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U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

NANTICOKE LENNI-LENAPE TRIBAL NATION,)	
)	
)	COMPLAINT FOR
)	INJUNCTIVE AND
)	DECLARATORY RELIEF
Plaintiff)	
)	
v.)	
)	
JOHN JAY HOFFMAN)	CIV. ACT. NO.
ACTING ATTORNEY GENERAL OF NEW JERSEY,)	
IN HIS OFFICIAL CAPACITY,)	
)	
)	
Defendant.)	
)	

The Nanticoke Lenni-Lenape Tribal Nation (“Nation”), by way of complaint against the Defendant, avers as follows:

1. This is a civil rights action. The Nation says the state of New Jersey, acting through its acting attorney general, has wrongfully repudiated its official recognition of the Nation as an American Indian tribe, and has thereby violated: 1) the Nation’s right to procedural and substantive due process under the federal and state constitutions; 2) the Nation’s right to equal protection under the federal and state constitutions; and 3) the Nation’s right under state law to rely on the state’s word and to be free from arbitrary and unlawful state action.

I. PARTIES

2. The Nation is a constitutionally organized, self-governing, inherently sovereign American Indian tribe. Its principal place of business is 18 East Commerce Street, Bridgeton, New Jersey. The majority of the Nation's approximately 3,000 members reside in New Jersey.
3. Defendant John Jay Hoffman is Acting Attorney General of the state of New Jersey. He is sued in his official capacity. His principal place of business is the Richard Hughes Justice Center in Trenton, New Jersey.

II. JURISDICTION AND VENUE

4. This action is for deprivation of federal constitutional rights under color of state law, brought pursuant to 42 U.S.C. § 1983; deprivation of state constitutional rights pursuant to the New Jersey Civil Rights Act, N.J.S.A 10:6-1 *et seq.*; and pendent state common law claims.
5. The Court has jurisdiction over the Nation's federal claims pursuant to 28 U.S.C. § 1331, as an action arising under the Constitution of the United States, and under 28 U.S.C. § 1343(a)(3), to redress the deprivation, under color of state law, of rights secured by the Constitution. The Court has jurisdiction over the Nation's state claims under 28 U.S.C. § 1367.
6. The Court has the authority to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the rule of *Ex Parte Young*, 209 U.S. 123 (1908).
7. The Court has authority to award costs and attorneys' fees on the Nation's federal claims pursuant to 42 U.S.C. § 1988, and on its state constitutional claims pursuant to N.J.S.A. 10:6-2(f).
8. Venue is properly laid in the District of New Jersey pursuant to 28 U.S.C. § 1391(b) because all parties reside in this district, and the events giving rise to this claim occurred in this district.

III. FACTS

9. The lineage of the Lenni-Lenape people (also called “Delawares”) in what became New Jersey and the surrounding region dates back more 12,000 years and through 500 generations. The Lenni-Lenape were often referred to as "the Grandfather tribe" because of their diplomatic skills, and their reliable honesty in dealing with others, and because they provide the ancient root of many other American Indian nations.
10. Colonists’ diseases and violence took heavy tolls on the Lenni-Lenape. In 1758, the Colonies established an American Indian reservation in New Jersey, the Brotherton Reservation in present-day Burlington County, to be a permanent safe haven.
11. But the emerging American government saw in the Lenni-Lenape a potential ally in its fight against the British, so the first treaty the government signed after the Declaration of Independence was with the Lenape-Lenape Nation. It promised the Tribe statehood and seats in Congress if they would join the revolutionary cause. The Lenni-Lenape kept their end of the bargain, but the American government did not.
12. In 1802 the reservation was disbanded and New Jersey began forcibly expelling Lenni-Lenape. They were relocated westward into Pennsylvania, Ohio, Indiana, Oklahoma, and eventually Canada after colonial governments broke additional treaties.
13. Some Lenni-Lenape families managed to evade forced removal to maintain a presence in their ancient homeland. The Plaintiff in this case—the Nanticoke Lenni-Lenape Tribal Nation—includes among its approximately 3,000 members persons whose ancestors include Lenni-Lenape who remained in New Jersey and the Nanticoke, a documented tribe residing on the Chesapeake Bay side of the Delmarva Peninsula. Many of Nation’s families have lived for hundreds of years in what is now Fairfield Township, New Jersey, where the Nation maintains

tribal grounds, called “Cohanzick,” housing a community center, ceremonial grounds, and store.

14. American Indians were not considered "persons within the meaning of the law" until 1879.

Not until 1924 did Congress recognize American Indians as United States citizens.

15. Beginning in the late 19th century and continuing at least through the 1970s, New Jersey pursued a practice of administrative racial reassignment. Public officials changed the race indicated on birth certificates of American Indians to either white or black in an attempt to eliminate American Indian racial identity. This practice by the state injured New Jersey’s American Indian tribes in profound ways, including socially, economically, and politically.).

16. In the early 1980s, New Jersey began to reverse the historical course of its maltreatment of American Indians by implementing a process of state recognition. New Jersey has described its process of state-recognition to the federal government as follows:

The New Jersey State Legislature, comprised of the Senate and Assembly, is the law-making body that is responsible for the legal recognition of Indian tribes. Formal recognition is accomplished by State Resolutions, which remain in effect until rescinded.

17. In 1979, the New Jersey legislature initiated its recognition process for two tribes, the Ramapough Mountain Indians and the Powhatan-Renape Nation. The legislature requested and received tribal genealogical records, evidence of self-governance, and testimony of tribal representatives.

18. In 1980 the legislature passed concurrent resolutions recognizing those two tribes, and explaining clearly the state’s intent:

“The purpose of this concurrent resolution is to *recognize* The Ramapough Mountain People of Western Bergen and Passaic County as the Ramapough Indian Tribe to assist them in obtaining *similar recognition* by the Federal Government and receive Federal assistance as an Indian tribe, so they may become self-determined.” (emphasis added)

19. The next year the legislature initiated the same process for the Nanticoke Lenni-Lenape Tribal Nation, requesting and receiving tribal genealogical records, evidence of self-governance, and testimony of tribal representatives. On December 16, 1982, by concurrent resolution modeled after the prior resolutions, the New Jersey legislature officially recognized the Nation as an American Indian tribe.
20. As described below, states have used and continue to use legislative resolutions to confer state recognition upon American Indian tribes, and it was reasonable for New Jersey to do so.
21. For decades thereafter New Jersey routinely reaffirmed recognition of the Nanticoke Lenni-Lenape Nation—as well as the other two tribes—through a series of actions consistent with and necessarily predicated upon that recognition. Those actions include, but are not limited to, the following:
 - a. In 1991, New Jersey enacted N.J.S.A. 26:8-49, to attempt to correct the aforementioned racial reassignment of birth certificates by the state. The law ceded previously exclusive state powers to the tribal governments, stating, in part:

[C]orrection to the birth record of a member of *one of the three New Jersey tribes* of American Indians, the Powhatan-Renape Nation, the Ramapough Mountain Indians, or the Nanticoke Lenni-Lenape Indians, the substantiating documentary proof may include, but shall not be limited to, an affidavit, satisfactory to the State registrar or any local registrar and signed by the chief of the tribe that according to tribal records the person whose certificate is to be amended is a member of the tribe of the chief whose signature appears on the affidavit. (emphasis added)
 - b. In September 1992, the Office of Governor James Florio sent a letter to the federal Indian Arts & Crafts Board, which board ensures that only products produced by American Indian tribes recognized by the state or federal government are labeled

“Indian-made.” This oversight protects tribes, the public, and museums from fraud.

The letter reiterates the state’s process of recognition:

Governor Florio has asked me to respond to your recent letter about the state of state-recognized Indian tribes in New Jersey. The New Jersey State Legislature, comprised of the Senate and Assembly, is the law-making body that is responsible for the legal recognition of Indian tribes. Formal recognition is accomplished by State Resolutions, which remain in effect until rescinded. To date, three tribes have been recognized.

- c. In 1995, during the administration of Governor Christine Todd Whitman, New Jersey formed by statute the Commission on American Indian Affairs. The Commission, which still operates, “...serves as the liaison among the governments of the tribes, New Jersey, and the United States.” The statute reserves two seats each for representatives of the specifically named Nanticoke Lenni-Lenape Tribal Nation, Ramapough Mountain Indians, and Powhatan Renape Nation. N.J.S.A. 52:16A-53. Other seats are reserved generally for persons who reside in New Jersey but are members of recognized tribes from other states.
- d. In February 2000, the Office of New Jersey’s Secretary of State stated:

[t]he Department [of State] has confirmed, upon inquiry, that the State of New Jersey has recognized three groups of Indians. They are referred to in the law as the Nanticoke Lenni-Lenape Indians, the Ramapough Mountain Indians, and the Powhatan Renape Nation.
- e. In 2000, Governor Whitman’s office confirmed to the U.S. Department of Commerce, Census Bureau, that the Nation is one of New Jersey’s three state-recognized American Indian tribes. New Jersey’s designation of a State Designated American Indian Statistical Area (“SDAISA”) is defined as “...statistical entities for state recognized American Indian tribes that do not have a state recognized land base (reservation).” The U.S. Census Bureau confirmed the designation in a letter to the state Commission

on American Indian Affairs, stating: “Our records show that the state of New Jersey has granted recognition to...tribal governments [including the Nation].

- f. A November 2000 report to the Governor and Legislature of New Jersey by the statutorily created Commission on American Indian Affairs states:

There are only three tribes in the state of New Jersey that are *legally recognized by the State,*” (before identifying the Nation, the Ramapough, and the Powhatan Renape).

- g. In 2001, a private citizen claiming to represent his own newly constituted tribe sued the state seeking the acquire lands in the geographic area of the former reservation. The Nation simultaneously successfully sued the citizen to prevent him from implying any association with it. The citizen’s lawsuit against the state failed, in part, because the state asserted that the citizen was not affiliated with one of its three existing tribes.
- h. Between 2000 and 2001, multiple governmental environmental assessments for improvements at McGuire Air Force Base confirmed that the Nation is state-recognized.
- i. From 2002 to 2005, the Nation and its *pro bono* counsel sued a New Jersey municipality that sought to undermine the integrity of New Jersey’s statewide historic preservation process. The Nation won, protecting the state’s process and preserving the Black Creek Site, one of only four American Indian sites among the 1,600 sites listed on the New Jersey Register of Historic Places. In formal ceremonies at the State Capitol, the Governor presented the Nation, its legal counsel, and community leaders with the Governor’s Award for Historic Preservation. Officials celebrated the Nation as a tribe that had validated its state-recognized status by demonstrating its commitment to the welfare of all residents of New Jersey.

- j. In March 2003, then-U.S. Senator and later Governor Jon S. Corzine wrote to the U.S.

Department of the Interior, Bureau of Indian Affairs, stating:

The Nanticoke Lenni-Lenape have been functioning as a designated tribe in New Jersey since a concurrent resolution passed the New Jersey Legislature to designate them as such in 1982. As a result, the Nanticoke Lenni-Lenape has received grants and services from federal programs for [state-recognized] Indians.

- k. In 2006, Governor Corzine created a Committee of Native American Affairs to research and report on the social and economic conditions of New Jersey's state-recognized American Indian tribes and other American Indian communities. The report identified continuing issues of unfair treatment in areas of civil rights, education, environmental protection, employment, fair housing, health care, and infrastructure.

- l. Released in December 2007, the Committee report observed that while the state's prior recognition of the Tribes was legally sufficient, it was proving politically insufficient, because over time members of the state bureaucracy had begun to undermine the tribes' status out of confusion or prejudice. It recommended that further steps be taken to reaffirm the recognition of 25 years prior, with options including refreshed concurrent resolutions, an executive order, or legislation. The report found:

Concurrent New Jersey legislative resolutions passed in 1980 and 1982 *recognized* three New Jersey Native American tribes—the Nanticoke Lenni-Lenape, the Powhatan Renape, and the Ramapough Lenape.... [The Committee] determined that the 1980 and 1982 concurrent legislative resolutions *did recognize* the three New Jersey American Indian tribes... [emphasis added].

New state action might be taken to further “*affirm* state recognition for [the] three tribes *previously recognized...*,” even if such legislation was not required (emphasis added).

- m. In 2010, the state once again affirmed to the U.S. Census Bureau that the Nation was state-recognized.

22. State recognition of a tribe has little to no impact on a state budget, except that it may provide tribes access to certain federal benefits that save the state from spending its own dollars. Benefits to state-only recognized tribes like those in New Jersey are much more limited than those available to federally recognized tribes, but nonetheless these benefits are critical to a state-recognized tribe's ability to pursue economic and educational vitality, including:

- a. Authorization to sell artwork and crafts as "Indian-made" under the Indian Arts and Crafts Act, 25 U.S.C. §§ 305 *et seq.*
- b. Grants and student scholarships.
- c. Favored contractor status under the U.S. Small Business Administration 8(a) Business Development Program, which helps small, disadvantaged businesses compete in the marketplace, and supports small businesses owned by American Indians and other socially disadvantaged groups.

23. Since 1982, the Nation has reasonably relied on the state's official recognition to claim eligibility for, and entitlement to, certain federal benefits, and to obtain them. During the past 33 years, the Nation and its members have expended time, money, and energy in reliance on the state's recognition; the Nation has also, to a significant degree, associated its tribal identity with that recognition.

24. The federal government, for the purposes of providing access to certain of its programs, does not require states to adopt a standard process for state recognition or that the state's process adhere to a level of formality that might be required by the state in other policy-making circumstances. Accordingly, states have adopted multiple processes. For example:

- a. South Carolina originally used statutes to recognize tribes. In 2003, the legislature granted the State Commission on Minority Affairs authority to recognize any additional tribes.
- b. Virginia has utilized executive orders, concurrent legislative resolutions, and state statutes for tribal recognition. Two tribes were recognized by executive order, eight tribes were recognized by concurrent legislative resolutions in 1983, 1985, and 1989, and one tribe was recognized by state statute.
- c. Georgia originally recognized four tribes by statute; any additional tribes will be recognized by concurrent legislative resolution.
- d. Connecticut originally recognized tribes through executive order. The state now recognizes any additional tribes by statute.
- e. Delaware recognized the Lenape Indian Nation of Delaware with a single letter from the Secretary of State to the U.S. Census Bureau. The letter states that upon inquiry by the federal government, Delaware conducted a review of historical and anthropological references to the tribe and previous actions by the state legislature and state agencies and concluded that that the tribe had obviously been state-recognized in practice, even absent a concurrent resolution, state statute, executive order, or other means.

25. States can and have changed their processes for recognizing tribes, but states have not applied those changes retroactively to previously recognized tribes. Indeed, in 2001 New Jersey amended the law governing its Commission on American Indian Affairs so that recognition of New Jersey tribes beyond the original three already recognized “shall require specific statutory authorization....” N.J.S.A. 52:16A-56(g). The change was not retroactive, nor has Defendant

relied to date on that statute in attempting to articulate its current position to Plaintiff or to federal agencies.

26. Notwithstanding New Jersey's prior actions over three decades recognizing and then repeatedly reaffirming the Nation's official tribal status, the state now wrongfully attempts to deny and repudiate such recognition—and that of the other two tribes—without affording the Nation due process.

27. The State has recently advanced several groundless and contradictory rationales for denying that the Nation is a state-recognized tribe.

a. Defendant has argued that it only “acknowledged” or “designated” the three tribes, and did not *recognize* them. Upon information and belief, no law, rule, or practice distinguishes between these terms in the context of state recognition of American Indian tribes. Defendant has used the terms “acknowledged,” “designated,” and “recognized” interchangeably in statements and communications regarding the Nation, and has on numerous occasions used only the word “recognized.”

b. Defendant has argued that “it does not now and has not previously had any process that provides any tribes with state recognition.” To the contrary, prior to the adoption of the relevant concurrent resolutions the legislature required and received evidence of the Nation's genealogy and self-governance and formal testimony. The state has previously described its exact process to the federal government. Moreover, in 2001, New Jersey amended Commission on American Indian Affairs statute so that going forward its process for conferring state recognition would require passage of a statute. N.J.S.A. 52:16A-56(g).

- c. Defendant has argued that “only the federal government has the authority to recognize tribes,” and thus no action by any state to recognize its tribes is valid. This position contradicts decades of accepted practice and policy in the United States, as well as the 2001 amendments to the Commission on American Indian Affairs statute, through which the state affirms its own powers to confer state recognition.
 - d. Defendant has argued that it was improper for Defendant to use concurrent resolutions to recognize the tribes because such resolutions “do not have the force of law.” However, for most of the benefits it provides to state-recognized tribes, the federal government requires no particular mode or formality of expression of state recognition. When it does set forth a mode, as in the case of eligibility for protections under the Indian Arts and Crafts Act, it requires only that *the state legislature* express its intent to recognize, not that a governor sign such recognition into law. Indeed, numerous states have and continue to use concurrent resolutions in the same way that New Jersey did and without issue.
28. While taking the position that it does not recognize the three New Jersey tribes, Defendant has yet to articulate what exactly the tribes are, except to imply that they are something lesser and undefined.
29. Defendant’s purported justifications for its position are pretextual. On information and belief the state is actually motivated by a racial-stereotype-driven and irrational fear that any American Indian tribe, if recognized as such, will seek to conduct gaming in competition with New Jersey’s politically powerful non-Indian gaming interests.
30. State recognition of tribes plays no part in securing rights to conduct gaming under federal law. The separate process of federal recognition, which itself is no guarantee of gaming rights, can

take tribes decades to navigate, in part because it requires tribes to produce the very same birth records that states such as New Jersey altered in prior decades.

31. Further, the Nation, like many American Indian tribes, is deeply and publicly opposed to gaming. Its opposition is written into its governing documents, flows from the Nation's members' religious beliefs, and has been repeatedly conveyed to the State. The three state-recognized tribes in New Jersey are parties to a pact prohibiting economic benefit from gaming and have offered to have proscriptions written into law if such assurances meant the state would cease undermining their status. In 2001 the Nation successfully sued a private citizen to prevent him from associating with the Nation, suspecting he had aspirations to pursue gaming rights. In the three decades since New Jersey recognized the Nation, the Tribe has never attempted to leverage its state-recognized status for gaming.

32. Upon information and belief the earliest attempt by state officials to undermine the tribes' state-recognized status was a letter written by the Division of Gaming Enforcement in 2001 during the pendency of the lawsuit by the private citizen against the state for a land claim. The federal Indian Arts and Crafts Board sent its standard inquiry to the state Commission on American Indian Affairs asking for any additions to the state's list of recognized tribes. Before the Commission replied, the state's Division of Gaming Enforcement intervened, asserting that New Jersey has no state-recognized tribes. The Commission responded to the same standard federal inquiry in previous *and subsequent* years by *confirming* the Nation's state-recognized status.

33. Periodically thereafter a division of the Attorney General's office sent similar letters to the federal Indian Arts and Crafts board without prior notice to the tribes, which letters aimed to undermine the state's prior recognition with the specious arguments identified above.

34. Most agencies of the federal government continued to treat the Nation and other tribes as state-recognized because of the clear history of state-recognition in New Jersey, and because the state itself continued to act and make statements in direct contravention of those letters, or, as in the 2007 Corzine report, specifically reviewed and rejected them.
35. The tribe's status was undermined fundamentally, however, after the federal General Accounting Office issued a report in 2012 on the status of American Indians in the U.S. The Nation eventually discovered from the federal government that a state employee assigned to staff the state Commission on American Indian Affairs had, without the knowledge or consent of the Commissioners who are charged with executing its mission, informed the GAO that New Jersey has no state-recognized tribes.
36. The Nation sought answers from the state. The Attorney General's then-Chief of Staff took up the matter and liaised between the Nation, the Attorney General's Office, the Office of the Governor. After investigating the issue in depth, the Chief of Staff proposed that the Attorney General consider issuing a formal written retraction of previous state correspondence denying the state-recognition of the tribes. The Chief of Staff circulated multiple drafts of the retraction during several rounds of input from state officials and the Nation.
37. The Fort Lee lane closure scandal broke just as this process was concluding, and the Christie Administration suspended communications with the Nation for many months. Dialogue briefly resumed, not long before Governor Christie began exploring a candidacy for the presidential nomination, this time coordinated by the Governor's Deputy Chief of Staff. The draft retraction language was recirculated. The state again asked for and was provided briefs by the Nation detailing why the state's and/or established gaming interests' race-based assumption that the

Nation will leverage its state-recognition to pursue gaming is unwarranted. Ultimately, the Administration informed the Nation that it planned to do nothing to resolve the matter.

38. The Nation has suffered and is continuing to suffer significant financial and non-financial losses as a consequence of Defendant's position regarding state recognition, including but not limited to:

- a. The loss of the ability to sell artwork and crafts, including beadwork, walking sticks, drums, headdresses, regalia, and pottery as "Indian-made" under the Indian Arts and Crafts Act, 25 U.S.C. §§ 305 *et seq.* The Nation conservatively estimates that as a result of the inability to market and sell artisan goods as Indian-made under the Act, the Nation's 40 artisans, including senior citizens and college students who rely on the income, are losing an aggregate of \$260,000 each year, as well as a primary vehicle through which the Nation sustains and educates the public about its culture.
- b. The loss of approximately \$600,000 from grants from the U.S. Department of Health and Human Services ("HHS") Administration for Native Americans (42 U.S.C. § 2991c(3)).
- c. The imminent loss of approximately 30 tribal jobs and additional non-tribal jobs, as well as revenue for tribal programming and services that result from 8(a) contracts. The Nation estimates that through its 8(a) entity NLT Enterprises, it has secured an average of approximately \$650,000 per year in tribal employment and services revenue, and approximately \$7.8 million since the company was formed ten years ago.
- d. The loss of educational opportunities and funding. At least two young tribal members have lost their college scholarship awards estimated at \$50,000 in value and reserved for members of state-recognized tribes. On information and belief, additional students

- have ceased applying for scholarship support after the Defendant placed the Nation's status in question.
- e. The loss of funding—approximately \$45,000 a year—from HHS's Office of Community Services Community Service Block Grant Program, given only to federally and state-recognized American Indian tribes and tribal organizations.
 - f. Continuing harm from the ineligibility for recurring grants previously secured by the Nation, and for other benefits available only to recognized tribes.
 - g. The threat of loss of the Nation's membership or standing in professional organizations, including the National Congress of American Indians, the oldest and largest political organization of American Indian nations in the United States; the Alliance of Colonial Era Tribes, an intertribal league of sovereign American Indian nations dating from the colonial era of the United States; and the United League of Indigenous Nations, an international treaty organization of indigenous sovereign nations working to promote indigenous rights and governmental development.
39. On information and belief, Defendant's actions also have caused and continue to cause serious harm to the approximately 4,500 members of the Ramapough Mountain Indians and the 300 members of the Powhatan Renape Nation.
40. On information and belief, should its attempted repudiation of the Nation's state-recognized status be permitted to stand, New Jersey will be the first and only state in modern times retroactively to withdraw state recognition of Native American tribes.
41. As a result of Defendant's attempt to repudiate its recognition of the Nation, the Nation and its members have suffered, and continue today to suffer, the loss of benefits to which they are

entitled, the loss of revenues that accrue from those benefits, and a concomitant loss of tribal identity and prestige.

42. Defendant's actions were taken under color of state law.

43. Defendant's attempts to repudiate or deny official recognition of the Nation were undertaken pursuant to, and in furtherance of, an official policy, practice, or custom of the state of New Jersey, and represent the state's current official position on the issue.

44. Defendant's actions have caused the Nation immediate and irreparable harm.

IV. SUBSTANTIVE CLAIMS

COUNT I

(Procedural Due Process under the Federal Constitution)

45. The Nation incorporates the averments of the prior paragraphs as if fully set forth.

46. The Nation has a property interest, protected under state law, in protecting and preserving its tribal identity and in its recognition by New Jersey as an official American Indian tribe, eligible for various benefits under federal law.

47. Defendant's actions, as described above, in denying or repudiating the state's official recognition of the Nation were undertaken without proper notice to the Nation or an opportunity for the Nation to be heard, or without any of the process required by law before the state can interfere with the Nation's protected interest.

48. Defendant's actions therefore deprived the Nation of its right to procedural due process under the Fourteenth Amendment of the federal Constitution.

49. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

COUNT II
(Procedural Due Process under the New Jersey Constitution)

50. The Nation incorporates the averments of the prior paragraphs as if fully set forth.
51. The Nation brings this count directly under the New Jersey Constitution and pursuant to N.J.S.A. 10:6-2(e).
52. Defendant's actions, as set forth above, have deprived the Nation of its right to procedural due process under the due process component of Article I, Paragraph 1 of the New Jersey Constitution.
53. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

COUNT III
(Substantive Due Process under the United States Constitution)

54. The Nation incorporates the averments of the prior paragraphs as if fully set forth.
55. The Nation has fundamental, constitutionally protected property and liberty interests in its tribal identity and in its status as a recognized American Indian tribe. It also has a fundamental, protected interest in self-determination and freedom of association.
56. Defendant's actions, as described above, in denying and repudiating the Nation's tribal status infringe on those interests and do so in a way that is arbitrary, capricious, invidiously motivated, and shocking to the conscience of a reasonable person, thereby violating the Nation's right to substantive due process under the Fourteenth Amendment of the Constitution.
57. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

COUNT IV
(Substantive Due Process under the New Jersey Constitution)

58. The Nation incorporates the averments of the prior paragraphs as if fully set forth.
59. The Nation brings this count directly under the New Jersey Constitution and pursuant to N.J.S.A. 10:6-2(e).
60. Defendant's actions, as described above, constitute arbitrary and unreasonable governmental action that deprives the Nation of its tribal status without any adequate justification or need, and that tramples unnecessarily and wrongfully on the Nation's interests, in violation of the Nation's rights under the substantive due process component of Article I, Paragraph 1 of the New Jersey Constitution.
61. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

COUNT V
(Equal Protection under the United States Constitution)

62. The Nation incorporates the averments of the prior paragraphs as if fully set forth.
63. Defendant's actions, as described above, were improperly and invidiously motivated and were based on the Nation's status as an American Indian tribe, in that the Defendant wrongfully and erroneously assumed that the Nation's desire for continued state recognition is motivated by the intention to conduct casino gaming, despite plentiful evidence that the Nation, like many American Indian tribes, is deeply and publicly opposed to gaming and that state recognition of tribes plays no part in securing rights to conduct gaming.

64. Insofar as Defendant's actions against the Nation were based on the fact that the Nation's members are American Indians, the Nation comprises a suspect class and the state's actions constitute discrimination against the Nation on the basis of race.
65. Defendant's actions, and their discriminatory impetus, were intentional and deliberate and unjustified by any legitimate state interest, compelling or otherwise.
66. Defendant's actions violated the Nation's rights under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.
67. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

COUNT VI
(Equal Protection under the New Jersey Constitution)

68. The Nation incorporates the averments of the prior paragraphs as if fully set forth.
69. The Nation brings this count directly under the New Jersey Constitution and pursuant to N.J.S.A 10:6-2(e).
70. Defendant's repudiation of the Nation's recognition was arbitrary and invidiously motivated, based on the Nation's status as an American Indian tribe, and was entirely unnecessary given the state interests involved.
71. Defendant's actions, as described above, are improperly discriminatory and based on the race of the Nation's members.
72. Defendant's actions violated the Nation's rights under the equal protection component of Article I, paragraph 1 of the New Jersey Constitution.

73. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

**COUNT VII
(Estoppel under State Common Law)**

74. The Nation incorporates the averments of the prior paragraphs as if fully set forth.

75. Singly and in combination, state action between 1982 and at least 2010, as described above, constituted a representation by the state that it officially recognized the Nation as an American Indian tribe.

76. The state's actions were such that any reasonable person would have interpreted them as a representation that the state officially recognized the Nation as an American Indian tribe and would have accepted that representation as true.

77. The Nation reasonably and in good faith accepted that representation and relied on it to avail itself of the benefits of state recognition.

78. The Nation and its members expended money, time, and effort in reliance on the state's representation, and to a significant degree predicated its tribal identity on what it reasonably believed was the state's binding recognition of it as an American Indian tribe.

79. Defendant's subsequent denial and repudiation of that recognition was wrongful and inequitable and redounded to the Nation's detriment.

80. Defendant is equitably precluded or estopped from denying or repudiating its prior recognition of the Nation.

81. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been the victim of the Defendant's wrongful repudiation of the Nation's status as a state-

recognized American Indian tribe and has been wrongfully deprived of the benefits of that status.

COUNT VIII
(Arbitrary and Capricious Action under State Common Law)

82. The Nation incorporates the averments of the prior paragraphs as if fully set forth.

83. Defendant's denial and repudiation of the Nation's status as an officially recognized American Indian tribe was arbitrary, capricious, unreasonable, and contrary to law.

84. As a proximate result of Defendant's actions, the Nation has been irreparably injured in that it has been stripped of its proper status as a state-recognized American Indian tribe and wrongfully deprived of the benefits of that status.

WHEREFORE, the Nanticoke Lenni-Lenape Tribal Nation demands judgment in its favor, and against Defendant, as follows:

- a. Declaring, pursuant to 28 U.S.C. § 2201, that the Nation has been officially recognized as an American Indian tribe by the State of New Jersey.
- b. Enjoining Defendant, and through Defendant, the State of New Jersey, from denying, repudiating, or otherwise impairing the Nation's status as an American Indian tribe officially recognized by the State of New Jersey.
- c. That the Defendant's actions violated the Nation's substantive and procedural due process rights under the Fourteenth Amendment to the federal Constitution.
- d. That the Defendant's actions violated the Nation's substantive and procedural due process right under Article I, paragraph 1 of the New Jersey Constitution.
- e. That the Defendant's actions violated the Nation's right to equal protection of the laws under the Fourteenth Amendment to the federal Constitution.

- f. That the Defendant's actions violated the Nation's right to equal protection of the laws under Article I, paragraph 1 of the New Jersey Constitution.
- g. That the Defendant's actions were arbitrary, capricious, unreasonable, and otherwise contrary to law.
- h. That the Defendant, and through the Defendant the State of New Jersey, is estopped from denying or repudiating the Nation's status as an American Indian tribe officially recognized by the State of New Jersey.
- i. For costs and fees pursuant to 42 U.S.C. § 1988 and N.J.S.A. 10:6-2(f).
- j. For all other appropriate relief.

/s/ Frank L. Corrado

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July 20, 2015

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FED. R. CIV. P. 7.1 DISCLOSURE

I am a Partner with Barry, Corrado & Grassi, PC, having offices at 2700 Pacific Avenue, Wildwood, NJ 08260. I am familiar with the proceedings and documents related to the above-captioned matter and declare that the following is true and accurate to the best of my knowledge: the Nanticoke Lenni-Lenape Tribal Nation is an American Indian Nation. There is no corporation or parent corporation that owns stock in the Nanticoke Lenni- Lenape Tribal Nation.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Frank L. Corrado
Attorney for Plaintiff

DATED: July 20, 2015

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I hereby certify pursuant to L. Civ. R. 11.2 that I am currently aware of no other pending actions or administrative proceedings related to the subject matter of this litigation.

/s/ Frank L. Corrado
Attorney for Plaintiff

DATED: July 20, 2015