STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL April 19, 2021	No. I21-004 (R21-001) Re: Authority of Governor to Negotiate Gaming Compacts with Indian Tribes Under A.R.S. § 5-601

To: Mark Finchem, Representative
Arizona House of Representatives

Question Presented

1. Does Arizona Revised Statute ("A.R.S.") § 5-601(A) unconstitutionally delegate legislative power to the Executive Branch in violation of Article III of the Arizona Constitution?

2. Does the Governor have valid statutory authority under current law to unilaterally negotiate and bind the State of Arizona to gaming compacts other than the standard form compact codified in A.R.S. § 5-601.02?

Summary Answer

1. Likely no. Interpreting A.R.S. § 5-601(A) in its statutory context, including in conjunction with A.R.S. § 5-601.02, the Legislature's delegation of authority to the Governor to execute tribal-state gaming compacts is not clearly unconstitutional under Article III of the Arizona Constitution.

2. Yes, but with limitations. The plain language of A.R.S. § 5-601.02(E) confers upon the Governor statutory authority "to negotiate and enter into amendments to new compacts" previously entered into under A.R.S. § 5-601.02(A), but there are a number of important limitations on the exercise of that authority, including that any amendment must be consistent with Arizona's laws governing gambling on tribal lands and the Indian Gaming Regulatory Act.

Background

In 1988, Congress passed the Indian Gaming Regulatory Act ("IGRA"), providing a "statutory basis for the operation and regulation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments," among other objectives, while balancing the interests of the federal government, tribes, and states. 25 U.S.C. § 2702.

IGRA separates gaming on tribal lands into three classes: Class I, which includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations"; Class II, which includes all formats of bingo played for prizes and card games that are statutorily permitted by state law, but does not include banking card games or electronic games of chance or slot machines; and Class III, which includes "all forms of gaming that are not [C]lass I or [C]lass II gaming." 25 U.S.C. § 2703(6)–(8). IGRA further requires any tribe desiring to conduct Class III gaming on tribal land to first enter into a tribal-state gaming compact with "the State" in which the tribe is located, subject to the Secretary of the Interior's approval. 25 U.S.C. § 2710(d)(3); *see also Simms v. Napolitano*, 205 Ariz. 500, 502, ¶ 10 (2003) ("The IGRA allows tribes to consent, through a tribal-state compact, to an extension of a state's jurisdiction and laws to gaming activities conducted on tribal lands."). Thus, "IGRA gives States the unique opportunity

to participate in the regulation of [C]lass III gaming on Indian lands." *Yavapai-Prescott Indian Tribe v. Arizona*, 796 F. Supp. 1292, 1296 (D. Ariz. 1992).

In response to IGRA, the Arizona Legislature enacted A.R.S. § 5-601 by emergency measure in 1992, with the express intention of "authoriz[ing] the negotiation of [gaming] compacts, with due regard for the public health, safety and welfare in furtherance of fairness and honesty in the operation of gaming and with due regard for the interests of the Indian tribes and other and lawful existing gaming operations beyond Indian lands." 1992 Ariz. Sess. Laws ch. 286, § 1. As originally enacted, A.R.S. § 5-601 authorized the state, through the governor, to "enter into negotiations and execute tribal-state compacts" with Arizona tribes pursuant to IGRA, but subject to the state's rights under the Tenth and Eleventh Amendments of the United States Constitution. *Id*.; *see also Salt River Pima-Maricopa Indian Comm. v. Hull*, 190 Ariz. 97, 103 (1997) (observing "the Legislature originally gave the governor broad power to negotiate and reach agreement with Arizona's Indian tribes").

Two years later, the Legislature amended A.R.S. § 5-601 to include a provision prohibiting the governor from concurring "in any determination by the United States Secretary of the Interior that would permit gaming on lands acquired after October 17, 1988[.]" *See* 1994 Ariz. Sess. Laws ch. 285, § 2.

Pursuant to A.R.S. § 5-601, the then-governor (Governor Symington) negotiated and executed the first ten-year gaming compacts with 16 of the 21 tribes located in Arizona at the time. *Hull*, 190 Ariz. at 99. Governor Symington declined, however, to subsequently negotiate or execute any new compacts with the remaining five tribes. *Id*.; *see also* Ariz. Dep't of Gaming, Tribal Gaming History-Gaming in Arizona (April 9, 2021), *available at* https://gaming.az.gov/tribal-gaming/history. In response, Arizona's voters approved—by almost

a two-thirds vote—an initiative (Proposition 201) that made tribal-state gaming compacts like those given to the first sixteen tribes available to the remaining five tribes. *See Hull*, 190 Ariz. at 99. Specifically, Proposition 201, codified as A.R.S. § 5–601.01, required the Governor to execute a standard form of gaming compact—defined as "the form of compact that contains provisions limiting types of gaming, the number of gaming devices, the number of gaming locations, and other provisions that are common to the compacts entered into by this state with Indian tribes in this state on June 24, 1993"—with "any eligible Indian tribe that requests it." *Id*. at 100-01 (quoting A.R.S. § 5-601.01)). "The practical result of § 5-601.01 [wa]s that if negotiations [were] requested by one of the five tribes without a compact and fail[ed] to go forward to completion," the Governor was required to execute the standard compact with the tribe at the tribe's request. *Id*. at 101 (emphasis in original). Because A.R.S. § 5-601.01 was passed by a voter initiative, it is subject to the restrictions of the Voter Protection Act, which generally prohibits the legislature from changing voter-approved measures. Ariz. Const. art. 4, pt. 1, § 1(6)(B).

In upholding Proposition 201's constitutionality, the Arizona Supreme Court has noted that the voters acted within their power to decide the minimum terms of tribal-state compacts, gave the Governor a minimum bargaining position, limited the Governor's discretion to decide certain terms of a compact, and effectively gave tribes "a negotiating advantage—a peek, so to speak, at the state's 'hole card.'" *See Hull*, 190 Ariz. at 101, 103. This is especially true because IGRA authorizes "the state" to enter into gaming compacts with tribes, and the people of Arizona, exercising their initiative power, "have the authority to act for the state and dictate to the Legislature and the [G]overnor a good faith bargaining position, including the minimum terms of any compact." *Id*. at 105.

In 2000, the Legislature again amended A.R.S. § 5-601 by adding two substantive requirements for any tribal-state gaming compacts that the Governor negotiates on the state's behalf. First, the Legislature required that all gaming compacts executed, modified, extended or renewed pursuant to the statute include a provision prohibiting anyone under 21 years old from "wagering on gaming activities." 2000 Ariz. Sess. Laws ch. 14, § 4 (codified at A.R.S. § 5-601(B)). Second, the Legislature required that all gaming compacts executed, modified, extended or renewed pursuant to the statute include five specific provisions aimed at preventing compulsive gambling and prohibiting advertisements that specifically appeal to minors. 2000 Ariz. Sess. Laws ch. 305, § 1 (codified at A.R.S. § 5-601(I)).

Two years later—upon the eve of the expiration of the first set of gaming compacts and as negotiations for renewed compacts began—horse and dog track owners sued Governor Hull in federal court to enjoin her from entering into those new compacts. *American Greyhound Racing, Inc. v. Hull*, 146 F.Supp.2d 1012 (2001), *vacated on other grounds by* 305 F.3d 1015 (9th Cir. 2002). The district court struck down A.R.S. § 5-601 as an unconstitutional delegation of legislative power under Article III of the Arizona Constitution, *id.* at 1069-72, and the state defendants appealed, *see American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002). Meanwhile, Arizona voters passed Proposition 202, the "Indian Gaming Preservation and Self-Reliance Act." Title, § 1, Proposition 202, 2002 Ballot Propositions, *available at* https://apps.azsos.gov/election/2002/Info/pubpamphlet/english/prop202.htm. Proposition 202 repealed A.R.S. § 5–601.01 and added A.R.S. § 5–601.02, which enumerated the terms of the new standard tribal-state gaming compacts and, in turn, allowed the tribes and the Governor to execute new negotiated compacts and continue tribal gaming for at least ten years. *Id*. at Declaration of Purpose, § 2. Section 5-601.02, which took effect on August 2, 2012, codified the

terms of these compacts and provides a framework for the negotiation and execution of future compacts. *Id*. Less than two months later, the Ninth Circuit Court of Appeals vacated the district court's decision in *American Greyhound Racing*, with instructions to dismiss the action, holding that "the compacting tribes were indispensable parties with sovereign immunity from suit." *See* 305 F.3d at 1018.

Today, Arizona has gaming compacts with each of the 22 tribes located within its boundaries. *See* Ariz. Dep't of Gaming, Full List of Tribal-State Gaming Compacts, Appendices, and MOUs between State of Arizona and Tribes, *available at* https://gaming.az.gov/sites/default/files/Compact%20and%20Appendix%20Checklist%20%28rev%204-9-19%29.pdf.

Analysis

I. Under Arizona Law Applying The Non-Delegation Doctrine, A.R.S. § 5-601(A) Is Not Clearly Unconstitutional.

The first question asks whether A.R.S. § 5-601(A) unconstitutionally delegates legislative power to the Governor in violation of the Arizona Constitution. Considering the statutory provision in its entire context—not in isolation—A.R.S. § 5-601(A) is not clearly or patently unconstitutional under Arizona law interpreting Article III of the Arizona Constitution. *See* Ariz. Att'y Gen. Agency Handbook, Ch. 1, § 1.5.3 ("When called upon to address the constitutionality of a statute, the Attorney General presumes a statute is constitutional and will find otherwise only when the statute is clearly or patently unconstitutional.").

"Every duly enacted state and federal law is entitled to a presumption of constitutionality," a presumption that "applies equally to initiatives as well as statutes." *Ruiz v. Hull*, 191 Ariz. 441, 448, ¶ 25 (1998). In analyzing a specific provision, the courts look to the statute as a whole, giving meaning to all of its provisions, including its context, subject matter,

historical background, and purpose. *City of Phoenix v. Orbitz Worldwide Inc.,* 247 Ariz. 234, 238, ¶ 10 (2019); *Ariz. Dep't of Rev. v. Action Marine, Inc.*, 218 Ariz. 141, 143, ¶ 10 (2008). And statutes that "relate to the same subject or have the same general purpose—that is, statutes which are in pari materia" should be "read in connection with, or should be construed together with other related statues, as though they constituted one law." *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970). "This rule of construction applies even where the statutes were enacted at different times." *Id*.

A. Absent Delegation, The Power To Negotiate And Execute Tribal Gaming Compacts Belongs To The Legislature.

The Arizona Constitution divides government powers among three branches of government and prohibits any one branch from exercising the powers of another. ARIZ. CONST. art. III. Under this structure, the Legislature enjoys the exclusive power to declare what the law should be, and the executive possesses the duty to faithfully execute those laws. *State ex rel. Woods v. Block*, 189 Ariz. 269, 275 (1997). Further, unlike the federal system, the Arizona Constitution also grants the Legislature all powers not expressly denied to it or expressly granted to one of the other two branches of government. *Hull*, 190 Ariz. at 103.

"Under the doctrine of 'separation of powers' the Legislature alone possesses the lawmaking power and while it cannot completely delegate this power to any other body, it may allow another body to fill in the details of legislation already enacted." *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971). Arizona has long recognized that "[a]lthough the Arizona Constitution created separate and distinct branches of government, … an unyielding separation of powers is impracticable in a complex government, and some blending of powers is constitutionally acceptable." *Andrews v. Willrich*, 200 Ariz. 533, 535, ¶ 7 (App. 2001) (citation omitted). *Cf. Ariz. Mines Supply Co.*, 107 Ariz. at 205 (noting an increasing tendency to hold as

nonlegislative the authority conferred to executive agencies because the Legislature may "authorize others to do those things which it might properly, yet cannot understandingly or advantageously do itself") (quoting *Peters v. Frye*, 71 Ariz. 30, 35 (1950)).

When it comes to contractual relationships with the tribes, the federal government, through Congress, would ordinarily have plenary power. *See Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1238 (10th Cir. 2018) ("A compact is a form of contract.") (citation omitted). Through IGRA, however, Congress handed over to "the state" the authority to compact with tribes regarding gaming within state boundaries. That vertical delegation of federal authority is to the Legislature, not the Governor, and the Arizona Constitution does not expressly grant negotiation powers to the Governor, nor expressly deny them to the Legislature. *See Hull*, 190 Ariz. at 102, 103 & n.4 (noting that "'governor' is not a synonym for 'state'"). Thus, in the absence of additional delegation by the Arizona Legislature, the authority to negotiate and enter gaming compacts with Indian tribes located within Arizona's boundaries belongs to the Legislature, not the Governor.

B. Arizona Law Delegates Some Authority To Enter Into Tribal Gaming Compacts To The Governor.

The crux of the first question presented is whether there has been a valid delegation of authority to the Governor. No provision in the Arizona Constitution expressly prohibits the Legislature through statute, or the people through initiative, from delegating the legislative power to enter tribal gaming compacts to the executive branch. For the Governor to have constitutionally obtained such legislative authority, the Legislature (or the people exercising legislative power) must have (1) made a delegation (2) in a constitutional manner. The Legislature did not clearly fail to satisfy either of those requirements with respect to negotiating and entering tribal gaming compacts.

With respect to whether a delegation has occurred here, at least two provisions of Arizona law delegate some authority to the Governor to negotiate and enter tribal gaming compacts. *See* A.R.S. §§ 5-601(A), 5-601.01(A). As explained below in Part II of this Opinion, that authority is not unlimited. For purposes of non-delegation though, the only pertinent question is whether the legislative delegation of authority occurred in a manner that is not clearly unconstitutional.

C. Arizona Law Delegates Authority To The Governor To Enter Tribal Gaming Compacts In A Manner That Is Not Clearly Unconstitutional.

The statutory scheme relating to tribal gaming compacts, when considered as a whole, is not clearly unconstitutional under the non-delegation doctrine. In some states, the governor is required to obtain legislative approval or input when negotiating new or amended tribal compacts. *See, e.g.*, § 285.712(2), Fla. Stat. ("Any tribal-state compact relating to gaming activities which is entered into by an Indian tribe in this state and the Governor pursuant to subsection (1) must be conditioned upon ratification by the Legislature."); Idaho Code Ann. § 67-429A(3) (requiring legislative ratification unless a negotiated agreement is shared with the legislature at least 21 days in advance of execution). Any such requirement would likely obviate a non-delegation issue. But no such requirement exists in Arizona. Thus, whether Arizona's statutory scheme for the execution of tribal gaming compacts is clearly unconstitutional under the non-delegation doctrine is a close question.

To properly delegate legislative power, a statute must contain "reasonably definite standards which govern the exercise of the power." *Schecter v. Killingsworth*, 93 Ariz. 273, 285 (1963). In other words, the delegation must "contain[] an intelligible principle to guide the exercise of the delegated discretion." *Ethridge v. Ariz. State Bd. of Nursing*, 165 Ariz. 97, 104 (App. 1989); *see also Ariz. Mines*, 107 Ariz. at 205 (delegations of legislative powers will be

upheld so long as the Legislature has provided a "basic standard" or "intelligible principle" to guide their exercise); *Hernandez v. Frohmiller*, 68 Ariz. 242, 255 (1949) (stating that legislative powers given to an administrative board must "by the provisions of the act, be surrounded by standards, limitations, and policies"). [1] In contrast, "a statute [that] gives unlimited regulatory power to a commission, board or agency with no prescribed restraints nor criterion nor guide to its action offends the Constitution as a delegation of legislative power." *State v. Marana Plantations, Inc.*, 75 Ariz. 111, 114 (1953). "The standards laid down by the Legislature may be broad and in general terms." *Ethridge*, 165 Ariz. at 104.

Accordingly, the delegation must include an "intelligible principle" to guide the Governor in exercising the power to execute tribal-state gaming compacts. *Ariz. Mines*, 107 Ariz. at 205. Arizona's tribal gaming statutes—enacted by both the Legislature and the voters—do not clearly fail this test.

As the Arizona Supreme Court has recognized, A.R.S. § 5-601 itself grants the executive branch an "*almost* unlimited" and "broad delegation of authority." *Hull*, 190 Ariz. at 103–04 (emphasis added). There are, however, some limitations on the Governor's authority within the statutory scheme as a whole, thereby preventing the legislative delegation from being clearly unconstitutional under the Arizona Supreme Court's forgiving non-delegation standard.

Starting with the restrictions contained in § 5-601 itself, the Legislature mandated, without exception, that all tribal-state gaming compacts executed in Arizona do the following: prohibit all people under 21 years old from "wagering on gaming activities"; require compacting

[1] Whether Arizona courts should depart from or modify the "intelligible principle" test (discussed *infra*) in interpreting Article III of the Arizona Constitution is beyond the scope of this opinion. *See, e.g., Gundy v. United States*, 139 S.Ct. 2116, 2139 (2019) (Gorsuch, J., dissenting) (stating the "mutated version of the 'intelligible principle' remark has no basis in the original meaning of the [Federal] Constitution, in history, or even in the decision from which it was plucked").

tribes to pay their share of regulatory costs to the Arizona Department of Gaming; include provisions that establish guidelines for the use of automated teller machines, credit cards, and credit gaming; require the compacting tribe to post signs at all entrances and exits that provide specific information about habitual gaming; prohibit gaming advertising and marketing that appeals to minors; establish guidelines for the effective treatment and prevention of pathological gaming; and establish guidelines for voluntary ban procedures from all Arizona gaming facilities. A.R.S. § 5-601. Further, A.R.S. § 5-601(A) expressly prohibits the Governor from executing any compact that waives, abrogates, or diminishes the state's rights under the Tenth and Eleventh Amendments to the United States Constitution, and requires that the negotiated compacts be executed "pursuant to" IGRA. Thus, federal law necessarily constrains the Governor's discretion, requiring the Governor to act consistent with IGRA's declaration of policy. *See* 25 U.S.C. § 2702 (codifying IGRA's purposes, including, inter alia, to provide for "the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments" and to regulate "gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players").

The requirements in § 5-601, however, are not the only restrictions in the statutory scheme cabining the Governor's discretion. *See Hull*, 190 Ariz. at 103 (construing A.R.S. § 5-601 together with A.R.S. § 5-601.01, the predecessor to A.R.S. § 5-601.02, in determining the scope of the Governor's authority to negotiate and enter into tribal-state compacts); *Ethridge*, 165 Ariz. at 104 (noting standards may "be inferred from the statutory scheme as a whole"). So too do several provisions in A.R.S. § 5-601.02, which was passed in 2002 and outlines standard

terms that must be included in all tribal-state gaming compacts.[2] For example, the statute identifies those forms of gaming allowed on tribal lands, the number of gaming devices permitted, the physical location of gaming facilities on tribal lands, and other conditions for the operation of gaming facilities and devices. A.R.S. § 5–601.02.

In combination, sections 5-601 and 5-601.02, provide sufficiently clear standards by which the Governor must exercise his authority such that I cannot conclude that those provisions are in clear violation of Arizona's permissive non-delegation doctrine. *See Ariz. Mines*, 107 Ariz. at 206 (holding a standard that regulations promulgated by an executive agency be "necessary" was sufficient, and concluding that a requirement that regulations be "necessary and feasible" was also adequate).[3]

II. The Governor May Enter Into Amendments Of Tribal Compacts Previously Entered Into Pursuant to A.R.S. § 5-601.02(A) Even Where Those Amendments Go Beyond The Terms Of The Standard Tribal Compact, But That Power Is Not Unlimited.

The second question asks whether the Governor has authority to negotiate with tribes for "gaming compacts other than the standard form compact codified in A.R.S. § 5-601.02." The plain language of A.R.S. § 5-601.02(E) provides the Governor with statutory authority to negotiate and bind the State of Arizona to amendments to any gaming compact that was

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[2] In 2001, a federal district court in Arizona held that A.R.S. § 5-601 contained an unconstitutional delegation of legislative authority to the Governor. *See American Greyhound*, 146 F. Supp. 2d at 1069-72. Not only did the Ninth Circuit later vacate that non-binding authority, *see* 305 F.3d 1015 (9th Cir. 2002), but the district court decision occurred prior to the passage of Proposition 202 and arguably utilized an overly-strict application of the non-delegation doctrine under existing Arizona law.

[3] As discussed below, the statute also preserves the Governor's authority to negotiate amendments to a tribe's gaming compact on the state's behalf. A.R.S. § 5-601.02(E)–(G). Much like its predecessor statute, § 5-601.02 limits that authority by establishing the Governor's "minimum bargaining position" and requiring him or her to agree to its standard compact terms unless otherwise negotiated. *See Hull*, 190 Ariz. at 101–02.

previously entered into pursuant to § 5-601.02(A). That statute provides as follows: "The state, through the governor, is authorized to negotiate and enter into amendments to new compacts that are consistent with this chapter and with the policies of the [IGRA]." A.R.S. § 5-601.02(E). Moreover, the statute makes clear that the Governor's authority in subsection E is "independent and separate from the obligations of the state pursuant to subsection A," which governs execution of the standard form compact. *See* A.R.S. § 5-601.02(A), (G). Accordingly, amendments to those compacts previously entered into under § 5-601.02(A) are permitted, including amendments going beyond the terms of the standard compact. A.R.S. § 5-601.02(E).[4]

There are, however, several significant limitations on the Governor's power to unilaterally bind the State of Arizona to tribal compacts, and any exercise of power outside these legal limits may very well raise serious questions and issues of first impression. To begin, while the statutes giving the Governor authority to bind the State are not in clear violation of the non-delegation doctrine, that does not necessarily mean that such legislation passing off gaming policy decisions to the Governor (even if bounded) fully comports with Article III of the Arizona Constitution, including separation of powers principles. Notably, courts in several states have concluded that a system allowing the Governor to act unilaterally with respect to tribal gaming policy is inconsistent with the separation of powers. *See, e.g., Saratoga Cnty. Chamber of Commerce v. Pataki*, 798 N.E.2d 1047, 1061 (N.Y. Ct. App. 2003) ("Unsurprisingly, every state high court to consider the issue has concluded that the state executive lacks the power unilaterally to negotiate and execute tribal gaming compacts under IGRA. New Mexico, Kansas and Rhode Island have each concluded that gaming compacts incorporate policy choices

[4] This opinion does not address the application of A.R.S. § 5-601.02 to any concrete set of facts or the validity of any future gaming compact amendments, including the 2021 gaming compact amendments contemplated by the Legislature's recent passage of A.R.S. § 5-605. *See* 2021 Ariz. H.B. 2772; S.B. 1797 (55th Legis., 1st Reg. Sess.).

reserved for the Legislature. Today we join those states in a commitment to the separation of powers and constitutional government." (cleaned up)); *but see Sears v. Hull*, 192 Ariz. 65, 72, ¶ 30 (1998) (distinguishing the New Mexico Supreme Court's separation of powers decision for purposes of standing). And this may be particularly true of the Governor's statutory authority to enter into amended compacts deviating from the standard form compact referenced in A.R.S. § 5-601.02(A). *See Treat v. Stitt*, 481 P.3d 240, 243 (Okla. 2021) ("The new compacts contain terms that are different or outside the Model Compact provisions altogether. Due to the statutory nature of the Model Compact, the new and differing provisions operate as the enactment of new laws and/or amend existing laws, which exceeds the authority of the Executive branch.").

The Governor must also exercise any statutory authority consistent with Arizona law. For example, A.R.S. § 5-601.02(E) unambiguously states that any amendment to new compacts must be consistent with Title 5, Chapter 6 and with IGRA. So, for example, the Governor likely cannot enter into tribal gaming compacts or amendments that authorize types of gaming expressly prohibited under Arizona law. *See e.g., Treat v. Stitt*, 473 P.3d 43, 45 (Okla. 2020) (holding that the governor exceeded his statutory authority by entering into tribal gaming compacts that "authorize[d] types of Class III gaming expressly prohibited by" Oklahoma's state laws).

Finally, Arizona's Voter Protection Act ("VPA") may limit the Legislature and/or the Governor from carrying out tribal gaming policy or amending Arizona law relating to tribal gaming through legislation. Legislative amendments to existing gaming compacts may raise serious questions under the VPA, which amended the Arizona Constitution to "limit[] the legislature's power to amend, repeal, or supersede voter initiatives." *State v. Maestas*, 244 Ariz. 9, 13, ¶ 14 (2018) (citing ARIZ. CONST. art. 4, pt. 1, § 1(6)(B)-(C), (14)). Proposition 202

through the VPA may create additional limits on the Legislature's power to amend an initiative measure by requiring that "the amending legislation further[] the purposes of such measure" and that "at least three-fourths of the members of each house of the legislature … vote to amend such measure." Ariz. Const. art. 4, pt. 1, § 1(6)(C). Thus, to the extent the Governor attempts to implement tribal gaming policy by promoting and signing legislation, the VPA may limit his ability to do so.

Conclusion

Considering Arizona's entire statutory scheme governing tribal-state compacts, state law provides sufficient standards to guide the Governor in his or her exercise of authority granted by A.R.S. § 5–601. That authority therefore is not in clear violation of the non-delegation doctrine. Additionally, the Governor has some statutory authority to enter into amendments to compacts previously entered into under § 5-601.02(A), including amendments going beyond the terms of, but consistent with, the standard compact. The Governor's authority to unilaterally amend tribal compacts creates potential legal concerns (possibly constitutional in nature) that cannot be addressed by this Opinion in the absence of factual development. Arizona law makes abundantly clear, however, that any such amendment must not conflict with Arizona law, including any statutory provision in A.R.S., Title 5, Chapter 6 (Gambling on Indian Reservations) or with the policies of IGRA.

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