

1
2 **THE COURT OF APPEALS FOR**
3 **THE STATE OF BOYD**

4
5 The Alpha Tribe, a Native Tribe of Boyd,

6 Petitioner,

Case No.: 22-CIV-184563

7 vs.

OPINION

8 Boyd Gaming Control Board & Wonder City

9 Casino, a Boyd corporation,

10 Respondents.

11
12 Appeal from the Boyd District Court

13 County of Nirvana

14 Argued: April 1, 2021

15 Decided: October 31, 2021

16
17 **Before Schobert, Phipps, and Hinkel, Appellate Division Judges.**

18 **PHIPPS, J.:**

19 **I. Background and Procedural History**

20 The gaming industry has become a growing aspect of Boyd’s economy since Boyd’s Governor
21 John Lucky signed the Boyd Gambling Bill (“BGB”) that legalized card rooms and slot machines. Along
22 with the BGB, Governor Lucky also passed the Boyd Gaming Control Act (“BGCA”) which created the
23 Boyd Gaming Control Board (“Board”) and the Boyd Gaming Commission (“Commission”). Governor
24 Lucky chose this two-tier system to mimic Nevada’s gaming industry. The Board was created to protect
25 the stability of the gaming industry and maintain public confidence in gaming. As a result, the Board was

1 tasked with conducting investigations, overseeing initial licensing, and enforcing the laws and regulations
2 adopted by the Commission. The Commission is the final authority on licensing matters. As a result, the
3 Commission has the ability to approve, restrict, limit, condition, deny, revoke, or suspend any gaming
4 license. As mentioned above, the Commission is in charge of adopting regulations to implement and also
5 works to enforce Boyd laws that govern gaming. Together, the Board and the Commission are responsible
6 for regulating the Boyd gaming industry. When the Board believes discipline against a gaming license is
7 appropriate, it acts in the prosecutorial capacity while the Commission acts in a judicial capacity to
8 determine whether sanctions are warranted.

9 Pursuant to the BGB, the Commission has approved licenses for seven large Las Vegas style
10 casinos throughout the state. The seven casinos have opened their doors to offer various poker games and
11 slot machines for their patrons to enjoy. The seven casinos were completed in late 2016 and all opened to
12 the public in early 2017. The opening of the casinos quickly created a surge in Boyd's economy, as
13 hundreds of thousands of tourists a year have traveled to Boyd to participate in gambling activities. Boyd's
14 casinos also became extremely popular with Boyd residents. In 2021, Boyd's casinos were visited by
15 500,000 people (400,000 of whom were tourists).

16 Boyd's largest casino, Wonder City Casino ("Wonder City") is one of these seven casinos that
17 offer gaming activities. Wonder City is surrounded by luxury condominiums, bars, nightclubs, the largest
18 shopping mall in Boyd, and several well-known restaurants. Since the opening of Wonder City, the area
19 has become a major tourism hub for travelers. Wonder City is located in Eastern Boyd.

20 However, gaming is not new to Boyd. Prior to the passage of the BCB, various gaming activities
21 were permitted "on Native lands of a Native tribe" pursuant to a statute adopted by the Boyd Legislature
22 in 1990. This statute permitted native tribes to conduct various gaming activities such as slot machines,
23 card rooms, raffles and drawings, banking or banked card games, and sports betting on native land. Since
24 the statute was enacted, eight casinos have opened and operated on native land.

25

1 The passage of the BCB required parties to apply for gaming licenses, however, native tribes were
2 not required to apply for a gaming license from the Board. Rather, they are automatically issued a license
3 by the Board. Since the tribes were issued gaming licenses, the Commission passed a regulation listing
4 the types of permitted gaming activities that was identical to the gaming activities allowed under the 1990
5 statute. The Commission's regulation also incorporated the "on Native lands of a Native tribe" language
6 in the same regulation. This places Boyd's native tribes' casinos under the authority of the Board and
7 Commission.

8 Boyd is home to three native tribes, the Alpha Tribe being the most populous. The Alpha Tribe
9 ("The Tribe") has a longstanding history with gaming in Boyd. Since the adoption of the statute in 1990,
10 The Tribe has opened four casinos on land owned by The Tribe. These casinos offer slot machines, card
11 rooms, banking card games, and sports betting on the casino properties. Since the passage of the BCB, all
12 The Tribe's casinos have gaming licenses issued by the Board. Two of The Tribe's casinos are located in
13 Southern Boyd, one is located in Western Boyd, and one is located in Northern Boyd.

14 In January 2021, in addition to its traditional gaming activities, the Tribe announced a new form
15 of gaming it was going to offer: online sports betting. The Tribe explained that it was launching a mobile
16 application that would be available for download throughout the entire state of Boyd. This app allows
17 users who are not physically present on The Tribe's land to engage in sports betting. For instance, someone
18 located over 100 miles away from the nearest Alpha Tribe casino, but still in the state of Boyd, can place
19 a bet on a sporting event by using The Tribe's mobile application. The user would simply open the mobile
20 application, select their desired sporting event, and input their wager. This app purports to convert all
21 sports betting wagers placed by persons located off The Tribe's lands into wagers made within The Tribe's
22 lands by declaring that wagers made on the mobile application shall be deemed to take place exclusively
23 where received at the location of the servers or other devices used to conduct such wagering activity at a
24 Facility on Alpha Tribe's Lands. The mobile application became live on March 1, 2021.

1 Prior to the Tribe's 2021 launch of its mobile application, BRS § 334.665 prohibited all sports
2 betting, including online sports betting. Indeed, this statute classifies sports betting as a third degree felony
3 punishable with fines and prison time. Thus, betting on Boyd's major sporting events was illegal in Boyd
4 prior The Tribe's 2021 launch of its mobile application.

5 Boyd's seven casinos as well as the Board and Commission quickly became aware of The Tribe's
6 plan to launch its mobile sports betting application. On the application's launch date, the Board and
7 Wonder City Casino filed suit against The Tribe, alleging that its mobile application violated the
8 Commission's regulation concerning the operation of casinos by native tribes. The Board and Wonder
9 City Casino also alleged that The Tribe's operation of its mobile application violated the Wire Act of
10 1961. As a result of these allegations and a subsequent investigation by the Board, the Board revoked The
11 Tribe's gaming license.

12 While the case developed through the district court, Wonder City started experiencing substantial
13 financial losses. Wonder City saw a significant decrease in its number of patrons and as a result, had to
14 fire approximately 150 employees. With Wonder City's diminished traffic, the surrounding economy
15 suffered. Tourists stopped traveling to the Eastern portion of Boyd and other tourist-driven businesses in
16 Eastern Boyd began to suffer losses.

17 Conversely, The Tribe's casinos saw a dramatic uptick in revenue. While the Tribe's casinos did
18 not report any substantial change in the number of patrons visiting its casinos, it did report a significant
19 amount of traffic through the mobile application. To date, approximately 1 million patrons have placed
20 bets via the mobile application, resulting in \$3.4 million in revenue for the Tribe's casinos.

21 Following a lengthy process, the district court granted summary judgment to the Board and held
22 that (1) The Alpha Tribe's online betting system does not occur exclusively on "Native land" and (2)
23 because the mobile application allows the Alpha Tribe to offer sports betting off of "Native lands," it
24 violates the Wire Act of 1961.

25 We affirm.

1 **II. Standard of Review**

2 We review *de novo* a district court judge’s grant of summary judgment. BRS § 322.94(3).

3 **III. Discussion**

4 If a statute’s language is clear and unambiguous, the Court must give its language its plain meaning.
5 *Slade v. Caesars Entertainment Corporation*, 373 P.3d 74, 75 (Nev. 2016). Ultimately, the Court’s task is
6 to give effect to the legislature’s intent. *Fraternal Order of Eagles Sheridan Aerie No. 186, Inc. v. State*
7 *ex rel. Forwood*, 126 P.3d 847, 855 (Wy. 2006).

8 There is a dearth of legislative history and common law precedent in the state of Boyd. Thus, to
9 answer the questions before us—and to select which common law analysis better comports with the
10 Commission’s objectives—the Court necessarily turns to our state’s codified public policy. The Boyd
11 legislature has declared: “The gaming industry is vitally important to the economy of this State and to the
12 general welfare of its inhabitants.” Boyd Rev. Stat. § 322.93(1). To that end, Boyd law provides that the
13 “continued growth and success of gaming is dependent upon public confidence and trust that licensed
14 gaming is conducted honestly and competitively.” Boyd Rev. Stat. § 322.93(2). That public confidence,
15 the Boyd legislature declares, can be “maintained only by strict regulation of all persons, locations,
16 practices, associations, and activities related to the operation of licensed gaming establishments.” Boyd
17 Rev. Stat. § 322.93(3).

18 Additionally, the Commission requires that those granted a license or found suitable “continue to
19 meet the applicable standards and qualifications set forth in the sector and any other qualifications
20 established by the Commission by regulation.” BRS 463.107(8).

21 In order to satisfy the policy objectives and ensure all requirements are met, the legislature
22 empowered the Board with the power to investigate applicants and “observe the conduct of all licensees
23 and other persons having a material involvement directly or indirectly with a licensed gaming operation”
24 to ensure that there is not any material involvement in gaming operations by “unqualified, disqualified or
25

1 unsuitable persons or persons whose operations are conducted in an unsuitable manner.” BRS §
2 463.1405(1).

3 From these investigations, the Board can “recommend...the limitation, conditioning or restriction
4 of any license, registration, finding of suitability or approval, the suspension or revocation of any license,
5 registration, finding of suitability or approval or the imposition of a fine upon any person licensed,
6 registered, found suitable or approved for any cause deemed reasonable by the Board.” BRS §
7 463.1405(3). If these investigations reveal a failure to continue to meet the standards set forth in BRS
8 Chapter 463 or a failure to comply with any of the regulations set forth by the Commission, the Board can
9 initiate proceedings against the licensee. BRS 463.310(b).

10 At the conclusion of the proceeding the Commission has “full and absolute power and authority
11 to...limit, condition, restrict, revoke, or suspend any license.” BRS 463.1405(4). While the Commission
12 has full and absolute power to reach a decision regarding alleged violations, “any person aggrieved by a
13 final decision or order of the Commission...may obtain a judicial review thereof in the district court of
14 the county in which the Respondent resides or has his, her or its principal place of business.” BRS
15 463.315(1). The reviewing court may affirm the decision, remand for further proceedings, or reverse “if
16 the substantial rights of the petitioner have been prejudiced because the decision is: (a) In violation of
17 constitutional provisions; (b) In excess of the statutory authority or jurisdiction of the Commission; (c)
18 Made upon unlawful procedure; (d) Unsupported by any evidence; or (e) Arbitrary or capricious or
19 otherwise not in accordance with law.” BRS § 463.317 (3).

20 This matter comes before us on appeal from Boyd District Court’s ruling affirming the Board and
21 the Commission’s decision to revoke Petitioner’s gaming license for (1) operating a sports betting system
22 occurring on non-native land that (2) violated the Wire Act of 1961. While this court’s dissent believes
23 that the Board and Commission’s decision violated Petitioner’s rights and that the mobile application did
24 not violate the Commission’s regulation, the Commission was justified in revoking Petitioner’s gaming
25 license.

1 **A. The Alpha Tribe’s online betting system does not occur exclusively on “Native lands” and**
2 **therefore violates the Commission’s Regulation and BRS § 334.665.**

3 A plain meaning reading of the Commission’s regulation yields only one result: the mobile sports
4 betting application violates the Commission’s regulation by purporting to authorize gaming activities
5 occurring outside of native lands. The provisions of the mobile application itself acknowledge that patrons
6 do not need to be on native lands, which directly conflicts with the Commission’s regulation.

7 In 1990, the Boyd Legislature found that “Native tribes have the exclusive right to regulate gaming
8 activity on Native lands.” BRS § 333.211. The Commission’s regulation generally grants tribes the
9 exclusive right to conduct gaming activity “on Native lands.” This regulation also provides that such
10 “activities shall be lawful on Native lands only if” such gaming meets certain conditions, including that it
11 is “conducted in conformance with the Commission’s regulations.” With no recognized exception, the
12 regulation explicitly limits all of its provisions to gaming “on native lands.”

13 Here, the Tribe unsuccessfully attempts to circumvent the limitations of the Commission’s
14 regulation by including provisions declaring that bets placed from outside of the Tribe’s lands will be
15 deemed to take place on the reservations so long as the bets are received on servers and devices located
16 on those reservations. Through this fiction, the Tribe seeks to expand sports betting outside of native lands
17 to individuals located anywhere in Boyd so long as they have a computer and internet connection. Indeed,
18 it purports to change the Commission’s regulation to permit patrons physically located in Boyd, but not
19 on native lands, to engage in sports betting if done online, so long as the sports books, including servers
20 and devices are located at one of the Tribe’s casinos.

21 For example, the mobile application allows an individual to place a wager on a sporting event
22 using his mobile device from his couch in Northern Boyd. Using the Tribe’s logic, this wager is deemed
23 to have been placed at the nearest Alpha Tribe casino, which could be up to over 300 miles away, simply
24 because the Tribe’s servers are located there.

25 Such logic cannot change the analysis of what is actually happening here. When a bet is placed by
a gambler using the internet somewhere in Boyd that is not on native lands, that person is engaging in

1 sports betting off of native lands. This is explicitly prohibited by the Commission’s regulation and BRS §
2 334.665. This scheme also runs contrary to federal law. As explained by the U.S. Supreme Court, “Placing
3 and receiving a wager are opposite sides of a single coin. You can’t have one without the other.” *United*
4 *States v. Calarmo*, 354 U.S. 351, 354 (1957). Additionally, a bet or wager encompasses two distinct legal
5 acts and is placed *both* where the bettor and the casino are located. *California v. Iipay Nation of Santa*
6 *Ysabel*, 898 F.3d 960, 967 (9th Cir. 2018) (recognizing that a tribe’s internet gaming occurred both on
7 Indian lands and at the location of the bettors) (emphasis added). Here, the bettor can be located anywhere
8 in the state of Boyd while placing her wager through the mobile application; the bettor need not physically
9 be located “on native lands” as prescribed by the Commission’s regulation. Thus, the Tribe’s contention
10 that bets placed through the mobile application occur on native land because the internet servers that relay
11 these wagers are located on native land is nothing but a legal fiction.

12 This fiction does not render The Tribe’s mobile application lawful. Rather, it contradicts the
13 legislative history surrounding BRS § 333.211 and the federal government’s prior position and
14 longstanding precedent interpreting applicable federal law and recognizing that betting or wagering occur
15 where the bettor is located and where the wager is received. *Iipay Nation of Santa Ysabel*, 898 F.3d at 967.
16 Declaring that betting took place somewhere it did not does not change the meaning of federal law or BRS
17 § 334.665.

18 The regulation’s plain language does not authorize a tribe to offer online gaming to patrons located
19 off native lands. This is true despite the fact that servers accepting the bets are located on native lands.
20 Thus, the Tribe’s operation of the mobile sports betting application violates the Commission’s regulation
21 and BRS § 334.665. Accordingly, the Board was justified in revoking the Tribe’s gaming license as a
22 result of its investigation.

1 **B. Because Wagering via the Mobile Application is not Legal on Both Ends of the Transaction, this Arrangement violates the Wire Act of 1961.**

2 The Wire Act of 1961 applies to transmissions in interstate or foreign commerce and prohibits
3 interstate online sports betting. 18 U.S.C. § 1081. A “wire communication facility” is “any and all
4 instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of
5 communications) used or useful in the transmissions of writings, signs, pictures, and sounds of all kinds
6 by aid of wire, cable, or other like connection between the points of origin and reception of such
7 transmission.” 18 U.S.C. § 1081.

8 While some courts may assume that the use of wire facilities in “interstate or foreign commerce”
9 triggers application of the Wire Act only in the communications that actually travel from one state or
10 country to another, this Court concludes that the Wire Act applies when the communication is between a
11 person in a state and a person on a Native reservation, especially when they are using wire facilities that
12 are clearly used in “interstate and foreign commerce.” 18 U.S.C. § 1081. This is especially true where the
13 communications themselves are likely to travel across state lines given the interconnected nature of the
14 interstate wire facilities. *See e.g., AT&T Corp v. Coeur D’Alene Tribe*, 45 F. Supp 2d 995, 1000-01 (D.
15 Idaho 1998) (gaming activity occurs off the reservation when a phone call is placed from non-tribal lands
16 to participate in a lottery, even if received on tribal lands, and thus would violate the Wire Act), *rev’d on*
17 *other grounds*, 295 F.3d 899 (9th Cir. 2002); *State ex rel. Nixon v. Coeur D’Alene Tribe*, 164 F.3d 1102,
18 1109 n.5 (8th Cir. 1999).

19 To permit the use of wire communication facilities to further gambling wagers in locations where
20 the gambling in question is legal, the Wire Act contains a safe harbor for “the transmission of information
21 assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country
22 where betting on that sporting event or contest is legal into a State or foreign country in which such betting
23 is legal.” 18 U.S.C. § 1084. However, the safe harbor exception does not exempt from liability the
24 interstate transmission of bets themselves, but protects only the interstate transmission of information
25

1 “assisting” in the placing of bets. See *United States v. Lyons*, 740 F.3d 702, 713 (1st Cir. 2014) (citing
2 *United States v. McDonough*, 835 F.2d 1103, 1104-05 (5th Cir. 1988)).

3 Here, sports betting is illegal in Boyd outside of Native lands. BRS § 334.665. Yet, the mobile
4 application in question here specifically permits a person located in Boyd to use the internet to engage in
5 sports betting. It then follows that the online sports wagers are “initiated” in an area in which such wagers
6 are illegal (everywhere in Boyd other than Native land), then received on the Tribe’s lands (where such
7 sports gambling would be legal under the Commission’s regulation). This arrangement violates the Wire
8 Act because the wagering is not legal on both ends of the transaction.

9 As discussed previously, the Tribe’s argument that all sports betting occurs at the location of the
10 Tribe’s sports books and servers on native land is to no avail. Because the mobile application authorizes
11 patrons to wager off Native lands—so long as the wagerer is in the state of Boyd—and because those bets
12 clearly qualify as a gaming activity, the mobile application violates the Wire Act because sports betting is
13 illegal in Boyd except when it occurs on Native land.

14 Additionally, the safe harbor would not apply because sports betting is illegal in Boyd off Native
15 lands, so the requirement that the wagering be legal on both ends of the transaction also fails.

16 **IV. Conclusion**

17 It is a daunting task to select which iteration of the common law analyses to adopt for a state that,
18 like ours, has yet to grapple with several important issues. The issues decided by this Court today go to a
19 growing part of Boyd’s economy and livelihood. We are confident that our decision comports with the
20 state’s statutes and public policy.

21 We affirm.
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1 **SCHOBERT, J., dissenting:**

2 Today, the majority holds that the Alpha Tribe violated the Commission’s regulation by offering
3 gaming not occurring “on native land” and that such operation violates the Wire Act of 1961. I respectfully
4 dissent from both of these holdings because they are averse to the text of the relevant statutes and because
5 they contravene well-settled common law principles.

6 **A. The Alpha Tribe’s Online Sports Betting System Does Occur on “Native land.”**

7 The majority is correct in stating that the Commission’s regulation requires tribes to conduct gaming
8 activities “on Native lands.” Sports wagering is undoubtedly gaming activity and therefore must take place
9 on native, and in this case the Alpha Tribe’s, land.

10 Here, the mobile application permissibly only authorizes gaming that occurs on the Tribe’s native
11 lands, consistent with the Commission’s regulation, and does not and could not authorize activity
12 occurring off the Tribe’s native lands. As provided by the terms of the mobile application in question, the
13 Tribe may accept online sports bets lawfully placed with the State of Boyd pursuant to Boyd law on its
14 native lands. This hybrid gaming approach ensures that (1) it is legal under state law for a person in Boyd
15 to place an online sports wager if they are not physically located on the Tribe’s native lands, (2) it is legal
16 under the Commission’s regulation to receive such wager on its native lands, and (3) it is legal for the
17 Tribe to engage in sports betting when the wager is both placed and received on the Tribe’s native lands.

18 There is nothing novel about gaming activities that contemplate a key component of the gaming
19 activity occurring off of native lands. For example, agreements between Native tribes and states have long
20 permitted Native tribes to offer patrons the opportunity for simulcast wagering, which involves wagering
21 on the tribes’ Native lands on a race occurring off such lands. See *Cabazon Band of Mission Indians v.*
22 *Wilson*, 124 F.3d 1050, 1053 (9th Cir. 1997) (discussing compacts that governed the tribes’ “operation of
23 simulcast wagering” related to horse races occurring off of the tribes’ respective Native lands).

24 Additionally, the mobile application only authorizes, and could only authorize, the gaming activity
25 occurring on the Tribe’s native lands, i.e., all gaming activity occurring on the Tribe’s native lands,

1 including the receipt of wagers placed off the Tribe’s native lands. Here, the Commission’s regulation
2 contemplates, for state law purposes, that the placement of wagers off of the Tribe’s native lands are
3 deemed to occur there. This is not a novel approach; several other states have enacted similar laws. For
4 instance, the New Jersey Constitution generally prohibits gaming in the state except at casinos in Atlantic
5 City. N.J. Const. art. 4, § 7, ¶ 2(D). Notwithstanding this limitation, New Jersey enacted a law allowing
6 players throughout the state to place online sports wagers, and deemed such placement to occur at the
7 servers located in Atlantic City. See N.S. Stat. Ann § 5:12-95.20. Other states have adopted similar laws.
8 See, e.g. 42 R.I. Gen. Laws. Ann. § 42-61.2-1(16) (deeming placement of online wagers to occur at facility
9 where received); Mich. Comp. Laws Ann § 432.304(2) (deeming placement of online sports wagers are
10 being placed at the “internet gaming operator’s casino” regardless of where the bet is physically placed).
11 Thus, for state law purposes, the Tribe adopted an approach identical to the approach taken in several
12 other states, which deems the placement of online sports betting to occur where the bet is received.

13 **B. The Mobile Application Operation Does Not Violate the Wire Act of 1961.**

14 The majority argues that the Tribe’s mobile application violates the Wire Act because it allegedly
15 allows the Tribe and gaming participants to use wire communications to place, receive, and facilitate
16 sports betting as between the Tribe’s native lands and other locations in Boyd. I agree with the majority
17 that under federal law, the location of the bettor determines where the bet is placed, see *Michigan v. Bay*
18 *Mills Indian Cmty.*, 572 U.S. 782, 792-93 (2014), and thus federal law as to the location of the bettor
19 cannot be changed or altered through a tribe’s gaming operations. Accordingly, if a bet is placed within
20 Boyd, but outside the confines of the Tribe’s native lands, the bet occurs outside of native lands and must
21 be authorized by state law. See, e.g. *State of Cal. v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 968-69
22 (9th Cir. 2018). Contrary to the majority’s arguments, however, these requirements of federal law fail to
23 establish that the mobile application violates the Wire Act.

24 The majority alleges that the mobile application violates the Wire Act because it purportedly
25 allows bets or wagers, information assisting in the placement of bets or wagers, or bank wire transfers in

1 connection to those bets or wagers, to be transmitted “in interstate or foreign commerce.” The majority
2 also argues that the mobile application violates the Wire Act because “communications...are likely to
3 travel across state lines given the interconnected nature of the interstate wire facilities.”

4 To the extent that the mobile application contemplates online sports betting that occurs entirely
5 within the State of Boyd, the Wire Act is not implicated at all. *See* 18 U.S.C. 1084(a) (“in interstate or
6 foreign commerce”). That is, if bets are being placed off the Tribe’s native lands in Boyd and received on
7 the Tribe’s native lands—all of which are wholly within Boyd—and no “transmissions” of “bets or
8 wagers” occur outside of Boyd, then there is no violation of the Wire Act. *See United States v. Lyons*, 740
9 F.3d 702, 713 (1st Cir. 2014) (“the Wire Act prohibits interstate gambling without criminalizing lawful
10 intrastate gambling”). Here, the majority ignores the text of the statute, 18 U.S.C. 1084(a) (“*interstate* or
11 *foreign*”) (emphasis added), arguing that the Wire Act should apply when the communication is between
12 a person in a state and a person on a Native reservation. The majority offers no support for this position,
13 and thus it should be rejected outright.

14 Additionally, as set forth above, the placement of an online sports wager in Boyd but off the Tribe’s
15 native lands is legal under state law and the receipt of such wager by the Tribe on its native lands is legal
16 under the Wire Act. Thus, the circumstances here are fundamentally different than those in *Iipay*, because
17 the sports betting is “legal both where it is ‘initiated’ and where it is ‘received’” 898 F.3d at 965.

18 Based on the foregoing, I would hold that for state and federal law purposes, and consistent with
19 federal law, the online sports betting provisions reflect a permissible hybrid approach wherein gaming
20 activity that occurs off the Tribe’s native lands is authorized under state law, and gaming activity that
21 occurs on native lands is authorized by the Wire Act. Nothing in the Commission’s regulation or Wire
22 Act prohibits such a hybrid approach.

23 I dissent.
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Appendix

Boyd Rev. Stat. § 322.93 — Gaming policy; public access; common law.

The legislature finds, and hereby declares to be the public policy of this state, that:

(1) The gaming industry is vitally important to the economy of this State and to the general welfare of its inhabitants;

(2) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively;

(3) Public confidence and trust can be maintained only by strict regulation of all persons, locations, practices, associations, and activities related to the operation of licensed gaming establishments;

(4) To ensure that gaming is conducted honestly, competitively, and is free of criminal and corruptive elements, all gaming establishments in this state must remain open to the general public, and the access of the general public to gaming activities must not be restricted in any manner, except as provided in Boyd Rev. Stat. § 322.93(5);

(5) Regarding the ability to exclude:

(a) The Boyd Gaming Control Board shall have the exclusive authority to exclude a patron for reasons stemming from such patron’s conduct during a game that constitutes “gambling,” as defined in Boyd Rev. Stat. § 322.94;

(b) Nothing in this section shall be construed to abrogate or abridge any common-law right of a gaming establishment to exclude any person from gaming activities or eject any person for any lawful reason.

1990 Statute allowing Native Tribes to Conduct Gaming on “Native land” (BRS § 333.211)

Native tribes have the exclusive right to regulate gaming activity on Native lands if the gaming activity is not specifically prohibited by Federal law and is conducted within Boyd which does not, as a matter of criminal law and public policy, prohibit such gaming activity

Gaming Commission’s Regulation

The Commission finds that—

(1) numerous Native tribes have become engaged in or have licensed gaming activities on Native lands as a means of generating tribal governmental revenue

(2) a principal goal of this policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(3) Native tribes have the exclusive right to regulate gaming activity on Native lands if the gaming activity is not specifically prohibited by Federal law and is conducted within Boyd which does not, as a matter of criminal law and public policy, prohibit such gaming activity

BRS § 334.665

Whoever stakes, bets, or wagers any money or other thing of value upon the result of any trial or contest of skill, speed, or power or endurance of human or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet, or wagered, or offered for the purpose of being staked, bet, or wagered, by or for any person upon such result, or whoever knowingly becomes the custodian or depository of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets, or influences in any manner in any of such acts all of which are hereby forbidden, commits a felony of the third degree.