creating and distributing *benefits* based on race. *Zobel v. Williams*, 457 U.S. 55, 60 (1982).

86. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), the Supreme Court laid out five independent tests that a racial classification must survive to pass constitutional scrutiny. First, the government must identify one of two compelling governmental interests: "remediating specific, identified instances of past discrimination that violated the Constitution or a statute" or "avoiding imminent and serious risks to human safety in prisons, such as a race riot." *Id.* at 207. Second, the program must be narrowly tailored and cannot rely on "imprecise," "overbroad," or "underinclusive" racial categories. *Id.* at 216–17. Third, race can never be used as a "negative." *Id.* at 218–

19. Fourth, race can never be used as a "stereotype." *Id.* at 220–21. And fifth, all race-based programs must have a "logical end point." *Id.* at 221–22.

87. 2025 Wisconsin Act 247 permits mobile sports bets *only* "if the server or other device used to conduct such event or sports wager is physically located on a federally recognized American Indian tribe's Indian lands located in this state[.]"

88. This requirement is a racial classification.

89. By imposing that requirement, the Act confers a benefit upon Indian tribes and their members alone to run mobile sports betting markets.

90. The Act does not authorize those who are not members of Indian tribes to run mobile sports betting markets, at least without going through the Indian tribe to do so.

91. Thus, the Act singles out members of Indian tribes for a benefit not available to non-members.

92. Because all eleven Indian tribes in Wisconsin have blood quantum requirements or direct lineal descendent requirements, that distinction is one based on race.

93. To be sure, federal caselaw recognizes Congress's authority to legislate with respect to Indian tribes, but that authority derives from the Indian Commerce Clause and the Treaty Clause. *Morton v. Mancari*, 417 U.S. 535, 552 (1974); *see also Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 245 n.3 (1995) (Stevens, J., dissenting) (cautioning that the majority's holding suggested that singling out of American Indians would be looked at similarly to that of black Americans and

explaining that the Court in *Mancari* "relied in part on the plenary power of Congress to legislate on behalf of Indian tribes."). Those federal constitutional clauses offer no power to the Wisconsin State Legislature.

94. Indeed, for all they have to say about Congress's authority to legislate with respect to Indian tribes, federal courts have never extended a similar authority to state legislatures.

95. Rather, states have been found to violate the Constitution when they assign a benefit to an indigenous group based on that indigenous status. *See, e.g.*, *Rice v. Cayetano*, 528 U.S. 495 (2000).

96. *Mancari's* reach is further limited by the fact that it addressed legislation relating to the Bureau of Indian Affairs: a "truly *sui generis*" agency. *Mancari*, 417 U.S. at 554; *see also Rice*, 528 U.S. at 520 (discussing importance of BIA's "sui generis" status). The Wisconsin State Legislature does not occupy the BIA's unique position.

97. Finally, *Mancari* "shield[s] only those statutes that affect uniquely Indian interests." *See Williams v. Babbitt*, 115 F.3d 657, 665 (9th Cir. 1997). For example, Congress could not "give Indians a complete monopoly on," say, "the casino industry." *Id.* There are no uniquely Indian interests at stake here.

98. For these reasons, the State of Wisconsin may not discriminate on the basis of race, even when they use Indian-tribe-membership status to do so.

99. By assigning a benefit based on race, the Act violates the Fourteenth Amendment's Guarantee of Equal Protection.

REQUEST FOR RELIEF

Plaintiffs therefore request the following relief:

A. Declare that 2025 Wisconsin Act 247 violates Article IV, Section 24, of the Wisconsin Constitution.

B. Declare that any attempt by the Governor to carry out 2025 Wisconsin Act 247 in Wisconsin's compacts with Indian tribes would be *ultra vires*.

C. Declare that 2025 Wisconsin Act 247 and any compacts carrying it out violate the United States Constitution's Guarantee of Equal Protection under the Fourteenth Amendment.

D. Enjoin Defendants from taking any action to authorize or administer mobile sports betting throughout Wisconsin, including, but not limited to, negotiating any compact amendments to allow that activity to occur.

E. Award costs and any such other relief as the Court deems appropriate.

Dated: August 5, 2026

Respectfully Submitted,

WISCONSIN INSTITUTE FOR
LAW & LIBERTY

Electronically signed by
Kirsten A. Atanasoff

Daniel P. Lennington (#1088694)
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