No. 14-1236

IN THE

Supreme Court of the United States

STOP THE CASINO 101 COALITION *et al.*,

Petitioners,

v.

EDMUND G. BROWN, JR., AS GOVERNOR, *etc.*,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA,
FIRST APPELLATE DISTRICT, DIVISION THREE

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the federal government have the unilateral power to alter California's historic territorial jurisdiction and transfer that jurisdiction to an Indian tribe?

2. If the answer to the first question is affirmative, should a federal statute restoring tribal recognition and authorizing the United States to accept fee title to unspecified private lands within California's borders be construed as transferring territorial jurisdiction from the state to the tribe when the statutory language is silent on that subject?

3. Can a state's territorial jurisdiction shift by implication, or is an express, unequivocal acceptance of jurisdiction required under 40 U.S.C. § 3112?

RULE 29(4)(B) STATEMENT

Because this action draws into question the constitutionality of an Act of Congress, 28 U.S.C. § 2403(a) may apply, and three copies of this petition are being served upon the Solicitor General at the address specified in Rule 29(4)(b).*

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* But see note 6, *infra*. Petitioners have not sought and do not seek to invalidate the statute in question, but rather, seek a lawful construction of it consistent with its plain language and constitutional principles.

PARTIES TO THE PROCEEDINGS BELOW AND RULE 29(6) STATEMENT

The following list provides the names of all parties to the proceedings below:

Petitioners (who were the appellants in the court below) are:

Stop the Casino 101 Coalition, an unincorporated association, and the following individuals:

Marilee Montgomery
Pam Miller and
Fred Soares.

Respondent (also the respondent below) is:
Edmund G. Brown, Jr., in his official capacity as Governor of California.

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INTRODUCTION

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), this Court held that the Secretary of the Interior is authorized to take land into trust for Indian tribes only if the tribe in question was under federal jurisdiction in 1934, when the Indian Reorganization Act was enacted. The case was decided exclusively on statutory grounds. But lurking beneath the surface was a major question of constitutional dimension: does the federal government have the power to alter unilaterally a state's historic territorial jurisdiction? That very issue was raised in the trial court in *Carcieri* (*Carcieri v. Norton*, 290 F. Supp. 2d 167, 187-89 (D.R.I. 2003)), as well as before the First Circuit (*Carcieri v. Norton*, 398 F.3d 22, 34-35 (1st Cir. 2005) and *Carcieri v. Kempthorne*, 497 F.3d 15, 39-41 (1st Cir. 2007)(en banc)). One of the dissenters in the First Circuit cogently observed that:

> As Indian tribes evolve in modern society, old legal rules tend to blur. The controversy that divides our court today is vexing and of paramount importance to both the State and the Tribe. Thus, the issue—as well as the underlying principles of Indian law—doubtless would benefit from consideration by the Supreme Court.

Carcieri v. Kempthorne, 497 F.3d at 52 (Selya, J., dissenting).

The underlying constitutional issue that eluded review in *Carcieri* has resurfaced in this case. The court below specifically held—contrary to established precedent

from this Court—that the mere passage of the Graton Act (25 U.S.C. §§ 1300n-1300n-6) unilaterally diminished California's historic territorial jurisdiction. *Stop the Casino 101 Coalition v. Brown*, 230 Cal. App. 4th 280, 291 (2014).

Neither the statute at issue in *Carcieri* (25 U.S.C. § 465) nor the one here (the Graton Act, 25 U.S.C. § 1300n-3) contain any language suggesting that Congress intended to alter a state's territorial jurisdiction.

It should be noted also that the legal questions presented in this appeal arise in the context of a new and troubling phenomenon whereby gambling corporations purchase real property, partner with an Indian tribe, and proceed to gift the land to the United States in trust so they can claim an exemption from state laws barring casino gambling.

The problem is acute in states such as California where casino gambling is illegal. Cal. Const., art. IV, § 19(e).[1] The sole exception to California's casino ban is

1. A case recently filed in the Eastern District of California highlights the controversy of tribal jurisdiction on newly purchased lands. In 2004, the North Fork Rancheria obtained rights to 305 acres of unincorporated land in Madera County, adjacent to a major highway and the City of Madera, for the purpose of developing a casino resort. The land had been governed by the California law since the state was admitted to the Union. The state has never ceded its jurisdiction. The federal government agreed to take the land into trust and issued a determination that the tribe would be allowed to game on the land. The tribe then requested a compact from the state. The Governor negotiated a compact with the tribe, which the Legislature ratified. *See* Cal. Gov't Code § 12012.59. However, the People, through California's

narrow and specific, for it allows an Indian tribe to engage in casino gambling only "in accordance with federal law." Cal. Const., art. IV, § 19(f).

The federal law in question is the Indian Gaming Regulatory Act ("IGRA"), which contains a specific requirement that is at the heart of this litigation. IGRA requires that land be under a tribe's territorial jurisdiction before it is eligible for class III (casino) gaming. 25 U.S.C. § 2710(d)(1).

In this case, the Federated Indians of the Graton Rancheria ("Tribe") was granted federal recognition by an act of Congress (the "Graton Act") in 2000. 25 U.S.C. §§ 1300n-1300n-6.

In 2005, a subsidiary of a Nevada gambling company (Station Casinos) purchased land in Sonoma County which had been privately owned and occupied by non-Indians since statehood. Five years later, the company gifted the land to the United States so it could be placed in trust for the Tribe.

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initiative process, put the matter to a statewide vote. The issue in the campaign was whether voters wanted to allow casinos on off-reservation lands. The voters rejected the compact by a 61-39% margin last November. *See* www.http://elections.cdn.sos.ca.gov/sov/2014-general/pdf88/ballot-measures.pdf (at page 93). Now the tribe has filed suit against the state in federal court, asserting, *inter alia,* that the tribe has jurisdiction over the site (despite the fact that there has still been no express cession by the state), that California has failed to negotiate for a compact in good faith, and that the Tribe has rights to a compact despite the People's vote rejecting this off-reservation casino. *See North Fork Rancheria of Mono Indians of California v. California,* No. 15-419 (E.D. Cal. filed March 17, 2015).

In 2012, the Governor entered a compact with the Tribe to allow casino gaming on the subject property. The state Legislature, after being told that the Tribe was legally entitled to the compact, ratified it. Cal. Gov't Code § 12012.56(a).

Petitioners immediately challenged the legality of the compact on the ground that California's historic territorial jurisdiction over the property had never been ceded to the United States or to the Tribe. Petitioners contended that without a cession, California continued to exercise territorial jurisdiction; that state law – including the state constitutional ban on casino gambling – continued to apply to the property; and that the land, therefore, did not qualify for class III gaming under either IGRA or the state Constitution.

The trial court granted summary judgment in favor of the Governor. The California Court of Appeal, in a published opinion, *Stop the Casino 101 Coalition v. Brown*, 230 Cal. App. 4th 280, 178 Cal. Rptr. 3d 481 (2014), affirmed, making three key holdings. First, the court confirmed (as petitioners had contended) that a tribe must acquire territorial jurisdiction over land before the property can become gaming eligible under both IGRA and the California Constitution. *Id.* at 285-86, 178 Cal. Rptr. 3d at 485. Second, in a ruling of first impression, the court held that the Graton Act unilaterally transferred some of California's territorial jurisdiction. *Id.* at 291, 178 Cal. Rptr. 3d at 489. And third, the court held, also as a matter of first impression, that the California Legislature's ratification of the compact "impliedly" ceded jurisdiction over the subject property. *Id.* at 290, 178 Cal. Rptr. 3d at 489.

Petitioners contend that both the second and third holdings violate bright line rules of federal law as expressed by this Court, *e.g.*, *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 538-39 (1885), and raise profound constitutional and statutory questions that go to the heart of the federal-state relationship.

No language in the Graton Act purports to transfer any legislative jurisdiction over land and, in any event, the federal government lacks the authority to deprive a state unilaterally of jurisdiction over land within its borders. Moreover, while the implied cession point may be an issue of state law as well as federal law, the court below ignored the failure to comply with a clearly-worded federal statute that requires certain formalities for a transfer of jurisdiction to be completed. Here it is undisputed that those formalities never occurred, triggering the *conclusive* presumption in the statute that jurisdiction never shifted away from the state. 40 U.S.C. § 3112(c).

The court below concluded that because the Tribe had secured federal recognition and the Legislature had ratified the compact, there was no need to probe into the jurisdiction issue in any depth. But there was indeed a need to probe further – as petitioners specifically argued – because territorial jurisdiction does not shift by osmosis. An affirmative cession, coupled with formal acceptance by the United States, is required.

The decision below, which construed the Graton Act to shift unilaterally territorial jurisdiction, defies settled precedent as well as the state's sovereign integrity. It also completely ignores the specific requirements of 40 U.S.C. § 3112, allowing territorial jurisdiction to shift without

compliance with formal requirements. These are profound issues that, we submit, warrant review by this Court.

RULE 14(1)(g)(i) STATEMENT

The inability of the federal government to deprive unilaterally a state of territorial jurisdiction over lands within its borders was raised in the original complaint filed May 21, 2012. 1 Joint Appendix ("JA") 1–29.

The failure to comply with 40 U.S.C. § 3112, because the United States never formally accepted a cession of jurisdiction from the state, was raised in connection with the parties' cross motions for summary judgment in the trial court. 2 JA 455; 4 JA 1092.

In the court of appeal, these same issues were raised in petitioners' opening, closing and supplemental briefs. Further references to these issues appear in the Statement of the Case, below.

OPINIONS BELOW AND RELATED ORDERS

The opinion of the California Court of Appeal, as modified after the Petition for Rehearing was denied, is reported at 230 Cal. App. 4th 280, 178 Cal. Rptr. 3d 481 (2014) and reprinted in the Appendix ("App.") at 2a. The California Supreme Court's unreported order dated January 14, 2015 denying review is reprinted at App. 1a. The trial court's unreported order denying petitioners' motion for summary adjudication and granting respondent's cross-motion for summary judgment is reprinted at App. 38a.

JURISDICTION

The Court of Appeal issued its decision on October 3, 2014, App. 21a and modified its decision upon a denial of rehearing on October 28, 2014. App. 19a. Petitioners filed a timely petition for review, which the California Supreme Court denied on January 14, 2015. App. 1a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). Petitioners seek to correct an erroneous interpretation of a federal statute.

PERTINENT STATUTES AND CONSTITUTIONAL PROVISIONS

The Indian Commerce Clause, U.S. Const. art. 1 § 8 cl. 3 , provides:

> The Congress shall have Power... To regulate Commerce... with the Indian Tribes;

The Graton Rancheria Restoration Act, 25 U.S.C. § 1300n-1300n-6, provides in pertinent part:

> Transfer of land to be held in trust
> (a) Lands to be taken in trust
> Upon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California, for the benefit of the Tribe after the property is conveyed or otherwise transferred to the Secretary and if, at the time of such conveyance or transfer, there are no adverse legal claims to such property, including outstanding liens, mortgages, or taxes.

> (b) Former trust lands of the Graton Rancheria
> Subject to the conditions specified in this section, real property eligible for trust status under this section shall include Indian owned fee land held by persons listed as distributees or dependent members in the distribution plan approved by the Secretary on September 17, 1959, or such distributees' or dependent members' Indian heirs or successors in interest.
> (c) Lands to be part of reservation
> Any real property taken into trust for the benefit of the Tribe pursuant to this subchapter shall be part of the Tribe's reservation.
> (d) Lands to be nontaxable
> Any real property taken into trust for the benefit of the Tribe pursuant to this section shall be exempt from all local, State, and Federal taxation as of the date that such land is transferred to the Secretary.

25 U.S.C. § 1300n-3.

The Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721, provides in pertinent part:

> (d) Class III gaming activities; authorization; revocation; Tribal-State compact
> (1) Class III gaming activities shall be lawful on Indian lands only if such activities are--
> (A) authorized by an ordinance or resolution that--
> (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands.....

25 U.S.C. § 2710(d)(1).

40 U.S.C. § 3112 provides in pertinent part:

> (b) Acquisition and acceptance of jurisdiction.—When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.
> (c) Presumption. — It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

40 U.S.C. § 3112(b)-(c).

Cal. Gov't Code § 12012.56(a) provides in pertinent part:

> The tribal-state gaming compact entered into in accordance with the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701.) between the State of California and the Federated Indians of Graton Rancheria, executed on March 27, 2012, is hereby ratified.

Cal. Gov't Code § 12012.56(a).

California Constitution, art. IV, § 19 provides in pertinent part:

> (e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.
> (f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

Cal. Const., art. IV, § 19(e)-(f).

STATEMENT OF THE CASE

A. Background

California has long kept Nevada-style gaming at a distance. Since 1872, statutory law has prohibited casino gambling in the state, *see* Cal. Penal Code §§ 330-337z, and in 1984 the same prohibition was added to the state Constitution, which now provides: "The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey." Cal. Const. art. IV, § 19(e).

In 2000, California voters approved Proposition 1A, a constitutional amendment that authorized the governor to negotiate compacts with Indian tribes for Nevada-style casinos on Indian lands "in accordance with federal law." Cal. Const. art. IV, § 19(f).

As noted above, the federal law in question is IGRA. An important limitation in that statute is at the core of this case. IGRA permits a tribe to engage in class III gaming *only* on land over which it has jurisdiction. 25 U.S.C. § 2710(d)(1)(A). In addition, IGRA provides that such gaming shall be governed by a tribal-state compact, and further declares that unless and until a tribe acquires territorial jurisdiction over the land in question, it cannot even request that a state enter into compact negotiations. 25 U.S.C. § 2710(d)(3)(A). The requirement of tribal territorial jurisdiction for class III gaming appears repeatedly in IGRA. 25 U.S.C. § 2710(d)(7)(B)(iv), (d)(7)(B)(vii)(II).

In 2000, Congress passed and the President signed the Graton Rancheria Restoration Act ("Graton Act") which recognized the Tribe, granted its eligibility for federal benefits, and restored rights and privileges which were previously lost. 25 U.S.C. § 1300n.[2]

The Graton Act further provided that unspecified land in Sonoma or Marin Counties would be taken into trust and become part of the Tribe's reservation. 25 U.S.C. § 1300n-3. Significantly, the only Congressional report

2. The Graton Act was enacted pursuant to Congress' enumerated authority under the Indian Commerce Clause, U.S. Const., art. I, § 8, cl. 3. 5 JA 1182.

on the Graton Act states that "[th]is bill is not intended to preempt any state ... law." 2000 WL 793932 at *3 [H.R. Rep. No. 106-677]; App. 72a; the report is contained in the record. 5 JA 1181-83.

The casino site is in unincorporated Sonoma County, adjacent to the City of Rohnert Park and near U.S. Highway 101. No tribe has held legal or beneficial title to the site from the time of two Mexican land grants until 2010, 2 JA 541-55, and thus California has exercised territorial jurisdiction over the site since it joined the Union in 1850.[3]

In 2005, a subsidiary of Station Casinos, a Nevada casino operator, purchased the property that would later become the casino site. 2 JA 541-43, 555. After that purchase, the land of course continued to be governed by state law, including the anti-casino gambling provisions of the state constitution.

In 2008, the National Indian Gaming Commission approved the Tribe's non-site specific gaming ordinance. The NIGC chair's cover letter reminded the Tribe that

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3. Although the former Graton Rancheria was located several miles from the casino site (see App. 3a), that property was terminated by the United States in 1966. 1 JA 76. There is no evidence in the record that the Tribe exercised jurisdiction over the former Rancheria site. *See* Providing for the Distribution of the Land and Assets of Certain Indian Rancherias and Reservations in California, S. Rep. No. 1874, 2d Sess. (1958) at 24-25 to accompany H.R. 2824, The Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958) (discussing the former Graton rancheria and noting of the Indians there that "the group is not organized, either formally or informally").

"approval is granted for gaming only on Indian lands ... over which the Graton Rancheria exercises jurisdiction." App. 63a; 4 JA 988. The approved gaming ordinance itself confirms that requirement by defining "Indian Lands" as being lands "over which an Indian tribe exercises governmental power." App. 68a; 4 JA 989-90.[4]

In 2010, the Station Casinos subsidiary gifted the land to the United States in trust for the Tribe. 2 JA 475-496.

In March 2012 the Tribe and the Governor of California signed a compact authorizing class III gaming on the site with up to 3,000 slot machines. (The compact is included in the record at 1 JA 69 through 2 JA 315.) Two months later, the Legislature ratified the compact. Cal. Gov't Code § 12012.56(a). No language in the ratification statute (or in the compact itself) expressly ceded any of California's territorial jurisdiction. This litigation followed within days.

B. Proceedings Below

Petitioners, a local citizen group and individual nearby neighbors of the casino site,[5] filed this action against the

4. The NIGC approval occurred two years before the subject property was transferred to the United States. There is no evidence in the record that the NIGC has ever determined, before or after the transfer, that the subject lands are eligible for class III gaming under IGRA.

5. The neighbor petitioners alleged that they had reasonable expectations that the casino site would continue to be governed by state law, including the state law prohibition on casino gaming, as well as applicable local zoning (Diverse Agriculture). 2 JA 339-

Governor in Sonoma County Superior Court in May 2012, challenging the compact ratification on the grounds that the casino site remains governed by the State of California, not by the Tribe, and thus the land is not eligible for casino gambling under either IGRA or the State Constitution. Petitioners sought declaratory and injunctive relief.[6] In August 2013, on cross-motions for summary judgment, the trial court granted the Governor's motion and issued a 14-page memorandum of decision. App. 38a.

The trial court noted that "[s]ince California was admitted into the Union in 1850, the Property was governed by the State of California and was never governed by the [Tribe] or any other Indians." App. 45a (5 JA 1281). The trial court acknowledged that "[The Graton Act] ... does not purport to alter California's sovereignty or jurisdiction over the property" and further declared that "[n]othing in ... Government Code section 12012.56 [the statute that ratified the compact] purports to cede sovereignty or jurisdiction over the Property to either the United States or to [the Tribe]." App. 45a; 5 JA 1281.

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41. Two of the neighbor petitioners submitted declarations in the trial court detailing the personal impacts of the casino on them, including traffic, noise, well depletion, flooding and diminution of property values, 2 JA 536-40, thus satisfying the "injury in fact" standing requirement. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992).

6. Petitioners did not challenge the constitutionality of the Graton Act in the court below. Rather, they sought declaratory relief construing the Act in a constitutional manner, specifically as not unilaterally shifting California's historic territorial jurisdiction, a premise that is consistent with the plain language of the Act as well as core constitutional principles. Nor do petitioners challenge the acceptance of fee title to the subject lands in trust for the Tribe.

The trial court never explained how or if, in light of these findings, the federal government (and through it, the Tribe) obtained any territorial jurisdiction over the property. The court simply concluded that the Graton Act "establishes all of the requisites" to make the land gaming eligible. App. 62a; JA at 1292.

Petitioners timely appealed, and on October 2, 2014, the California Court of Appeal affirmed in a published opinion. The court agreed the Tribe was required to obtain jurisdiction, *see* App. 8a-9a, 280 Cal. App. 4th at 286, but ruled that the Graton Act conferred "a degree of jurisdiction" on the Tribe. App. 11a, 280 Cal. App. 4th at 287, 291. The court did not address case law (cited by petitioners) that prohibits the federal government from unilaterally divesting a state of territorial jurisdiction, nor did the court attempt to explain how the federal government acquired any quantum of jurisdiction over the subject property that could thereafter be conferred upon the Tribe.

The court also ruled in the alternative that even if the Graton Act had not unilaterally transferred jurisdiction, a cession "is implicit in the compact." App. 17a, 280 Cal. App. 4th at 290. The court drew this conclusion despite the fact that the Governor never contended that the compact ratification shifted jurisdiction. (Indeed, the Governor's position in the court below was that *the Graton Act* shifted jurisdiction.[7])

The concept of an implied cession of territorial jurisdiction is a repudiation of the oft-repeated rule in

7. Respondent Governor Edmund G. Brown Jr.'s Answer to Amicus Curiae Brief, filed August 14, 2014, at p. 4.

California law that such transfers can occur only by way of express and unequivocal legislation.[8] The same rule has been recognized by this Court. *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 538-39 (1885). In any event, under the facts herein the transfer by implied cession can only be completed by ignoring, as the court below did, the requirement of formal acceptance by the United States, which is set forth in 40 U.S.C. § 3112.

It is undisputed that the formalities required by 40 U.S.C. § 3112(b) were never complied with for the casino site. 5 JA 1135-39 (response to request for admissions). Accordingly, pursuant to 40 U.S.C § 3112(c), there is a conclusive presumption that territorial jurisdiction over the site has not shifted. The court of appeal simply ignored this issue, although it was fully briefed and presented in oral argument before that court.

REASONS FOR GRANTING THE PETITION

I. The California Court Of Appeal Erred By Holding That A Federal Statute Could, And Did, Unilaterally Divest The State Of California Of Its Historic Territorial Jurisdiction

All parties and the court below agree that the Tribe must have jurisdiction over its lands in order for the lands to be eligible for class III gaming under both federal and state law. In addition, no one disputes that prior to 2010, when title to the site was gifted to the United States, the land was governed by state law. The issue in this

8. *Coso Energy Developers v. County of Inyo*, 122 Cal. App. 4th 1512, 1533 (2004).

case is whether the Tribe has obtained any territorial (legislative) jurisdiction over the casino site and, if so, how that occurred.

The court below held that "[b]y virtue of the Graton Act, the Graton Tribe acquired jurisdiction over its reservation in conformity with IGRA." App. 17a-18a.

We submit that this holding is grossly incorrect. Under our constitutional system, and specifically under the Indian Commerce Clause, the federal government does not posses the power to alter unilaterally a state's sovereignty over land within its borders.

II. Safeguarding State Legislative Sovereignty (Territorial Jurisdiction) Over Land Is A Core Constitutional Principle

Territorial sovereignty is any state's most prized possession. In a case involving a different aspect of state sovereignty, this Court observed "the well-established principle that States do not easily cede their sovereign powers." *Tarrant Regional Water Dist. v. Herrmann,* 133 S. Ct. 2120, 2132 (2013). Territorial sovereignty embodies the state's ability to apply its own law to land within its borders.[9] Judicial precedent and governing statutes have erected high barriers to protect that vital power. This

9. The federal Constitution establishes a system of dual sovereignty. "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist, No. 45, p. 292 (Rossiter ed. 1961).), *see also Nat'l Fed. of Indep. Bus. v. Sebelius,* 132 S. Ct. 2566, 2577-80 (2012); U.S. Const., amend. X.

Court has established that the federal government cannot take a state's legislative (territorial) jurisdiction without the state's clear consent. *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 538-39 (1885) ("the state shall freely cede the particular place to the United States for one of the specific and enumerated objects. This jurisdiction cannot be acquired tortiously or by disseizin of the state; much less can it be acquired by mere occupancy, with the implied or tacit consent of the state....").

Courts have applied this principle consistently through the years. In *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 528 (1938), for example, this Court wrote "the Acts of cession and acceptance of 1919 and 1920 are to be taken as declarations of the agreements, reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park." And in *Pacific Coast Dairy, Inc. v. California Dept. of Agriculture*, 318 U.S. 285, 293 (1943), this Court examined pertinent state cession statutes before concluding that Moffett Field was under exclusive federal jurisdiction.

Past decisions reveal only three basic circumstances in which the federal government, and through it an Indian tribe, can acquire jurisdiction over land within a state:

1) The parcel is reserved by the United States at the time the state is admitted into the Union;[10]

10. This was precisely the case with many states. *E.g.*, Kansas and Nebraska, Kansas-Nebraska Act, 10 Stat. 277 (1854) (excluding from the new states "any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any

2) The land is acquired pursuant to the Enclaves Clause; or

3) The state in question expressly cedes jurisdiction to the federal government. *See generally, Fort Leavenworth R.R. v. Lowe,* 114 U.S. 525, 528, 541-42 (1885); *Silas Mason Co. v. Tax Commission of Washington,* 302 U.S. 186, 197 (1937); *Surplus Trading Co. v. Cook,* 281 U.S. 647, 651-52 (1930).

The opportunity for the first method ceases once statehood is achieved,[11] and the latter two share the

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State"); Montana, North Dakota, South Dakota and Washington, Enabling Act, 25 Stat. 676 (1889)("Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States"); Idaho, Idaho Const., art. XXI, § 19)(1890)(all Indian lands within the state "remain under the absolute jurisdiction and control of the congress of the United States"); Utah, 28 Stat. 107 (1894)("Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States"); Oklahoma, 34 Stat. 267 (1906)("all lands ... owned or held by any Indian, tribe, or nation ... shall be and remain subject to the jurisdiction, disposal, and control of the United States"); Arizona and New Mexico, 36 Stat. 557 (1910)("all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty ... shall be and remain ...under the absolute jurisdiction and control of the Congress of the United States"); Alaska, Alaska Statehood Act, 72 Stat. 339 (1958)("any lands ... the right or title to which may be held by any Indians, Eskimos, or Aleuts ... or is held by the United States in trust for said natives ... shall be and remain under the absolute jurisdiction and control of the United States").

11. The Graton casino site was not "reserved out" when California was admitted as a state. 9 Stat. 452 (1850); 2 JA 504-06.

requirement of an explicit and unambiguous state consent to transfer jurisdiction to another sovereign.

Until this case, no final appellate decision has ever found a fourth method by which the federal government can obtain territorial jurisdiction over lands within a state,[12] and no case since 1940—the year that a predecessor statute to 40 U.S.C. § 3112 was enacted – has found a cession of territorial jurisdiction without formal federal acceptance.[13] The holding of the court below is the first reported decision permitting the federal government to diminish unilaterally a state's historic jurisdiction over land within its borders.

The ruling below is not only wrong, but it sets a dangerous precedent that opens the door to further encroachment of Nevada-style casinos into urban areas of California and every other state because it permits territorial jurisdiction to shift without any affirmative action by the state in question.

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12. Although a similar contention was raised in *Carcieri v. Kempthorne*, 290 F. Supp. 2d 167, 187-90 (D.R.I. 2003), *aff'd*, 497 F.3d 15, 20-21 (1st Cir. 2007)(en banc), *rev'd on other grounds*, *Carcieri v. Salazar*, 555 U.S. 379 (2009), that case did not turn on constitutional grounds, but rather, on the construction of a portion of the Indian Reorganization Act (25 U.S.C. § 465) and whether it authorized land acquisitions on behalf of a tribe not under federal jurisdiction in 1934; *but see Gila River Indian Community v. United States*, 729 F.3d 1129, 1152 (9th Cir. 2013)(taking land into trust for a tribe did *not* alter its jurisdictional status).

13. 40 U.S.C. § 255, adopted in 1940, provided a conclusive presumption against a shift in territorial jurisdiction unless the federal government formally accepts the transfer. The modern successor is 40 U.S.C. § 3112.

III. The Same Rules That Apply For Transferring Territorial Jurisdiction Over Fee Holdings Of The Federal Government Also Apply To Indian Trust Lands

The decision below turns on a widely-held misconception that once the federal government accepts title to lands in trust for a tribe, the land is automatically removed from the control of state law. That notion improperly conflates the concepts of *title* and *jurisdiction.*

It also flies in the face of the time-honored concept embedded in this Court's precedents, and accepted by the federal government, namely that states have primary jurisdiction on all lands within their borders, even where fee title is held by the federal government.[14]

States possess "primary jurisdiction" over all land within their borders. *South Dakota v. Yankton Sioux Tribe,* 522 U.S. 329, 333 (1998). As this Court recognized long ago: "Upon the admission of a state into the Union,

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14. *See* Principles of Federal Appropriations Law (Ofc. the General Counsel, U.S. Gov't Acct'g Ofc., 3d ed. (2008), vol. III, ch. 13 (the "GAO Report") (available at http://www.gao.gov/special.pubs/d08978sp.pdf).) The GAO Report notes: "Almost all federally owned land is within the boundaries of one of the 50 states. This leads logically to the question: who controls what? When we talk about jurisdiction over federal land, we are talking about the federal-state relationship. The first point is that, whether the United States has acquired real property voluntarily (purchase, donation) or involuntarily (condemnation), the mere fact of federal ownership does not withdraw the land from the jurisdiction of the state in which it is located. ... *Acquisition of land and acquisition of federal jurisdiction over that land are two different things.*" GAO Report at ch. 13, pp. 13-101. (emphasis added and citations omitted).

the state doubtless acquires general jurisdiction, civil and criminal ... throughout its limits, except where it has ceded exclusive jurisdiction to the United States." *Van Brocklin v. Tennessee,* 117 U.S. 151, 167-68 (1886).

More recently, this Court confronted a claim that a federal statute divested the State of Hawaii of title to certain lands. The Court flatly rejected that assertion, noting that the subject statute "would raise grave constitutional concern if it purported to 'cloud' Hawaii's title to its sovereign lands more than three decades after the State's admission the Union." *Hawaii v. Office of Hawaiian Affairs,* 556 U.S. 163, 176 (2009). The Court went further and declared in a unanimous opinion that:

> We have emphasized that "Congress cannot, after statehood, reserve or convey ... lands that have already been bestowed upon a State." *Idaho v. United States,* 533 U.S. 262, 280, n. 9 ... (2001) ...; see also *id.,* at 284 ... (Rehnquist, C.J., dissenting) ("[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event ... to suggest that subsequent events somehow can diminish what has already been bestowed").

Id.

It is not uncommon for the federal government to own land in a state, but in most cases, the United States holds the property as a mere proprietor. Unless there has been a formal cession, the state retains legislative jurisdiction to pass laws of general application that govern those lands. *See Silas Mason Co. v. Tax Commission of Washington,* 302 U.S. 186, 197 (1937).

The rules governing territorial jurisdiction as between the states and the federal government are deeply rooted in the Constitution. The Tenth Amendment reserves to the states those powers not delegated to the United States. Under the Admission Clause (U.S. Const., art. IV, § 3), and the Equal Footing Doctrine, the territorial jurisdiction of a state cannot be diminished without the consent of the state's legislature. *Summa Corp. v. California ex rel. State Lands Commission,* 466 U.S. 198, 205 (1984). The Enclaves Clause (U.S. Const., art. I, § 8, cl. 17) provides for the creation of areas of exclusive federal jurisdiction for specified purposes – such as military installations – but only with the express consent of the affected state.

These rules serve to preserve the integrity of state government. It is not for the federal government to weigh local interests and step in to regulate local matters; indeed, there is no such thing as a general federal police power. See *Nat'l Fed. of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2577-80 (2012). Rather, local issues are properly regulated by individual states, which can determine which activities serve the health, safety and welfare of their residents, and which do not. *Id.*

This Court has confirmed that merely labeling land a "reservation" does not by itself shift jurisdiction. "State sovereignty does not end at a reservation's border. ... Ordinarily, it is now clear, an Indian reservation is considered part of the territory of the State." *Nevada v. Hicks*, 533 U.S. 353, 361-62 (2001)(citations omitted). *See also Surplus Trading Co. v. Cook*, 281 U.S. 647, 650-51 (1930) (federally owned lands such as Indian reservations are typically part of the state in which they are located and subject to state laws).

Where tribes do have sovereignty over their lands it is usually because the lands were held for and occupied by the tribes when the state was created; in short, the lands never became a part of the state in which they were situated. Thus the following unbroken pattern emerges in the case law:

• *Worcester v. Georgia,* 31 U.S. 515 (1832), involved land set aside for the Cherokee tribe by treaty before Georgia became one of the original states;

• *In re Kansas Indians,* 72 U.S. 737 (1867), held that Indians were exempt from state property taxes because Kansas accepted admission into union with stipulation that Indian rights to their lands would remain unimpaired;

• *Williams v. Lee,* 358 U.S. 217 (1959), involved the Navajo Indian Reservation established by an 1868 treaty in the territory that became Arizona 44 years later;

• *Montana v. United States*, 450 U.S. 544 (1981) and *Big Horn County Electric Coop. v. Adams,* 219 F.3d 944 (9th Cir. 2000), both concerned a Crow reservation in Montana established by the 1868 Second Treaty of Fort Laramie, 450 U.S. at 548, and "reserved out" when Montana became a state twenty-one years later, Enabling Act, 25 Stat. 676 (1889); and

• *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987), dealt with Indian lands established in California in 1876, not urban lands established in 2010.[15]

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15. The *Cabazon* case is a world apart from the instant facts. In *Cabazon*, the Court noted that the lands were formally set apart

The court below ignored these principles. All of the cases cited by the court to support its holding concerned historical Indian reservations, not private property within a state converted recently to Indian lands without a formal cession of jurisdiction by the state. In the course of its analysis, the court boldly claimed that no case casts doubt on the principle that a federally recognized tribe exercises jurisdiction over its reservation. (App. 12a) The court was wrong on that score, for in *Ex Parte Sloan*, 22 F. Cas. 324 (D. Nev. 1877), there was a clear finding that an Indian tribe did not have jurisdiction over its reservation in Nevada. But more fundamentally, calling land a "reservation" is merely the beginning of the jurisdictional inquiry, for the issue always is: how did the federal government, and through it an Indian tribe, acquire territorial jurisdiction in the first place?

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for these tribes in 1876, 480 U.S. 202, 204 n.1, although the tribes may have occupied the lands prior to then. If so, the lands would be under "Indian title." *See Northwestern Bands of Shoshone Indians v. United States*, 324 U.S. 335, 338-39 (1945). In any event, the lands would also be deemed Indian lands under tribal jurisdiction. *See City of Sherrill v. Oneida Indian Nation,* 544 U.S. 197, 219-21 (2005)(applying equitable doctrines of laches and acquiescence to issue of tribal territorial jurisdiction). Further, a general California cession statute in effect until the 1940's provides another basis for confirming a jurisdictional shift for long-held Indian trust lands in California. *See* 1891 Cal. Stats. ch. 181, § 1, at p. 262.

IV. The Graton Act Should Be Given A Construction Consistent With Its Plain Language And Constitutional Principles, Neither Of Which Would Diminish The State's Territorial Jurisdiction

The subsection of the Graton Act authorizing the Secretary to accept land into trust on behalf of the Tribe is silent on the issue of territorial jurisdiction. 25 U.S.C. § 1300n-3.[16] And merely asserting that the trust lands will be part of the Tribe's reservation, 25 U.S.C. § 1300n-3(c), does not evince a Congressional intent to shift territorial jurisdiction. *See Surplus Trading Co. v. Cook*, 281 U.S. 647, 651 (1930)("Such [Indian] reservations are part of the state within which they lie, and her laws, civil and criminal, have the same force therein as elsewhere within her limits....")

There is no basis for finding that a statute shifted territorial jurisdiction when its plain language does not purport to do so, and the legislative history is to the contrary. The Graton Act does not even mention the word "jurisdiction," and an accompanying House report asserted that the legislation "is not intended to preempt any State [or] local ...law." App. 72a, 5 JA 1183. Moreover,

16. The statute directly at issue, 25 U.S.C. § 1300n-3, applies only to the Graton tribe. But it is highly similar to 25 U.S.C. § 465, which authorizes the Secretary of the Interior generally to acquire title to lands in trust to provide land for Indians. This Court construed a different aspect of § 465 in *Carcieri v. Salazar*, *supra*, but did not reach the issue presented in this case. We note that there is much discussion of a possible statutory "*Carcieri* fix" for tribes not under federal jurisdiction in 1934, apparently predicated on the mistaken assumption addressed in this case that taking land into trust for tribes satisfies the tribal jurisdiction requirement of IGRA.

eight years after the Graton Act was enacted, the National Indian Gaming Commission reminded the Tribe that it needed to obtain jurisdiction over a casino site before the land would become gaming eligible. App. 63a, 4 JA 988-90.[17]

As demonstrated above, the primary holding of the court below – that the Graton Act transferred some of California's legislative jurisdiction over the site – is contrary to core constitutional principles set forth in the prior decisions of this Court. *E.g., Fort Leavenworth R.R. v. Lowe,* 114 U.S. 525 (1885); *Silas Mason Co. v. Tax Commission of Washington,* 302 U.S. 186 (1937); *Surplus Trading Co. v. Cook,* 281 U.S. 647 (1930).

The construction given to the Graton Act by the state court of appeal violates two fundamental rules of statutory interpretation: first, that statutory language says what it means and means what it says, *Connecticut National Bank v. Germain,* 503 U.S. 249, 253-54 (1992), and second, that a statute be construed in a constitutional manner if at all possible. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers,* 531 U.S. 159, 174 (2001); *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, 347 (1936).

The underlying question is whether Congress would be within its delegated powers under the Indian Commerce

17. The court below clearly erred when it interpreted the NIGC's approval of the Graton gaming ordinance. The court construed the NIGC's action as confirming that the Tribe *already had* jurisdiction over its land, which was the precise opposite of the clear language of the NIGC documents. App. 10a (Opinion of court below); App. 63a (NIGC approval letter)

Clause were it to attempt to displace unilaterally a state's territorial jurisdiction. The answer is no. The Indian Commerce Clause does not stretch that far. *Cf. Seminole Tribe v. Florida*, 517 U.S. 44 (1996). Saying Congress has plenary authority to regulate "commerce" with the Indians is one thing; saying Congress can unilaterally dismantle a state's territorial integrity is quite another. Indeed, it has been noted that "when the Indian canon conflicts with the federalism canon, the federalism canon prevails." *Gila River Indian Community v. United States*, 729 F.3d 1139, 1160 n.6 (9th Cir. 2013)(Smith, J., dissenting).

V. The Decision In *City of Roseville v. Norton*, Which Influenced The Court Below, Does Not Address The Issue Raised In This Case

The court below (as well as the Governor) relied heavily on *City of Roseville v. Norton*, 219 F. Supp. 2d 130 (D.D.C. 2002), *aff'd solely on standing issue*, 348 F.3d 1020 (D.C. Cir. 2003), *cert. denied*, 541 U.S. 974 (2004). That case, like this one, concerned tribal jurisdiction over newly acquired lands. But plaintiffs in *City of Roseville* made an argument that is the polar opposite from the one made here: they assumed that once a tribe gains beneficial title to land, the state loses its sovereignty; for that reason, the *Roseville* plaintiffs challenged the transfer of title itself.

In sharp contrast, petitioners herein have consistently asserted that a change in fee title has no effect on territorial jurisdiction. (Nor do petitioners challenge the United States' acceptance of fee title.) A clear cession is required in order for any quantum of a state's territorial jurisdiction to transfer. The opinion in *City of Roseville*

contains no analysis of how and when jurisdiction transfers; in short, the *Roseville* court simply did not analyze the issue that lies at the heart of this appeal.[18]

VI. The Court Below Also Erred By Disregarding A Governing Federal Statute That Provides A Conclusive Presumption Against A Jurisdictional Shift Without A Formal Acceptance Of Cession.

The alternative holding below that territorial jurisdiction can transfer through an "implied" cession is a constitutional first and defies a century of precedent. This Court held long ago that territorial jurisdiction cannot shift by implication. *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 538-39 (1885) ("This jurisdiction cannot be acquired ... by mere occupancy, with the implied or tacit consent of the state....").

The wisdom of the *Fort Leavenworth* rule is particularly apparent here, where the California Legislature was advised that no cession was needed. In

18. In the same vein, the references by the court below to Public Law 280, which is mentioned in the Graton Compact (*e.g.*, 1 JA 141-42) are not instructive. Public Law 280 (18 U.S.C. § 1162 and 28 U.S.C. § 1360), retrocedes partial legislative jurisdiction back to the host states over lands under tribal jurisdiction, *see California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), and thus only comes into play when a tribe has somehow already obtained legislative (territorial) jurisdiction in the first place. The references to Public Law 280 in the Graton compact merely reveal that its authors were laboring under the common misperception conflating fee title with jurisdiction, for they assumed that the federal government's acceptance of fee title *by itself* automatically transferred territorial jurisdiction from the state to the Tribe.

particular, the Governor's senior advisor stated before a legislative committee considering the Graton compact: "Once the federal government took this piece of land into trust for this tribe for the purpose of gaming, the state had a legal obligation to negotiate in good faith with the tribe for a casino on that piece of land." Testimony of Jacob Appelsmith, http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=303, at 33 minutes.

This statement is consistent with the Governor's position that it was *the Graton Act,* not the Compact or legislative ratification, that shifted jurisdiction in the first instance. Respondent Governor Edmund G. Brown Jr.'s Answer to Amicus Curiae Brief, filed August 14, 2014, at p. 4.

The "implied cession" holding does more damage than merely papering over the impermissible unilateral shift in territorial jurisdiction, for it also defies 40 U.S.C. § 3112(b), which requires that the federal government formally accept a transfer of jurisdiction. Here, it is undisputed that the formalities required by 40 U.S.C. § 3112(b) were never complied with for the casino site. 5 JA 1135-39 (response to request for admissions).

For this reason, the conclusive presumption against a jurisdictional transfer applies. 40 U.S.C. § 3112(c). That presumption applies to "any" transfers of jurisdiction, whether exclusive, partial or concurrent jurisdiction. 40 U.S.C. § 3112(b); *Adams v. United States,* 319 U.S. 312, 314-15 (1943).

The decision below, which allows an "implied" cession of jurisdiction clearly ignored the final statutory requisite,

to wit, the acceptance of the cession by the United States. This is no idle technical requirement, for with jurisdiction comes responsibility. Section 3112 was enacted to prevent such an onus being pinned to the federal government without a formal acceptance of it. The potential for untold difficulties in the future is obvious when this vital requirement is ignored.

CONCLUSION

California law bans casino gaming in the state. The only exception is for an Indian tribe that exercises territorial jurisdiction over the land that will serve as the casino site. When that occurs, the land is eligible for class III gaming under IGRA and the California Constitution.

But that did not happen here. As abundant precedent teaches, when newly acquired lands with no historical tribal tie are gifted to the federal government by a third-party corporation, another critical step is required before any territorial jurisdiction transfers from the state in question. There must be a formal cession of some quantum of jurisdiction by the state legislature. Only when that happens does the state's territorial authority over the subject property dissipate.

The court below engaged in an odd form of constitutional plastic surgery when it smoothed over the need for an express cession of jurisdiction and, further, when it held that an implied cession was permissible despite the specific requirements of federal law. The ruling below holds for the first time that a state's historic territorial integrity can be diminished unilaterally by the federal government, and in addition that it can dissipate by implication. Those

conclusions, which defy decisions from this Court, not to mention 40 U.S.C. § 3112, are serious errors which if left uncorrected, will be the source of trouble in years to come. The problem will not be confined to California, but will affect any state in the Union where the federal government obtains fee title to land without a cession and the formalities required by statute.

We submit that this case presents important national issues over which there exists widespread confusion. Certiorari should be granted so this Court can give them the careful scrutiny they deserve.

Respectfully submitted,

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Dated: April 7, 2015.

APPENDIX

APPENDIX A — CALIFORNIA SUPREME COURT ORDER DENYING REVIEW, FILED JANUARY 14, 2015

IN THE SUPREME COURT OF CALIFORNIA
S222518

EN BANC

Court of Appeal, First Appellate District
Division Three - No. A140203

STOP THE CASINO 101 COALITION *et al.*,

Plaintiffs and Appellants,

v.

EDMUND G. BROWN, JR., as Governor, etc.,

Defendant and Respondent.

The petition for review is denied.

/s/ Cantil-Sakauye
Chief Justice

APPENDIX B — FINAL OPINION OF THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION THREE, FILED OCTOBER 3, 2014, MODIFIED ON OCTOBER 28, 2014

COURT OF APPEAL OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

No. A140203

STOP THE CASINO 101 COALITION *et al.*,

Plaintiffs and Appellants,

v.

EDMUND G. BROWN, JR., as Governor, etc.,

Defendant and Respondent.

Filed October 3, 2014.
Modified Oct. 28, 2014
Review Denied by California Supreme Court

POLLAK, Acting P. J.—Stop the Casino 101 Coalition, an unincorporated citizen group, and three individuals (collectively, the coalition) appeal from a summary judgment rejecting their attempt to invalidate the compact between the state and the Federated Indians of the Graton Rancheria (the Graton Tribe) authorizing the operation of a gaming casino on a 254-acre parcel in and adjacent to the City of Rohnert Park. The coalition contends that

because the State of California failed to explicitly cede to the Graton Tribe jurisdiction over the property, which was formerly held by private parties, federal law does not authorize the assumption of tribal jurisdiction over the property and therefore the state's entry into the compact violates the California constitutional provision authorizing such gaming compacts. The state contends that the coalition's claim is essentially an attack on the validity of action taken by the federal government that cannot be challenged in these state court proceedings, and that in all events there has been no violation of either federal or state law. We do not pass judgment on the contentious policy issues underlying the creation of Indian reservations for the purpose of constructing gaming casinos. We consider only the legal issues presented and conclude that the attack on the validity of the compact and on the legislation approving the compact fails for multiple reasons.

Background

The original Graton Rancheria was located on a 15.45-acre parcel near the town of Graton, some distance from Rohnert Park. In 2000, Congress passed the Graton Rancheria Restoration Act (the Graton Act; 25 U.S.C. § 1300n et seq.), recognizing the Graton Tribe and making tribal members eligible "for all Federal services and benefits furnished to federally recognized Indian tribes or their members." (25 U.S.C. § 1300n-2(c)(1).) The Graton Act provides that upon application by the Graton Tribe, the Secretary of the Interior "shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California, for the benefit of the Tribe

after the property is conveyed or otherwise transferred to the Secretary." (25 U.S.C. § 1300n-3(a).) The Graton Act also provides that any real property taken into trust for the benefit of the Graton Tribe "shall be part of the Tribe's reservation." (25 U.S.C. § 1300n-3(c).) In May 2008, the federal Bureau of Indian Affairs published notice in the Federal Register of its intention to accept title to the casino site in trust for the Graton Indians. (73 Fed.Reg. 25766 (May 7, 2008).) In June 2008 the Graton Rancheria Tribal Council enacted the Graton Rancheria Gaming Ordinance and in August the Chairman of the National Indian Gaming Commission approved the ordinance "for gaming only on Indian lands, as defined in IGRA [(the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.)], over which the Graton Rancheria exercises jurisdiction." In October 2010, title to the casino site was transferred to the United States in trust for the Graton Indians (from a subsidiary of a Nevada-based casino operator that had acquired title to the property in 2005). Attached to the grant deed was a document entitled "Acceptance of Conveyance" executed on behalf of the Secretary of the Interior by which the grant was "accepted by the United States of America pursuant to [Public Law] 106-568, the Graton Rancheria Restoration Act, 25 U.S.C. § 1300n-3." Following negotiations between the Graton Tribe and the state, in March 2012 the Governor and the tribal chair of the Graton Tribe executed the "Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria."[1] On May 17, 2012, the Governor

1. Among the many detailed provisions of this lengthy agreement, which authorizes the operation of up to 3,000 slot machines and banked and percentage card games, the compact

signed into law Assembly Bill No. 517 (2011-2012 Reg. Sess.) ratifying the compact. (Gov. Code, § 12012.56.)

Litigation challenging creation of the casino predated entry of the compact. In 2008, following publication of the notice of the secretary's intention to accept title to the casino site, an action was filed in federal court seeking a declaration that transfer of title would not confer on the Graton Tribe jurisdiction over the site. The action was dismissed by the district court and the dismissal affirmed by the Ninth Circuit on the ground that use of the land as a casino was then speculative and the plaintiffs lacked

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grants the state gaming agency the right to inspect the gaming devices, the casino, and its records. Section 9.4 of the compact provides: "Nothing in this Compact impairs the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below, all State and local law enforcement agencies and state courts shall exercise jurisdiction to enforce the State's criminal laws on the Tribe's Indian lands, including the Gaming Facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the State and the United States, as is exercised by State and local law enforcement agencies and state courts elsewhere in the State, to the fullest extent permitted by decisions of the United States Supreme Court related to Public Law 280. The Tribe hereby consents to such criminal jurisdiction. However, no Gaming Activity conducted by the Tribe pursuant to this Compact may be deemed to be a criminal violation of any law of the State. Except for such Gaming Activity conducted pursuant to this Compact, criminal jurisdiction to enforce State gambling laws on the Tribe's Indian lands, and to adjudicate alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166(d)."

standing. (*Stop the Casino 101 Coalition v. Salazar* (9th Cir. 2010) 384 Fed. Appx. 546.)

The present action was commenced on May 21, 2012, before construction of the casino had begun. The coalition sought a temporary restraining order and a preliminary injunction to prevent construction but that relief was denied. Subsequently the coalition filed a second amended complaint, the first cause of action of which seeks a declaration that the statute approving the compact is invalid. The complaint alleges that the Graton Tribe does not have jurisdiction over the casino site so that the compact is not in compliance with IGRA (Indian Gaming Regulatory Act), causing the statute to be out of compliance with the California Constitution. The court sustained the state's demurrer to the second amended complaint on the ground that the Secretary of the Interior and the Chairman of the National Indian Gaming Commission had not been joined. The coalition filed an amendment to the second amended complaint joining the two federal officials, who promptly filed a special appearance asserting that their joinder is precluded by federal sovereign immunity. The coalition then dismissed the secretary and the chairman from the suit.

Eventually the parties filed competing motions for summary judgment. In granting the state's motion and denying the coalition's motion, the trial court explained: "In expressly stating to this court that they do 'not challenge actions taken by federal officials or pursuant to federal law' and declining to further pursue available avenues of relief under federal law against appropriate

federal defendants, who took the property into trust making it a part of the tribe's reservation, and approved the tribal gaming ordinance, plaintiffs effectively concede all of the elements necessary to establish the validity of the compact under federal law. [Citations.] [¶] The secretary's action in taking the property into trust on behalf of the tribe was in accordance with the express provision of the Graton Restoration Act, and the property's status as part of the tribe's reservation is expressly mandated by federal law. With the Tribe having been federally recognized pursuant to federal law, and the property being a part of the tribe's reservation under federal law, the property is eligible for class III gaming under IGRA. It follows that under IGRA, the tribe having had its gaming ordinance approved by the Chairman of the National Indian Gaming Commission, and hav[ing] negotiated the compact with the State of California that was duly ratified by the California State Legislature, class III gaming is permitted on the property under both federal law and the state Constitution. (Cal. Const., art. IV, § 19, subd. (f)).”[2]

The coalition timely appealed from the judgment subsequently entered in favor of the Governor.

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2. The trial court also stated that in view of a petition for a writ of mandate that the coalition filed in October 2012 premised on the existence of the compact, unsuccessfully challenging alleged noncompliance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), it appeared “that judicial estoppel should apply to [the coalition's] position in the instant action that Government Code section 12012.56 is invalid. In view of our determination of other issues, we need not reach the coalitions' argument regarding application of the doctrine of judicial estoppel in this case.”

Appendix B

Discussion

Article 4, section 19, subdivision (e) of the California Constitution provides that "The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey." However, subdivision (f) of section 19, added by Proposition 1A on the March 7, 2000 ballot, provides as follows: "Notwithstanding subdivision[] ... (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of ... banking and percentage card games by federally recognized Indian tribes on Indian lands in California *in accordance with federal law.* Accordingly, slot machines, ... banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts." (Italics added.)

The coalition emphasizes the italicized reference to compliance with federal law, which law is to be found in IGRA (25 U.S.C. § 2701 et seq.). This statute provides: "Class III gaming activities shall be lawful on Indian lands only if such activities are—[¶] (A) authorized by an ordinance or resolution that—[¶] (i) is adopted by the governing body of the Indian tribe *having jurisdiction over such lands*, [¶] ... and [¶] (iii) is approved by the Chairman." (25 U.S.C. § 2710(d)(1), italics added.)[3] The

3. The statute further provides that such gaming activities are lawful only if "(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and [¶] (C) conducted in conformance with a Tribal-State compact entered

coalition argues that the transfer of title to the casino site to the United States in trust for the Graton Tribe did not confer *jurisdiction* over this site on the Graton Tribe, so that IGRA does not authorize gaming activities on that site and the California Constitution in turn does not permit the Governor to enter a compact authorizing gaming on that site.

The coalition argues that the transfer to the federal government of title to property is not the equivalent of a transfer of jurisdiction. As a general proposition, this is correct. (See, e.g., *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512, 1520 [19 Cal. Rptr. 3d 669].) Relying on *Coso Energy Developers*, the coalition argues that jurisdiction over property within a state can be acquired by the United States in only three ways: purchase or donation of property with the consent of the

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into by the Indian tribe and the State ... that is in effect." (25 U.S.C. § 2710(d)(1).)

The statute also provides that "Any Tribal-State compact ... may include provisions relating to—[¶] (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity; [¶] (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations ... ." (25 U.S.C. § 2710(d)(3)(C)(i)-(ii).)

The purposes of IGRA include providing "a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." (25 U.S.C. § 2702(1); see generally *Artichoke Joe's v. Norton* (E.D.Cal. 2002) 216 F.Supp.2d 1084, 1091-1094.)

state, reservation of jurisdiction on admission of the state to the union, and a state's cession of jurisdiction with the acceptance of the United States. (*See ibid.*) Clearly neither of the first two methods apply and, the coalition argues, neither does the third. The coalition contrasts the Graton Act statutory language, which provides only that real property taken into trust for the benefit of the tribe "shall be part of the Tribe's reservation," with the statute authorizing land to be taken into trust for the Pokagon Band of Potawatomi Indians, which provides: "The Band shall have jurisdiction to the full extent allowed by law over all lands taken into trust for the benefit of the Band by the Secretary." (25 U.S.C. § 1300j-7.) Since the Graton Act does not explicitly state that the Graton Tribe shall acquire jurisdiction, the coalition argues that although the United States has acquired title to the casino site in trust for the benefit of the Graton Tribe, the Graton Tribe has not acquired jurisdiction over the site.

There are numerous fallacies in the coalition's argument. As pointed out above, the Chairman of the National Indian Gaming Commission has approved the Graton Tribe's gaming ordinance under IGRA for gaming "on Indian lands, as defined in IGRA, over which the Graton Rancheria exercises jurisdiction." The coalition's theory rests on the premise that the chairman incorrectly determined that the Graton Tribe exercises jurisdiction within its reservation. The chairman is not a party to these proceedings and this court would be in no position to set aside his determination even if we disagreed with it. Moreover, his determination clearly is correct.

Appendix B

The coalition does not challenge the ability of Congress to authorize the recognition of an Indian tribe and the acceptance of land in trust for the tribe as the tribe's reservation. (U.S. Const., art. I, § 8, cl. 3; *Carcieri v. Kempthorne* (1st Cir. 2007) 497 F.3d 15, 39, *revd. on other grounds sub nom. Carcieri v. Salazar* (2009) 555 U.S. 379 [172 L. Ed. 2d 791, 129 S. Ct. 1058].)[4] That, in short, is what the Graton Act has done. Recognition of an Indian reservation necessarily confers a degree of jurisdiction on the affected Indian tribe. Federally recognized Indian tribes are "'domestic dependent nations' that exercise

4. This premise has been challenged in an amicus curiae brief filed on behalf of the County of Napa, City of American Canyon, Napa County Farm Bureau, Napa Valley Grapegrowers, and Napa Valley Winegrowers. Relying largely on its interpretation of *article IV, section 3 of the United States Constitution*, which guarantees "state territorial integrity" (*Garcia v. San Antonio Metropolitan Transit Authority* (1985) 469 U.S. 528, 550 [83 L. Ed. 2d 1016, 105 S. Ct. 1005]), the amicus curiae brief argues that Congress has no authority to take property located within a state, in trust for Indians or otherwise, without the consent of the state (except as authorized by the *Enclaves Clause of the United States Constitution*, discussed below, or the power of eminent domain). The thrust of this argument is that the Graton Act itself is unconstitutional. Recognizing that this court has no power to declare an act of Congress unconstitutional, the coalition has steadfastly maintained that it does not question the validity of the Graton Act. We do not comment on the reasons for which the amicus curiae brief argues that the Indian Commerce Clause (U.S. Const., art. I, § 8, cl. 3) has been misinterpreted to confer on Congress plenary power to legislate in the field of Indian affairs, but proceed on the premise, as does the coalition and as we must, that the Graton Act is within the constitutional authority of Congress.

inherent sovereign authority over their members and territories." (*Big Horn County Electric Cooperative, Inc. v. Adams* (2000) 219 F.3d 944, 954.) "The [Supreme] Court has consistently recognized that Indian tribes retain 'attributes of sovereignty over both their members and their territory,' [citation], and that 'tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States ... .'" (*California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 207 [94 L. Ed. 2d 244, 107 S. Ct. 1083].) While many cases question the extent to which Congress has authorized states to exercise limited jurisdiction over Indian lands (e.g., *ibid.*), none casts doubt on the fundamental principle that a federally recognized tribe exercises jurisdiction over its reservation (e.g., *Nevada v. Hicks* (2001) 533 U.S. 353, 361 [150 L. Ed. 2d 398, 121 S. Ct. 2304] ["... Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation."]). "The cases in [the United States Supreme] Court have consistently guarded the authority of Indian governments over their reservations." (*Williams v. Lee* (1959) 358 U.S. 217, 223 [3 L. Ed. 2d 251, 79 S. Ct. 269].)

"IGRA is an example of 'cooperative federalism' in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme." (*Artichoke Joe's v. Norton, supra,* 216 F.Supp.2d at p. 1092.) Federal regulation provides explicitly that "none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or

controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States ... ." (25 C.F.R. § 1.4(a) (2014).)[5]

The suggestion that a tribe does not necessarily exercise some jurisdiction over its reservation is at odds with "traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." (*California v. Cabazon Band of Mission Indians, supra,* 480 U.S. at p. 216.) Indeed, the amicus curiae brief submitted in support of the coalition's position acknowledges "It is beyond dispute that the federal government's acquisition of lands for Indians whether authorized by a tribe-specific congressional act or [25 United States Code] section 465 establishes 'Indian country' and thereby diminishes the fundamental jurisdictional rights of states and their political subdivisions."[6]

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5. The regulation permits the Secretary of the Interior to make exceptions in specific cases (25 C.F.R. § 1.4(b) (2014)) but no party suggests the applicability of any exception in the present case.

6. "Indian country" is defined in 18 United States Code section 1151 to include "any Indian reservation under the jurisdiction of the United States Government." IGRA defines "Indian lands" as "(A) all lands within the limits of any Indian reservation; and [¶] (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or ... over

Thus, in *City of Roseville v. Norton* (D.D.C. 2002) 219 F.Supp.2d 130, a federal district court rejected a challenge to the Secretary of the Interior's taking land into trust on behalf of the United Auburn Indian Community with the intention of permitting the tribe to open a gaming casino. By legislation comparable to the Graton Act, Congress had recognized the status of the tribe as an Indian tribe and authorized the secretary to accept land in Placer County in trust for the benefit of the tribe, without explicitly stating that it was thereby conferring jurisdiction on the tribe. (219 F.Supp.2d at p. 135; 25 U.S.C. § 1300l-2.) Like the Graton Act, the Auburn Indian Restoration Act (25 U.S.C. § 1300l et seq.) provided that property taken in the name of the United States in trust for the tribe "shall be part of the Tribe's reservation." (25 U.S.C. § 1300l-2(c).) The court rejected a multitude of arguments as to why the secretary

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which an Indian tribe exercises governmental power." (25 U.S.C. § 2703(4).)

The amicus curiae brief cites a number of additional cases reflecting the basic proposition that an Indian tribe has jurisdiction over its reservation: *South Dakota v. United States DOI* (8th Cir. 2012) 665 F.3d 986, 990 ("States generally lack authority to regulate Indian tribes and tribe members on trust property."); *Yankton Sioux Tribe v. Podhradsky* (8th Cir. 2010) 606 F.3d 994, 1006 ("... Indian country falls under the primary civil, criminal, and regulatory jurisdiction of the federal government and the resident Tribe rather than the states."); *U.S. v. Roberts* (10th Cir. 1999) 185 F.3d 1125, 1131 ("lands owned by the federal government in trust for Indian tribes are Indian Country pursuant to 18 U.S.C. § 1151"); *Narragansett Indian Tribe v. Narragansett Elec. Co.* (1st Cir. 1996) 89 F.3d 908, 920 ("Taking land in trust is a considered evaluation and acceptance of responsibility indicative that the federal government has 'set aside' the lands.").

had no constitutional authority to take such action (*City of Roseville,* at pp. 149-156) and why the action violated IGRA (219 F.Supp.2d at pp. 156-164). Although the petitioners in that case did not make precisely the same arguments as the coalition makes here, the decision clearly recognizes that acceptance by the federal government of land in trust for an Indian tribe thereby confers jurisdiction on the tribe over the resulting reservation.

One of the arguments rejected by the court in *City of Roseville v. Norton, supra,* 219 F.Supp.2d 130 is that the Enclaves Clause of the United States Constitution (U.S. Const., art. I, § 8, cl. 17)[7] prohibits the assumption of federal jurisdiction without the consent of the state in which the property is situated. The court pointed out that this clause applies only to federal acquisition of exclusive jurisdiction, and that "[j]urisdiction over Indian lands ... is not exclusive, and requires 'an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.'" (*City of Roseville,* p. 150.) The "assertion that the *Enclaves Clause* stands for the proposition that 'before land can be removed from the primary sovereignty of a state, the legislature of the impacted state must grant its consent to such a removal ...' ... is simply incorrect." (*Ibid.*, citation omitted.) Although the coalition now disavows reliance on the Enclaves Clause, *Coso Energy Developers v. County of*

7. This clause authorizes Congress "[t]o exercise exclusive Legislation in all Cases whatsoever ... over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings."

Inyo, supra, 122 Cal.App.4th 1512, on which the coalition heavily relies, was addressing only the means by which the federal government may obtain *exclusive* jurisdiction over land within a state.[8] That decision says nothing about the means by which jurisdiction that is not exclusive of federal or state jurisdiction may be acquired by an Indian tribe.

Although, as the coalition points out, the federal statute recognizing the Pokagon Band of Potawatomi Indians contains language explicitly conferring jurisdiction on the tribe, the Governor correctly responds that the statutes recognizing other tribes are in this respect almost identical to the Graton Act. (25 U.S.C. §§ 1300k-4(d), 13001-2(c), 1300m-3(b); cf. 25 U.S.C. §§ 1300g-4(a), (b), 1300h-5(a), 1300i(b), (c)(1).) These other statutes also contain no explicit reference to jurisdiction, but that they do confer jurisdiction on the respective tribes (albeit limited or concurrent with respect to jurisdiction over certain matters reserved to the federal or state governments) appears to be beyond question.

Finally, even if—contrary to all of the foregoing—the coalition were correct that jurisdiction over the land transferred to the United States in trust for the Graton

8. Contrary to counsel's statement at oral argument, other cases cited in *Coso Energy Developers* and in the coalition's brief were also referring to the means of obtaining exclusive federal jurisdiction. (E.g., *Mason Co. v. Tax Comm'n of Washington* (1937) 302 U.S. 186, 210 [82 L. Ed. 187, 58 S. Ct. 233] ["exclusive legislative authority would be obtained by the United States only through cession by the State"]; *Surplus Trading Co. v. Cook* (1930) 281 U.S. 647, 652-656 [74 L. Ed. 1091, 50 S. Ct. 455].)

Tribe could not be conferred on the tribe without the express consent of the state, such consent is implicit in the compact signed by the Governor and ratified by the Legislature. Although the compact is not a formal "cession" of jurisdiction as that term has been used, the compact, signed by the Governor and ratified by the Legislature, recognizes and consents to the exercise of jurisdiction by the Graton Tribe in conformity with the terms of that agreement. The recitals to the compact refer explicitly to the exchange of benefits "on a sovereign-to-sovereign basis," to the need "to promote strong tribal government and self-sufficiency," and to the "joint sovereign interest" of the tribe and the state. A recital confirms that "this Compact will afford the Tribe primary responsibility over the regulation of its Gaming Facility ... ." The compact provisions referred to in footnote 1, *ante*, while containing the tribe's consent to the retention of broad jurisdiction by the state, preclude the state from prohibiting gaming activity authorized by the compact. The acknowledgement of the tribe's jurisdiction in this manner is consistent with the provisions of Government Code section 110, which provides that the extent of the state's jurisdiction "over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of the cession or the laws under which the purchase or condemnation is made."[9]

In all events, the premise of the coalition's argument fails. By virtue of the Graton Act, the Graton Tribe

9. While the 254-acre site was not "purchased" by the United States, we see no reason why this provision should not be read to encompass property gifted to the federal government.

acquired jurisdiction over its reservation in conformity with IGRA. Therefore, the compact between California and the Graton Tribe was "in accordance with federal law" and consistent with article 4, section 19, subdivision (f) of the California Constitution.

Disposition

The judgment is affirmed.[10]

Siggins, J., and Jenkins, J., concurred.

10. The coalition's several requests for judicial notice are denied, as the materials to which the requests refer are irrelevant or unnecessary to resolution of the issues on appeal.

APPENDIX C — ORDER MODIFYING OPINION AND DENYING REHEARING, ISSUED BY THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, FILED CTOBER 3, 2014

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

A140203

STOP THE CASINO 101 COALITION *et al.*,

Plaintiffs and Appellants,

v.

EDMUND G. BROWN, JR., as Governor, etc.,

Defendant and Respondent.

(Sonoma County Super. Ct. No. SCV-251712)

ORDER MODIFYING OPINION AND DENYING REHEARING; NO CHANGE IN JUDGMENT

Appendix C

THE COURT:

The opinion filed herein on October 3, 2014, is modified as follows:

On page 4, footnote 2, add to the end of the paragraph "In view of our determination of other issues, we need not reach the coalitions' argument regarding application of the doctrine of judicial estoppel in this case" so that the footnote reads:

> 2/ The trial court also stated that in view of a petition for a writ of mandate that the coalition filed in October 2012 premised on the existence of the compact, unsuccessfully challenging alleged noncompliance with the California Environmental Quality Act, it appeared "that judicial estoppel should apply to [the coalition's] position in the instant action that Government Code section 12012.56 is invalid. In view of our determination of other issues, we need not reach the coalitions' argument regarding application of the doctrine of judicial estoppel in this case."

The petition for rehearing is denied. There is no change in the judgment.

Date: _____Acting P.J.

Appendix C

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

A140203

STOP THE CASINO 101 COALITION et al.,

Plaintiffs and Appellants,

v.

EDMUND G. BROWN, JR., as Governor, etc.,

Defendant and Respondent.

(Sonoma County Super. Ct. No. SCV-251712)

Stop the Casino 101 Coalition, an unincorporated citizen group, and three individuals (collectively, the coalition) appeal from a summary judgment rejecting their attempt to invalidate the compact between the state and the Federated Indians of the Graton Rancheria (the Graton Tribe) authorizing the operation of a gaming casino on a 254-acre parcel in and adjacent to the City of Rohnert Park. The coalition contends that because the State of California failed to explicitly cede to the Graton

Tribe jurisdiction over the property, which was formerly held by private parties, federal law does not authorize the assumption of tribal jurisdiction over the property and therefore the state's entry into the compact violates the California constitutional provision authorizing such gaming compacts. The state contends that the coalition's claim is essentially an attack on the validity of action taken by the federal government that cannot be challenged in these state court proceedings, and that in all events there has been no violation of either federal or state law. We do not pass judgment on the contentious policy issues underlying the creation of Indian reservations for the purpose of constructing gaming casinos. We consider only the legal issues presented and conclude that the attack on the validity of the compact and on the legislation approving the compact fails for multiple reasons.

Background

The original Graton Rancheria was located on a 15.45-acre parcel near the town of Graton, some distance from Rohnert Park. In 2000, Congress passed the Graton Rancheria Restoration Act (the Graton Act), recognizing the Graton Tribe and making tribal members eligible "for all federal services and benefits furnished to federally recognized Indian tribes or their members." (25 U.S.C. § 1300n-2(c)(1).) The Graton Act provides that upon application by the Graton Tribe, the Secretary of the Interior "shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California, for the benefit of the Tribe after the property is conveyed or otherwise transferred to the Secretary."

(25 U.S.C. § 1300n-3(a).) The Graton Act also provides that any real property taken into trust for the benefit of the Graton Tribe "shall be part of the Tribe's reservation." (25 U.S.C. § 1300n-3(c).) In May 2008, the federal Bureau of Indian Affairs published notice in the Federal Register of its intention to accept title to the casino site in trust for the Graton Indians. (73 Fed.Reg. 25766 (May 7, 2008).) In June 2008 the Graton Rancheria Tribal Council enacted the Graton Rancheria Gaming Ordinance and in August the Chairman of the National Indian Gaming Commission approved the ordinance "for gaming only on Indian lands, as defined in IGRA [the Indian Gaming Regulatory Act, 25 United States Code section 2701 et seq.], over which the Graton Rancheria exercises jurisdiction." In October 2010, title to the casino site was transferred to the United States in trust for the Graton Indians (from a subsidiary of a Nevada-based casino operator that had acquired title to the property in 2005). Attached to the grant deed was a document entitled "Acceptance of Conveyance" executed on behalf of the Secretary of the Interior by which the grant was "accepted by the United States of America pursuant to [Public Law] 106-568, the Graton Rancheria Restoration Act, 25 U.S.C. § 1300n-3." Following negotiations between the Graton Tribe and the state, in March 2012 the Governor and the tribal chair of the Graton Tribe executed the "Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria."[1] On May 17, 2012, the Governor

1. Among the many detailed provisions of this lengthy agreement, which authorizes the operation of up to 3,000 slot machines and banked and percentage card games, the compact grants the state gaming agency the right to inspect the gaming

signed into law Assembly Bill No. 517 ratifying the compact. (Gov. Code, § 12012.56.)

Litigation challenging creation of the casino predated entry of the compact. In 2008, following publication of the notice of the Secretary's intention to accept title to the casino site, an action was filed in federal court seeking a declaration that transfer of title would not confer on the Graton Tribe jurisdiction over the site. The action was dismissed by the district court and the dismissal affirmed by the Ninth Circuit on the ground that use of the land as a casino was then speculative and the plaintiffs lacked standing. (*Stop the Casino 101 Coalition v. Salazar* (9th Cir. 2010) 384 Fed.Appx. 546.)

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devices, the casino, and its records. Section 9.4 of the compact provides: "Nothing in this compact impairs the civil or criminal jurisdiction of the state under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below, all state and local law enforcement agencies and state courts shall exercise jurisdiction to enforce the state's criminal laws on the tribe's Indian lands, including the gaming facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the state and the United States, as is exercised by state and local law enforcement agencies and state courts elsewhere in the state, to the fullest extent permitted by decisions of the United States Supreme Court related to Public Law 280. The tribe hereby consents to such criminal jurisdiction. However, no gaming activity conducted by the tribe pursuant to this compact may be deemed to be a criminal violation of any law of the state. Except for such gaming activity conducted pursuant to this compact, criminal jurisdiction to enforce state gambling laws on the tribe's Indian lands, and to adjudicate alleged violations thereof, is hereby transferred to the state pursuant to 18 U.S.C. § 1166(d)."

Appendix C

The present action was commenced on May 21, 2012, before construction of the casino had begun. The coalition sought a temporary restraining order and a preliminary injunction to prevent construction but that relief was denied. Subsequently the coalition filed a second amended complaint, the first cause of action of which seeks a declaration that the statute approving the compact is invalid. The complaint alleges that the Graton Tribe does not have jurisdiction over the casino site so that the compact is not in compliance with IGRA, causing the statute to be out of compliance with the California Constitution. The court sustained the state's demurrer to the second amended complaint on the ground that the Secretary of the Interior and the Chairman of the National Indian Gaming Commission had not been joined. The coalition filed an amendment to the second amended complaint joining the two federal officials, who promptly filed a special appearance asserting that their joinder is precluded by federal sovereign immunity. The coalition then dismissed the secretary and the chairman from the suit.

Eventually the parties filed competing motions for summary judgment. In granting the state's motion and denying the coalition's motion, the trial court explained: "In expressly stating to this court that they do 'not challenge actions taken by federal officials or pursuant to federal law' and declining to further pursue available avenues of relief under federal law against appropriate federal defendants, who took the property into trust making it a part of the tribe's reservation, and approved the tribal gaming ordinance, plaintiffs effectively concede

all of the elements necessary to establish the validity of the compact under federal law. [Citations.] [¶] The secretary's action in taking the property into trust on behalf of the tribe was in accordance with the express provision of the Graton Restoration Act, and the property's status as part of the tribe's reservation is expressly mandated by federal law. With the Tribe having been federally recognized pursuant to federal law, and the property being a part of the tribe's reservation under federal law, the property is eligible for class III gaming under IGRA. It follows that under IGRA, the tribe having had its gaming ordinance approved by the Chairman of the National Indian Gaming Commission, and hav[ing] negotiated the compact with the State of California that was duly ratified by the California State Legislature, class III gaming is permitted on the property under both federal law and the state Constitution. (Cal. Const., art. IV, § 19, subd. (f)).”[2]

The coalition timely appealed from the judgment subsequently entered in favor of the Governor.

Discussion

Article 4, section 19, subdivision (e) of the California Constitution provides that “The Legislature has no

2. The trial court also stated that in view of a petition for a writ of mandate that the coalition filed in October 2012 premised on the existence of the compact, unsuccessfully challenging alleged noncompliance with the California Environmental Quality Act, it appeared “that judicial estoppel should apply to [the coalition's] position in the instant action that Government Code section 12012.56 is invalid.”

power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey." However, subdivision (f) of section 19, added by Proposition 1A on the March 7, 2000 ballot, provides as follows: "Notwithstanding subdivision[] . . . (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of . . . banking and percentage card games by federally recognized Indian tribes on Indian lands in California *in accordance with federal law.* Accordingly, slot machines, . . . banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts." (Italics added.)

The coalition emphasizes the italicized reference to compliance with federal law, which law is to be found in IGRA, the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). This statute provides: "Class III gaming activities shall be lawful on Indian lands only if such activities are— [¶] (A) authorized by an ordinance or resolution that— [¶] (i) is adopted by the governing body of the Indian tribe *having jurisdiction over such lands*, [¶] . . . and [¶] (iii) is approved by the Chairman." (25 U.S.C. § 2710(d)(1), italics added.)[3] The coalition argues that the transfer of title to the casino site to the United States

3. The statute further provides that such gaming activities are lawful only if "(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and [¶] (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State . . . that is in effect." (25 U.S.C. § 2710(d)(1).)

in trust for the Graton Tribe did not confer *jurisdiction* over this site on the Graton Tribe, so that IGRA does not authorize gaming activities on that site and the California Constitution in turn does not permit the Governor to enter a compact authorizing gaming on that site.

The coalition argues that the transfer to the federal government of title to property is not the equivalent of a transfer of jurisdiction. As a general proposition, this is correct. (See, e.g., *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512, 1520.) Relying on *Coso Energy Developers,* the coalition argues that jurisdiction over property within a state can be acquired by the United States in only three ways: purchase or donation of property with the consent of the state, reservation of jurisdiction on admission of the state to the union, and a state's cession of jurisdiction with the acceptance of the United States. (See *ibid.*) Clearly neither of the first two methods apply and, the coalition argues, neither does the

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The statute also provides that "Any Tribal-State compact . . . may include provisions relating to—[¶] (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity; [¶] (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations." (25 U.S.C. § 2710(d)(3)(C)(i)-(ii).)

The purposes of IGRA include providing "a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." (25 U.S.C. § 2702(1); see generally, *Artichoke Joe's v. Norton* (E.D.Cal. 2002) 216 F.Supp.2d 1084, 1091-1094.)

third. The coalition contrasts the Graton Act statutory language, which provides only that real property taken into trust for the benefit of the tribe "shall be part of the tribe's reservation," with the statute authorizing land to be taken into trust for the Pokagon Band of Potawatomi Indians, which provides: "The Band shall have jurisdiction to the full extent allowed by law over all lands taken into trust for the benefit of the Band by the Secretary." (25 U.S.C. § 1300j-7.) Since the Graton Act does not explicitly state that the Graton Tribe shall acquire jurisdiction, the coalition argues that although the United States has acquired title to the casino site in trust for the benefit of the Graton Tribe, the Graton Tribe has not acquired jurisdiction over the site.

There are numerous fallacies in the coalition's argument. As pointed out above, the Chairman of the National Indian Gaming Commission has approved the Graton Tribe's gaming ordinance under IGRA for gaming "on Indian lands, as defined in IGRA, over which the Graton Rancheria exercises jurisdiction." The coalition's theory rests on the premise that the chairman incorrectly determined that the Graton Tribe exercises jurisdiction within its reservation. The chairman is not a party to these proceedings and this court would be in no position to set aside his determination even if we disagreed with it. Moreover, his determination clearly is correct.

The coalition does not challenge the ability of Congress to authorize the recognition of an Indian tribe and the acceptance of land in trust for the tribe as the tribe's reservation. (U.S. Const., art. I, § 8, cl. 3; *Carcieri*

v. Kempthorne (1st Cir. 2007) 497 F.3d 15, 39, revd. on other grounds *sub nom. Carcieri v. Salazar* (2009) 555 U.S. 379.)[4] That, in short, is what the Graton Act has done. Recognition of an Indian reservation necessarily confers a degree of jurisdiction on the affected Indian tribe. Federally recognized Indian tribes are " 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories." (*Big Horn County Electric Cooperative, Inc. v. Adams* (2000) 219 F.3d 944, 954.) "The [Supreme] Court has consistently recognized that Indian tribes retain 'attributes of sovereignty over both their members and their territory,' [citation], and that 'tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the

4. This premise has been challenged in an amicus curiae brief filed on behalf of the County of Napa, City of American Canyon, Napa County Farm Bureau, Napa Valley Grapegrowers, and Napa Valley Winegrowers. Relying largely on its interpretation of article IV, section 3 of the United States Constitution, which guarantees "state territorial integrity" (*Garcia v. San Antonio Metropolitan Transit Authority* (1985) 469 U.S. 528, 550), the amicus brief argues that Congress has no authority to take property located within a state, in trust for Indians or otherwise, without the consent of the state (except as authorized by the Enclaves Clause, discussed below, or the power of eminent domain). The thrust of this argument is that the Graton Act itself is unconstitutional. Recognizing that this court has no power to declare an act of Congress unconstitutional, the coalition has steadfastly maintained that it does not question the validity of the Graton Act. We do not comment on the reasons for which the amicus brief argues that the Indian Commerce Clause (U.S. Const. art. I, § 8, cl. 3) has been misinterpreted to confer on Congress plenary power to legislate in the field of Indian affairs, but proceed on the premise, as does the coalition and as we must, that the Graton Act is within the constitutional authtority of Congress.

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"IGRA is an example of 'cooperative federalism' in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme." (*Artichoke Joe's v. Norton, supra,* 216 F.Supp.2d at p. 1092.) Federal regulation provides explicitly that "none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States. . . ." (25 C.F.R. § 1.4(a).)[5]

5. The regulation permits the Secretary of the Interior to make exceptions in specific cases (25 C.F.R. § 1.4(b)) but no party suggests the applicability of any exception in the present case.

Appendix C

The suggestion that a tribe does not necessarily exercise some jurisdiction over its reservation is at odds with "traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." (*California v. Cabazon Band of Mission Indians, supra,* 480 U.S. at p. 216.) Indeed, the amicus curiae brief submitted in support of the coalition's position acknowledges "It is beyond dispute that the federal government's acquisition of lands for Indians whether authorized by a tribe-specific congressional act or [25 United States Code] section 465 establishes 'Indian country' and thereby diminishes the fundamental jurisdictional rights of states and their political subdivisions."[6]

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6. "Indian country" is defined in 18 United States Code section 1151 to include "any Indian reservation under the jurisdiction of the United States Government." IGRA defines "Indian lands" as "(A) all lands within the limits of any Indian reservation; and [¶] (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or . . . over which an Indian tribe exercises governmental power." (25 U.S.C. § 2703(4).)

The amicus brief cites a number of additional cases reflecting the basic proposition that an Indian tribe has jurisdiction over its reservation: *South Dakota v. United States DOI* (8th Cir. 2012) 665 F.3d 986, 990 ["States generally lack authority to regulate Indian tribes and tribe members on trust property."]; *Yankton Sioux Tribe v. Podhradsky* (8th Cir. S.D. 2010) 606 F.3d 994, 1006 ["Indian country falls under the primary civil, criminal, and regulatory jurisdiction of the federal government and the resident Tribe rather than the states."]; *United States v. Roberts* (10th Cir. 1999) 185 F.3d 1125, 1131 ["lands owned by the federal

Thus, in *City of Roseville v. Norton* (D.D.C. 2002) 219 F.Supp.2d 130, a federal district court rejected a challenge to the Secretary of the Interior's taking land into trust on behalf of the United Auburn Indian Community with the intention of permitting the tribe to open a gaming casino. By legislation comparable to the Graton Act, Congress had recognized the status of the tribe as an Indian tribe and authorized the secretary to accept land in Placer County in trust for the benefit of the tribe, without explicitly stating that it was thereby conferring jurisdiction on the tribe. (*Id.* at p. 135; 25 U.S.C. § 1300l-2.) Like the Graton Act, the Auburn Indian Restoration Act provided that property taken in the name of the United States in trust for the tribe "shall be part of the Tribe's reservation." (25 U.S.C. § 1300l-2(c).) The court rejected a multitude of arguments as to why the secretary had no constitutional authority to take such action (*City of Roseville,* pp. 149-156) and why the action violated IGRA (*id.* at pp. 156-164). Although the petitioners in that case did not make precisely the same arguments as the coalition makes here, the decision clearly recognizes that acceptance by the federal government of land in trust for an Indian tribe thereby confers jurisdiction on the tribe over the resulting reservation.

One of the arguments rejected by the court in *City of Roseville v. Norton, supra,* 219 F.Supp.2d 130 is that the Enclaves Clause of the United States Constitution

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government in trust for Indian tribes are Indian country pursuant to 18 U.S.C. § 1151"]; *Narragansett Indian Tribe v. Narragansett Elec. Co.* (1st Cir. 1996) 89 F.3d 908, 920 ["Taking land in trust is a considered evaluation and acceptance of responsibility indicative that the federal government has 'set aside' the lands."].

(U.S. Const., art. I, § 8, cl. 17)[7] prohibits the assumption of federal jurisdiction without the consent of the state in which the property is situated. The court pointed out that this clause applies only to federal acquisition of exclusive jurisdiction, and that "[j]urisdiction over Indian lands . . . is not exclusive, and requires 'an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.'" (*City of Roseville,* p. 150.) The "assertion that the Enclaves Clause stands for the proposition that 'before land can be removed from the primary sovereignty of a state, the legislature of the impacted state must grant its consent to such a removal' . . . is simply incorrect." (*Ibid.*) Although the coalition now disavows reliance on the Enclaves Clause, *Coso Energy Developers v. County of Inyo, supra,* 122 Cal.App.4th 1512, on which the coalition heavily relies, was addressing only the means by which the federal government may obtain *exclusive* jurisdiction over land within a state.[8] That decision says nothing about the

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7. This clause authorizes Congress "[t]o exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings."

8. Contrary to counsel's statement at oral argument, other cases cited in *Coso Energy Developers* and in the coalition's brief were also referring to the means of obtaining exclusive federal jurisdiction. (E.g., *Silas Mason Co. v. Tax Commission of Washington* (1937) 302 U.S. 186, 210 ["exclusive legislative authority would be obtained by the United States only through cession by the State"]; *Surplus Trading Co. v. Cook* (1930) 281 U.S. 647, 652-656.)

means by which jurisdiction that is not exclusive of federal or state jurisdiction may be acquired by an Indian tribe.

Although, as the coalition points out, the federal statute recognizing the Pokagon Band of Potawatomi Indians contains language explicitly conferring jurisdiction on the tribe, the Governor correctly responds that the statutes recognizing other tribes are in this respect almost identical to the Graton Act. (25 U.S.C. §§ 1300k-4(d), 1300l-2(c), 1300m-3-(b); cf. 25 U.S.C. §§ 1300g-4(a)-(b), 1300h-5(a), 1300i-(b), (c)(1).) These other statutes also contain no explicit reference to jurisdiction, but that they do confer jurisdiction on the respective tribes (albeit limited or concurrent with respect to jurisdiction over certain matters reserved to the federal or state governments) appears to be beyond question.

Finally, even if—contrary to all of the foregoing—the coalition were correct that jurisdiction over the land transferred to the United States in trust for the Graton Tribe could not be conferred on the tribe without the express consent of the state, such consent is implicit in the compact signed by the Governor and ratified by the Legislature. Although the compact is not a formal "cession" of jurisdiction as that term has been used, the compact, signed by the Governor and ratified by the Legislature, recognizes and consents to the exercise of jurisdiction by the Graton Tribe in conformity with the terms of that agreement. The recitals to the compact refer explicitly to the exchange of benefits "on a sovereign-to-sovereign basis," to the need "to promote strong tribal government and self-sufficiency," and to the "joint

sovereign interest" of the tribe and the state. A recital confirms that "this compact will afford the tribe primary responsibility over the regulation of its gaming facility." The compact provisions referred to in footnote 1, *ante*, while containing the tribe's consent to the retention of broad jurisdiction by the state, preclude the state from prohibiting gaming activity authorized by the compact. The acknowledgement of the tribe's jurisdiction in this manner is consistent with the provisions of Government Code section 110, which provides that the extent of the state's jurisdiction "over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of the cession or the laws under which the purchase or condemnation is made."[9]

In all events, the premise of the coalition's argument fails. By virtue of the Graton Act, the Graton Tribe acquired jurisdiction over its reservation in conformity with IGRA. Therefore, the compact between California and the Graton Tribe was "in conformance with federal law" and consistent with article 4, section 19, subdivision (f) of the California Constitution.

9. While the 254-acre site was not "purchased" by the United States, we see no reason why this provision should not be read to encompass property gifted to the federal government.

Appendix C

Disposition

The judgment is affirmed.[10]

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.

10. The coalition's several requests for judicial notice are denied, as the materials to which the requests refer are irrelevant or unnecessary to resolution of the issues on appeal.

APPENDIX D — TRIAL COURT JUDGMENT, ISSUED BY THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SONOMA, FILED OCTOBER 1, 2013

SUPERIOR COURT OF THE
STATE OF CALIFORNIA

COUNTY OF SONOMA

STOP THE CASINO 101 COALITION,
MARILEE MONTGOMERY, PAM MILLER
and FRED SOARES,

Plaintiffs,

v.

EDMUND G. BROWN JR., Governor of the State
of California, in his official capacity,
and DOES 1 through 100,

Defendants.

Case No. SCV 251712

JUDGMENT OF DISMISSAL FOLLOWING ORDER GRANTING SUMMARY JUDGMENT

Pursuant to the Court's order dated August 13, 2013, granting defendant Edmund G. Brown Jr., Governor of the State of California's motion for summary judgment, a true and correct copy is attached hereto as Exhibit A.

Appendix D

IT IS ORDERED, ADJUDGED, AND DECREED that plaintiffs Stop the Casino 101 Coalition, Marilee Montgomery, Pam Miller and Fred Soares' Second Amended Verified Complaint for Declaratory and Injunctive Relief is dismissed with prejudice in its entirety and judgment be entered in favor of defendant Edmund G. Brown Jr., Governor of the State of California.

Dated: OCT 01 2013 GARY NADLER [for]
HONORABLE ELLIOT L. DAUM

Approved as to form:

MICHAEL T. HEALY
Attorney for Plaintiffs

Appendix D

EXHIBIT A

SUPERIOR COURT OF THE
STATE OF CALIFORNIA

COUNTY OF SONOMA

STOP THE CASINO 101 COALITION, MARILEE MONTGOMERY, PAM MILLER and FRED SOARES,

Plaintiffs,

v.

EDMUND G. BROWN JR., Governor of the State of California, in his official capacity, and DOES 1 through 100,

Defendants.

Case No. SCV 251712

ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION OF ISSUES AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Judge: The Honorable Elliot L. Daum
Trial Date: Vacated
Action Filed: May 21, 2012

The motion by plaintiffs STOP THE CASINO 101 COALITION, MARILEE MONTGOMERY, PAM MILLER and FRED SOARES for summary adjudication of issues and the motion for summary judgment by

defendant EDMUND G. BROWN JR., Governor of the State of California, sued in his official capacity, came on for hearing in Department 16 of this Court on July 12, 2013. Deputy Attorney General William L. Williams, Jr., appeared on behalf of Defendant, EDMUND G. BROWN JR. Michael T. Healy, Attorney at Law, and Bruce A. Miroglio, Attorney at Law, appeared on behalf of plaintiffs STOP THE CASINO 101 COALITION, MARILEE MONTGOMERY, PAM MILLER and FRED SOARES.

The parties' respective motions having been submitted to the Court for decision after oral argument, and after full consideration of the evidence and the written and oral submissions by the parties, the Court finds that there are no triable issues of material fact, and that plaintiffs' motion is denied in its entirety and that defendant's motion is granted in its entirety for the reasons stated, and upon the evidence identified, in the Court's Memorandum of Decision Granting Defendant's Motion for Summary Adjudication and Denying Plaintiffs' Motion for Summary Adjudication filed August 1, 2013, a true and correct copy of which is attached hereto as Exhibit A. The parties' respective requests for judicial notice in support of their respective motions are granted.

THEREFORE IT IS ORDERED that the plaintiffs' motion for summary adjudication of issues be **DENIED. IT IS FURTHER ORDERED** that defendant's motion for summary judgment is **GRANTED,** and that judgment in favor of defendant EDMUND G. BROWN JR., Governor of the State of California and against plaintiffs STOP THE CASINO 101 COALITION, MARILEE MONTGOMERY,

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PAM MILLER and FRED SOARES shall be entered accordingly. The defendant will submit a proposed form of judgment within five (5) days of this Order.

Dated: August 13, 2013

/s/_____
HONORABLE ELLIOT L. DAUM

Appendix D

EXHIBIT A

HON. ELLIOT LEE DAUM
JUDGE OF THE SUPERIOR COURT
Courtroom 16
3035 Cleveland Avenue, Suite 200
Santa Rosa, CA 95403
(707) 521-6547

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

STOP THE CASINO 101 COALITION, *et al.*,

Plaintiffs,

v.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, IN HIS OFFICIAL CAPACITY, *et al.*,

Defendants.

Case No. SCV-251712

MEMORANDUM OF DECISION GRANTING DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND DENYING PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

Plaintiffs and Defendant's Motions for Summary Adjudication came on regularly for hearing on July 10, 2013, before the Honorable Elliot Lee Daum, Judge Presiding. Counsel Michael T. Healy and Bruce A.

Miroglio were present on behalf of Plaintiffs. Counsel William L. Williams was present behalf of Defendant.

Upon consideration by the court of the papers and evidence filed in support of and in opposition to the motions, and having heard and considered oral argument of counsel, the court makes the following ruling:

MEMORANDUM OF DECISION AFTER HEARING GRANTING DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND DENYING PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

Facts

The Graton Rancheria Restoration Act of 2000 (the "Graton Act"), codified at 25 U.S.C. section 1300n-1, *et seq.*, provides that "upon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County ..." 25 U.S.C. section 1300n-3(a). The Graton Act further provides that land selected by the FIGR for trust status shall become part of their reservation, but does not purport to alter California's sovereignty or jurisdiction over the property.

In October 2010, the United States Department of the Interior accepted title to 254 acres of land pursuant to the Graton Act, mostly adjacent to, but partially within, the City of Rohnert Park (the "Property"), in trust for the FIGR.

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In March 2012, the Governor concluded a compact with the FIGR that would allow them to construct and operate a Nevada-style casino with 3,000 slot machines on the site.

In May 2012, the California Legislature passed AB 517, enacting Government Code section 12012.56, which ratified the Graton Compact. On May 17, 2012, the Governor signed AB 517 into law. AB 517 was an urgency bill and took effect immediately.

Since California was admitted into the Union in 1850, the Property was governed by the State of California and was never governed by the FIGR or any other Indians. Nothing in AB 517 or Government Code section 12012.56 purports to cede sovereignty or jurisdiction over the Property to either the United states or to FIGR.

Defendant's Statement of Undisputed Material Facts ("SUMF")

The Property was taken in trust for the benefit of the Tribe by the Secretary of State in May 2008. (SUMF #1) No successful legal challenge to action taking the Property into trust has been mounted by Plaintiffs. (SUMF #2)

Plaintiffs by this suit do not challenge the action of the Secretary of the Department of the Interior in taking the Property into Trust. (SUMF #3) Plaintiffs do not challenge the federal law under which the Secretary took the Property into Trust. (SUMF#4)

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On October 4, 2010, three separate Grant Deeds were recorded transferring ownership of the various parcels comprising the Property from SC Sonoma Development, LLC to the United States of America in trust for the Tribe. (SUMF #5) The Tribal-State Compact between the State of California and the Tribe was executed March 12, 2012. (SUMF #6) The Compact authorizes casino gaming on the Property with up to 3,000 slot machines. (SUMF #7) By the express terms of the Graton Restoration Act, the Property became part of the Tribe's reservation. (25 U.S.C. § 1300n-3(a) & (c); SUMF #14.) No successful challenge has been brought against the Secretary's action taking the property into trust or the Property's reservation status. (SUMF #3-4.) Plaintiffs do not challenge the Graton Restoration Act or the actions taken by the Secretary under it in this suit. (*Id.*)

The Tribes' class III gaming ordinance was approved by the Chairman of the NIGC on August 25, 2008. (SUMF #14; Defendant's Request for Judicial Notice ("RJN"), Exh. M&N.)

The Compact allowing for class III gaming on the Property was executed in March 2012. (SUMF #3) The Compact was ratified by the State Legislature under AB 517, which is codified at Government Code section 12012.56. (SUMF # 9-10).

Relevant Procedural History

On May 21, 2012, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in this matter against

the Governor. Plaintiffs sought a declaration that the Tribal-State class III gaming compact between the Tribe and the State and the legislation ratifying it (Gov. Code § 12012.56) are "invalid and unenforceable" and violated the California Constitution and IGRA. Plaintiffs also sought to permanently enjoin the Governor "from participation in the administration of the Compact or taking any actions to carry out the purposes of the [legislation and statute ratifying it];" and to require the Governor to notify federal officials that the ratification of the Compact is a nullity. (Complaint, prayer, p. 12) On June 14, 2012, Plaintiffs sought a temporary restraining order that was heard and denied by this Court on that same date.

On June 25, 2012, Plaintiffs filed a First Amended Verified Complaint for Declaratory and Injunctive Relief (FAC). The FAC was verified and contained minor changes, but was largely the same as the original Complaint.

On July 31, 2012, Plaintiffs filed the Second Amended Complaint (SAC), in which Plaintiffs set forth two causes of action, with the first cause of action repeating largely the same allegations as the original complaint, but also added a second cause of action for an alleged violation of the Compact. The SAC continues to seek Declaratory and Injunctive Relief regarding both causes of action. Defendant's demurred to the SAC and said demurrer was sustained with leave to amend.

Plaintiffs desire a judicial determination and declaration of Plaintiffs' and Defendant's rights and duties

under AB 517 and Government Code section 12012.56, of the question of whether AB 517 and Government Code section 12012.56 violate California Constitution, Article IV, section 19(e) and (f), and the validity and enforceability of AB 517 and Government Code section 12012.56. Plaintiffs submit that a declaration is necessary and appropriate at this time so that Plaintiffs may ascertain their rights and duties without being subjected to a possibly irreversible decision to build the casino, or the later interposition of a laches defense. For the reasons set forth below, this Court finds no violation of the California Constitution. AB 517 codified as Government Code section 12012.56 is both valid and enforceable.

Plaintiffs also plead injunctive relief to avoid great or irreparable injury to Plaintiffs, because monetary compensation would not provide adequate relief.

MOTION:

Pursuant to Code of Civil Procedure section 437c, Defendant moves the court for an order that summary judgment be entered in favor of this Defendant and against all Plaintiffs in the within matter, Stop the Casino 101 Coalition, Marilee Montgomery, Pam Miller and Fred Soares. The grounds for the motion are that no triable issue exists for any material fact in this case, and Defendant is entitled to summary judgment as a matter of law.

Alternatively, Defendant moves for an order that the following causes of action and claims have no merit and are eliminated from this case:

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1. Plaintiffs first cause of action for Declaratory and Injunctive Relief, which is wholly negated by unchallenged provisions of the Graton Restoration Act (25 U.S.C. §§ 1200n, *et seq.*) and the Indian Gaming Regulatory Act (25 U.S.C. §§ 2700, *et seq.*, "IGRA" and that is wholly without merit because the Enclaves Clause of the United States Constitution (U.S. Const., Art. I, § 8, cl. 17)), provides no basis to challenge the class III gaming compact between the State of California and the Federated Indians of the Graton Rancheria (Compact) or Government Code section 12025.56;

2. Plaintiffs' second cause of action for Declaratory and Injunctive Relief must be dismissed because there is no right in third parties to enforce the Compact, there is no private right of action to enforce the Compact, and the claim is moot.

Opposition

Plaintiffs argue that the Defendant's moving papers fail to identify any affirmative cession of Jurisdiction over the FIGR site to the Federal Government by the California Legislature by any of the three *Coso* methods. (*Cosa Energy Developers v. County of Inyo* (2004) 22 Cal. App.4th 1512, 1520).

Plaintiffs argue there is no transfer of jurisdiction to the Federal Government unless and until the Federal Government formally accepts the transfer. Accordingly, Plaintiffs contend that the lack of tribal jurisdiction renders the challenged gaming Compact invalid under the California Constitution for two separate reasons: because

the subject property remains subject to the sovereignty and jurisdiction of California, the exception provided by California Constitution Article IV, section 19(f) does not apply, and the prohibition on casino gaming contained in California Constitution Article IV, section 19(e) is in effect and renders the challenged statute illegal; and (2) Congress in enacting IGRA limited Indian gaming to lands under tribal jurisdiction, and Proposition 1A requires gaming compacts to be "in accordance with federal law." IGRA provides for gaming on Indian lands, but only if the Indian lands are under the tribe's jurisdiction.

Reply

Plaintiff's Request for Judicial Notice ("RJN")

Pursuant to Evidence Code sections 452 and 453 that the Court take judicial notice of documents relevant to determining the issues on the subject demurrer, as follows:

1. Three selected pages (pages 4, 5 and 90) from the official statewide Voter's Pamphlet from the March 7, 2000 statewide Primary Election.

2. Selected pages (cover and pages 11, 12, 107, 108 and A-1 through A-5) of the Tribal-State Compact between the State of California and the Federated Indians of Graton Rancheria Gaming Ordinance dated August 25, 2005.

3. National Indian Gaming Commission approval of the Graton Rancheria Gaming Ordinance dated August 25, 2008.

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Official ballot materials are properly subject to judicial notice. *Strong v. State Board of Equalization* (2007) 155 Cal.App.4th 1182, 1188 fn.3.¶

Accordingly, the Court takes judicial notice of these ballot materials.

FIRST CAUSE OF ACTION—DECLARATORY AND INJUNCTIVE RELIEF (CCP §§ 526, 1060)

Defendant argues that Plaintiffs' first cause of action should be dismissed on the grounds that the unchallenged provisions of federal law negate Plaintiffs' claims. Plaintiffs' first cause of action is based upon the theory that the property taken into trust by the federal government for the benefit of the Tribe is not "Indian Lands" under IGRA, is not under the Tribe's jurisdiction under IGRA, and hence is not eligible for casino-style gaming under the IGRA or the California Constitution. (Complaint, ¶¶ 37-39). Plaintiffs ultimately conclude that the Tribal-State Compact Between the State of California and the Federated Indians of the Graton Rancheria and the legislation ratifying it (Gov. Code § 12012.56) violates the California State Constitution. Plaintiffs' requisite predicate for their constitutional claim is a violation of the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701, *et seq.*, IGRA), in that the parcel of land upon which the Federated Indians of the Graton Rancheria's (Tribe) gaming casino is to be built and operated under the Compact is not eligible for tribal gaming under IGRA.

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Under the Graton Restoration Act, federal recognition was restored to the Tribe. The Secretary was required to take property in Marin or Sonoma Counties into trust for the Tribe's benefit. There is no factual dispute that this is what was done in relation to the Property. (SUMF #1) The Graton Restoration Act further provides that property taken in trust for the benefit of the Tribe "shall be part of the Tribe's reservation." (25 U.S.C. § 1300n-3(a)). The property taken into trust is not subject to state taxation. (*Ibid*). Other provisions of the Graton Restoration Act address tribal membership and the formation of the Tribe's government. (25 U.S.C. §§ 1300n-4-6)

Under IGRA, "Indian lands" are defined as "(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." (25 U.S.C. § 2703(4))

Under IGRA, casino-style gambling, also called class III gaming, is lawful on "Indian lands" if authorized by an ordinance or resolution that- (i) is adopted by the governing body of the Indian tribe having jurisdiction over the lands ... and (iii) is approved by the Chairman [of the National Indian Gaming Commission]." (25 U.S.C. § 2710(d)(1)(A)) Indeed, IGRA specifically allows for gaming to be conducted on lands acquired by a tribe after 1988, if such "lands were taken into trust as part of ... the restoration of lands for an Indian tribe that is restored to

Federal recognition." (25 U.S.C. § 2719(b)(1)(B)(iii)) That is precisely the situation for the Tribe and the Property in this case. Accordingly, the State negotiated a compact with the Tribe as required under IGRA. (25 U.S.C. § 2710(d)(7)(B)(ii)).

In *Brock v. County of Los Angeles* (1937) 9 Cal.2d 291, 300, the California Supreme Court addressed its obligations in relation to unchallenged provisions of federal law and the actions of federal officials taken under federal law as follows:

> "The case of *United States v. Butler*, 297 U.S. 1 [56 Sup. Ct 312, 80 L. Ed. 477, 102 A. L. R. 914], relied upon by respondents, held unconstitutional the processing taxes sought to be collected under the federal Agricultural Adjustment Act as part of the plan of crop control. The court confined its opinion to the provisions of the act then before it. Until the federal courts have finally determined the scope of the decision in the Butler case, *we are bound to presume that the present acts of federal officials under federal law are valid,* based as they are upon provisions of the statute different from those under review in the *Butler* case." (Italics added.)

Even where a federal statute is challenged, which is not the case here, it is presumed to be valid. *(INS v. Chadha* (1983) 462 U.S. 919, 944). Plaintiffs cannot fairly ignore federal laws. In expressly stating to this Court

that they do "not challenge actions taken by federal officials or pursuant to federal law" and declining to further pursue available avenues of relief under federal law against appropriate federal defendants, who took the Property into trust making it a part of the Tribe's reservation, and approved the tribal gaming ordinance, Plaintiffs effectively concede all of the elements necessary to establish the validity of the Compact under federal law. (Defendant's RJN, Exh. G, 2:1-2; 25 U.S.C. § 2710(d)(1); see *Stop the Casino 101 Coalition v. Salazar* (9th Cir. 2010) 384 Fed. Appx. 546, 548 [holding that Plaintiffs did not have standing to challenge the Secretary's determination to take the Property into trust because "the resultant injuries are all hypothetical, related to the possible building of a Casino in the future"]; see *Citizens Against Casino Gambling in Erie County v. Stevens* (W.D.N.Y. May 10, 2013, 09-CV-291S) 2013 U.S. Dist. Lexis 66900 [adjudicating a claim against the Chairman of the National Indian Gaming Commission under IGRA challenging the eligibility of land for tribal gaming].)

The Secretary's action in taking the Property into trust on behalf of the Tribe was in accordance with the express provision of the Graton Restoration Act, and the Property's status as part of the Tribe's reservation is expressly mandated by federal law. With the Tribe having been federally recognized pursuant to federal law, and the Property being a part of the Tribe's reservation under federal law, the Property is eligible for class III gaming under IGRA. It follows that under IGRA, the Tribe having had its gaming ordinance approved by the Chairman of the National Indian Gaming Commission, and have negotiated

the Compact with the State of California that was duly ratified by the California State Legislature, class III gaming is permitted on the property under both federal law and the State Constitution. (Cal. Const., Art IV, § 19, subd. (f)).

Accordingly, Defendant's motion for summary adjudication is granted under the express terms of federal law and the State Constitution.

Although Plaintiffs appear to have abandoned any so-called enclave *theory,* it is worth noting authorities supporting the Federal/State construct.

The seminal United States Supreme Court case on Indian gaming cited by Plaintiffs in their moving papers, *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202 specifically addressed the issue of whether California's criminal jurisdiction over "Indian country" under PL 280 could support the enforcement of the state's gambling laws in "Indian country" in California. The Court stated:

> "California argues, however, that high stakes, unregulated bingo, and the conduct which attracts organized crime, is a misdemeanor in California and may be prohibited on Indian reservations. But that an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law within the meaning of Pub. Law 280. Otherwise, the distinction between § 2

> and §4 of that law could easily be avoided and total assimilation permitted. This view, adopted here and by the Fifth Circuit in the [*Seminole Tribe v.*] *Butterworth* [(5th Cir. 1981) 658 F. 2d 310] case, we find persuasive. Accordingly, we conclude that Pub. Law 280 does not authorize California to enforce [California's bingo law] within the Cabazon and Morongo Reservations.

(Id. at pp. 211-212) *Cabazon* did not hold that PL 280 was without force and effect. It simply delimited the scope of the State's criminal authority under it. As such, *Cabazon* conclusively demonstrates that exclusive trial or federal jurisdiction over land is not necessary to support gaming on "Indian lands" in California.

"In enacting IGRA, Congress was not only aware of the complicated legal framework governing state-tribal relations, but was legislating directly in response to a Supreme Court decision in this area—[Cabazon]." *(Rincon Band of Luiseno Mission Indians v. Schwarzenegger* (9th Cir. 2010) 602 F.3d 1019, 1048.)

> IGRA was Congress' compromise solution to the difficult questions involving Indian gaming. The Act was passed in order to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." And "to shield [tribal gaming] from organized crime and other corrupting influences to ensure that the Indian tribe is the

> primary beneficiary of the gaming operation." 25 U.S.C. §2702(1), (2). IGRA is an example of "cooperative federalism" in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme.
>
> (*Artichoke Joe's v. Norton* (E.D. Cal. 2002) 216 F. Supp. 1084, 1092).

IGRA does not require that for "Indian lands" to be eligible for tribal gaming, they must be ceded to the federal government—thus abrogating the State's jurisdiction under PL 280. Indeed, PL 280 remains in effect to this day in all "Indian country" in California. (18 U.S.C. § 1162).

Coso Energy Developers v. County of Inyo (2004) 122 Cal.App.4th 1512, cited by Plaintiffs in their opposition and in support of their Enclaves Clause theory, does not in any way address trust acquisitions of land by the federal government for Indian tribes, or tribal reservations. Rather it addresses the State's right to continued taxation of private entities operating geothermal energy projects pursuant to certain contracts and leases with the United States Navy on property that had not been ceded to the federal government by the state. (*Id.*, at 1517) It is of note that the unchallenged Graton Restoration Act specifically precludes state taxation of the Property. (25 U.S.C. § 1300n-3(d)). Accordingly, *Coso* does not apply in this case.

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Other cases cited by Plaintiffs have no application to this case. *Mason Co. v. Tax Commission of Washington* (1937) 302 U.S. 186, dealt with the federal government having "exclusive jurisdiction" over federal land and the notion that "exclusive jurisdiction" would be obtained by the United States, "only through cession by the State." (*Id.*, at 210) Similarly, in *Kake v. Egan* (1961) 369 U.S. 60, the issue was whether the federal government retained "exclusive jurisdiction" over fishing rights in Alaska under the Alaska Statehood Act. (*Id.*, at 68) Several other cases cited by Plaintiffs regarding state admissions statutes do not address issues of cession in the context of tribal lands.

DeCoteau v. District Court (1975) 420 U.S. 425, dealt with whether an Indian tribe, not a state, had ceded jurisdiction over land to the federal government. Similarly, *Yankton Sioux Tribe v. Podhradsky* (2010) 606 F.3d 994, involved tribal cession of land, not state cession of land.

On the other hand, in *City of Roseville v. Norton* (D.D.C. 2001) 219 F. Supp. 2d 130, in a legal and factual setting nearly identical to this case, a federal district court addressed similar issues. *City of Roseville* involved a direct challenge by a municipality to the Secretary's taking land into trust on behalf of the United Auburn Indian Community. As in the instant case, the land was taken into trust for United Auburn for gaming purposes under a congressional act restoring the tribe's federally recognized status. (*Id.*, at 135; see 25 U.S.C. §§ 13001, *et seq.*) The Auburn Indian Restoration Act had language almost identical to the Graton Restoration Act, providing the Secretary authority to take land into trust on behalf of United Auburn, and that such land would become part

of the tribe's reservation. (25 U.S.C. § 13001-2(a) & (c)) Plaintiffs in *City of Roseville* argued that the land had to be ceded by the state to the federal government to be eligible for gaming. The court rejected the plaintiff's arguments.

In any event, this case negates Plaintiffs' claim that the Property on which the Tribe is building its casino must be ceded by the state to the federal government to be eligible for gaming.

Plaintiff's Assert the Invalidity of Government Code §12025.56

In a petition for writ of mandate filed by Plaintiff Stop the Casino 101 Coalition (STOP) with this Court on October 12, 2012, STOP alleged: "California Government code section 12025.56 provides for an exemption from CEQA for a [sic] intergovernmental agreement between a tribe and County or City government negotiated pursuant to the express authority of, or as expressly referenced in, a Tribal-State Ratified Compact Agreement." *(Stop the Casino 101 Coalition v. City of Rohnert Park,* SCV-252617, Pet. For Writ of Admin. Mandamus [CCP § 1094.5 and/or 1085] to Compel the City to Comply with the CEQA and Compl. for Decl. Relief and Inj. Relief, ¶ 6, RJN, Exh. O.) In the SAC, here, and in Plaintiffs' instant motion, they seek to invalidate Government Code section 12012.56 as ratifying the Compact. (SAC, ¶¶ 3, 12, and [Prayer], ¶¶ 1 & 2.) The doctrine of judicial estoppel is a discretionary doctrine that precludes a party from taking two contrary legal positions before a judicial tribunal as follows:

> "The doctrine applies when '(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position and accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.'"

(People v. Catillo (2010) 49 Cal.4th 135, 155.)

In the *Stop the Casino 101 Coalition v. City of Rohnert Park, supra,* this Court issued a final order rejecting Plaintiffs' challenge to an intergovernmental mitigation agreement between the City of Rohnert Park and the Tribe. (*Stop the Casino 101 Coalition v. City of Rohnert Park,* SCV-252617, Order Granting City of Rohnert Park's Mot. For Judgment (May 30, 2013), RJN, Exh. P.) However, this Court stated: "In addition, [the City of Rohnert Park's adoption of a mitigation agreement] is exempt from CEQA review under Gov. Code § 12012.56(b)(1)(C)." *(Ibid.)* As such, assuming that the inconsistent positions taken by STOP before this Court are not the result of "ignorance, fraud, or mistake," it would appear that judicial estoppel should apply to STOP's position in the instant action that Government Code SECTION 12012.56 is invalid.

No Right in Third Parties to Enforce the Compact

While Plaintiffs' second cause of action seeks Declaratory and Injunctive Relief, it sounds in breach of Compact. The gravamen of the second cause of action is an alleged failure of the Governor to require that the

Tribe enter into a mitigation agreement with the City of Rohnert Park. (Complaint, ¶¶43-47; see Compact, §§ 4.4, 11.8.7) The ultimate allegation of the second cause of action is that "[t]he fact that construction has commenced on the casino without a valid agreement with the City of Rohnert Park is a violation of the Compact." (Complaint, ¶47.)

The Compact itself, as ratified by the State Legislature, includes a specific non-enforcement provisions it pertains to third parties that states:

> "Notwithstanding any provision of law, this Compact is not intended to, and shall not be construed to create any right on the part of a third party to bring an action to enforce any of its terms."

(RJN, Exh. H, Compact § 18.1) As such, under state law, Plaintiffs' second cause of action is precluded under the language of the Compact. (See Gov. Code § 12025.56).

IGRA sets forth the specific rights of action that allow enforcement of the Compact in federal court for: "any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under [IGRA]." There is no IGRA private right of action available to non-parties to the Compact to enforce it. In *Hein v. Captain Grande Band of Diegueno Mission Indians* (9th Cir. 2000) 201 F.3d 1256, 1260, the Ninth Circuit Court of Appeals held that no general right of action existed under IGRA. Accordingly, Plaintiffs have no private right of action to enforce the Compact under IGRA.

Appendix D

CONCLUSION

The Graton Restoration Act establishes all of the requisites necessary for the Property to be eligible for class III gaming under the Indian Gaming Regulatory Act ("IGRA"). (25 U.S.C. §§ 2700, *et seq.* and the California Constitution. Accordingly, the Governor negotiated the Compact with the Tribe to allow class III gaming on the Property under IGRA. The Compact was duly passed by the California State Legislature. All of the state constitutional requisites for class III gaming on the Property have been met, and Plaintiffs' motion must be denied.

Additionally, *City of Roseville, supra,* at 140-152 negates Plaintiffs' claim that the Property on which the Tribe is building its casino must be ceded by the state to the federal government to be eligible for gaming.

Defendant's Motion for Summary Adjudication is **GRANTED.**

Plaintiffs' Motion for Summary Adjudicated is **DENIED.**

IT IS SO ORDERED

DATED: August 1, 2013

/s/
ELLIOT LEE DAUM
Judge of the Superior Court

APPENDIX E — NATIONAL INDIAN GAMING COMMISSION APPROVAL OF GRATON GAMING ORDINANCE, DATED AUGUST 25, 2009 (INCLUDING EXCERPT FROM GRATON GAMING ORDINANCE)

NATIONAL INDIAN GAMING COMMISSION

August 25, 2008

Mr. John A. Maier
Maier Pfeffer & Kim, LLP
510 16th Street, Suite 302
Oakland, CA 94612

Re: Request for Approval of Graton Rancheria Gaming Ordinance

Dear Mr. Maier:

This letter responds to your request to the National Indian Gaming Commission ("NIGC") to review and approve the Graton Rancheria Gaming Ordinance, enacted by the Graton Rancheria Tribal Council by Resolution 08-13 on June 13, 2008, and received by the NIGC on June 19, 2008.

This letter constitutes approval of the Gaming Ordinance under the Indian Gaming Regulatory Act ("IGRA"). It is important to note, however, that approval is granted for gaming only on Indian lands, as defined in IGRA, over which the Graton Rancheria exercises jurisdiction.

Appendix E

Thank you for submitting the Gaming Ordinance for our review and approval. The NIGC staff and I look forward to working with you and the Rancheria on future gaming issues. If you have any questions or require assistance, please contact Denise Desiderio or John Hay in the Office of General Counsel, at 202-632-7003.

Sincerely,

/s/_____
Philip N. Hogen
Chairman

cc: Greg Sarris, Tribal Chairman
Graton Rancheria

Appendix E

[This is an excerpt of the first two pages of the Graton Gaming Ordinance]

GAMING ORDINANCE

OF THE

FEDERATED INDIANS OF GRATON RANCHERIA

Received by NIGC June 19, 2008

Approved by NIGC August 25, 2008

ARTICLE I: PURPOSE

The Federated Indians of Graton Rancheria ("Tribe"), acting through its Tribal Council, pursuant to the Tribe's inherent authority and the Constitution of the Federated Indians of Graton Rancheria, adopted December 23, 2002, as amended, hereby enacts this Ordinance in order to set the terms for class II and class III gaming operations on the Tribe's Indian lands.

ARTICLE II: DEFINITIONS

Section 1. General

Unless a different meaning is clearly indicated in this Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*) and its regulations (25 C.F.R. § 500 *et seq.*).

Appendix E

Section 2. Special Terms

In this Ordinance:

(a) CLASS I GAMING: "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(b) CLASS II GAMING: "class II gaming" means:

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith);

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of California, or

(II) are not explicitly prohibited by the laws of California and are played at any location in California, but only if such card games are played in conformity with those laws and regulations (if any) of California regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

The term "class II gaming" does not include any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(c) CLASS III GAMING: "class III gaming" means all forms of gaming that are not class I gaming (as defined by IGRA) or class II gaming.

(d) COMMISSION: "Commission" means the Federated Indians of Graton Rancheria Gaming Commission to be established pursuant to an ordinance duly adopted by the Tribal Council.

(e) COMPACT: "Compact" means a Tribal-State Compact concerning class III gaming approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. § 2710(d).

(f) IGRA: "IGRA" means the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* and its regulations, 25 C.F.R. § 500 *et seq.*

(g) INDIAN LANDS: "Indian lands" means all lands within the limits of any Indian reservation and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(h) KEY EMPLOYEE: "key employee" means

(1) A person who performs one or more of the following functions: bingo caller; counting room supervisor; chief of security; custodian of gaming supplies or cash; floor manager; pit boss; dealer; croupier; approver of credit; or custodian of gambling devices including person with access to cash and accounting records within such devices;

(2) If not otherwise included, any other person whose total cash compensation is in excess of fifty-thousand dollars ($50,000.00) per year; or

[End of excerpt]

APPENDIX F — HOUSE REPORT NO. 106-677 REGARDING THE GRATON RANCHERIA RESTORATION ACT

GRATON RANCHERIA RESTORATION ACT

HOUSE REPORT NO. 106–677

June 19, 2000

Mr. Young of Alaska, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 946]

The Committee on Resources, to whom was referred the bill (H.R. 946) to restore Federal recognition to the Indians of the Graton Rancheria of California, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 946 is to restore Federal recognition to the Indians of the Graton Rancheria of California.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 946 would restore federal recognition to the Indians of the Graton Rancheria of California. The Graton Rancheria is one of over 40 Indian tribes which were

terminated in 1958 by Public Law 85–671. Today there are approximately 355 members of the Federated Indians of Graton Rancheria living in the general vicinity of Santa Rosa, California.

H.R. 946 provides that the service area for the Tribe shall be Marin and Sonoma counties, that nothing in the legislation shall expand, reduce, or affect any hunting, fishing, trapping, gathering, or water rights of the Tribe, that real property eligible for trust status shall include certain Indian-owned land, and that the Secretary of the Interior shall compile a membership roll of the Tribe. The bill also provides for an Interim Tribal Council, the election of tribal officials, and the ratification of a constitution for the Tribe.

Section 5(d) of H.R. 946 provides that real property taken into trust for the benefit of the Tribe pursuant to the bill shall not have been taken into trust for "gaming" purposes pursuant to section 20(b) of the Indian Gaming Regulatory Act (12 U.S.C. 2719(b)).

COMMITTEE ACTION

H.R. 946 was introduced on March 2, 1999, by Congresswoman Lynn Woolsey (D–CA). The bill was referred to the Committee on Resources. On May 16, 2000, the Full Resources Committee held a hearing on the bill. On June 7, 2000, the Full Resources Committee met to mark up the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

Appendix F

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. A cost estimate has been requested but has not been received. However, the Committee does not believe that enactment of H.R. 946 would not have a significant effect on the federal budget.

2. Congressional Budget Act. As stated above, a cost estimate has been requested from the Congressional Budget Office but has not yet been received. The Committee does not believe that the bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but has not yet received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

Documentation of Miwok peoples dates back as early as 1579 by a priest on a ship under the command

of Francis Drake. Other verification of occupancy exists from Spanish and Russian Voyagers in 1595, 1775, 1793, and 1808. Missions established from 1809 to 1834 used Coast Miwok and Southern Pomo tribal people as a labor source. These records assist us today in substantiating Native genealogical persistence. After the Mission period (1769–1834) local Indian people continued in servitude to Mexican land grant owners throughout their confiscated tribal territories. Mexican and American period records show that a Coast Miwok, Camilo Ynitia, secured the land grant for Olompali near Novato within Coast Miwok homelands. Olompali is the site of a large village, extending from prehistoric times into the Spanish/Mexican periods, and continues today as an important historic locale. Another important locale was Nicasio (northwest of San Rafael). Near the time of secularization (1835) the Church granted the San Rafael Christian Indians 20 leagues (80,000 acres) of mission lands at Nicasio. About 500 Indians relocated to Nicasio. By 1850 they had but one league of land left. This radical reduction of land was a result of illegal confiscation of land by non-Indians under protest by Indian residents. In 1870, Jose Calistro, the last community leader at Nicasio, purchased the small surrounding parcel. Calistro died in 1875, and in 1876 the land was transferred by his will to his four children. In 1880 there were 36 Indian people at Nicasio. The population was persuaded to leave in the 1880s when Marin County curtailed funds to all Indians (except those at Marshall) who were not living at the Poor Farm, a place for "indigent" peoples.

Appendix F

By the beginning of California statehood (1850) the Marshall, Bodega, and Sebastopol peoples, along with their Pomo and Patwin neighbors were making the best of a difficult oppressive situation, by earning their livelihoods through farm labor or fishing, within their traditional homelands. William Smith, a Bodega Miwok, after force relocation to Lake County during the late 1800's, returned to Bodega Bay where he and his relatives founded the commercial fishing industry in the area. By the early 1900's a few people pursued fishing for their livelihoods; one family continued commercial fishing into the 1970's, while another family maintained an oyster harvesting business. When this activity was neither, in season nor profitable, Indian people of this area, sought agricultural employment, which required an itinerant lifestyle. The preferred locality for such work was within Marin and Sonoma counties.

In May 1920, Bureau of Indian Affairs Inspector John J. Terrell proposed the purchase of a 15.45 acre tract of land near the small rural Sonoma County town of Graton, for the "village home" of the Marshall, Bodega, Tomales, and Sebastopol Indians. Through the purchase of this land, put into federal trust, the government consolidated these neighboring traditionally interactive groups into one recognized entity, Graton Rancheria. In June 1923, a Bureau of Indian Affairs census of the Sebastopol Indians of Round Valley Agency, California, included seventy-five individuals of Marshall, Bodega, and Sebastopol descent, and demonstrates their congregation in the vicinity of the Graton Rancheria.

Appendix F

The United States government terminated the tribes' status in 1966 under the California Rancheria Act of 1958 (Public Law 85–671, as amended; 72 Stat. 619). The Bureau of Indian Affairs approved a plan to distribute the assets between three distributees (now all deceased). This act in effect called the Coast Miwok extinct, ending their rights as a tribe. Today, the membership of the Federated Indians of Graton Rancheria comprises approximately 366 individuals. Many of these people have maintained their identities as California Indians from birth as shown by their having roll numbers on the 1933 Census Roll of the Indians of California, the 1955 California Combined Roll, and the 1972 California Indian Judgment Rolls. Members born after the last roll numbers were issued in 1969, have provided birth certificates and/or baptismal certificates connecting them with roll number bearers and have been included on the Graton tribal roll.

The Federated Coast Miwok and Federated Indians of Graton Rancheria, is recognized socially and politically as an Indian group by outside Indian and non-Indian groups, scholars, organizations, and federal, state, and local agencies/governments. The Federated Indians of Graton Rancheria have endured through time as a distinctive tribal group. Restoring Federal recognition will provide the tribe with much needed health, education, and housing benefits.

The Assistant Secretary for Indian Affairs Kevin Gover, testified on behalf of the Administration at the hearing on May 16, 2000 in favor of passage of H.R. 946. In part Secretary Gover stated, "I am pleased to report

that after careful review of the information submitted by the Federated Indians of the Graton Rancheria (the successor name), the documentation shows that the group is significantly tied with the terminated tribe known as the Graton Rancheria. Therefore, we support their restoration of tribal status." Mr. Gover did, however, recommend the deletion of Section 5(d) of the bill stating, "We see no reason to single this Tribe out for gaming restrictions."

Section 5(d) of H.R. 946 provides that real property taken into trust for the benefit of the Tribe pursuant to the bill shall not have been taken into trust for gaming purposes pursuant to section 20(b) of the Indian Gaming Regulatory Act. This language places restrictions on gaming activities on certain lands taken into trust. It is included due to the particular circumstances of this situation and at the request of the Tribe. We do not intend this language to serve as a precedent to be used in future restoration acts.

George Miller.

H.R. REP. 106-677, H.R. Rep. No. 677, 106TH Cong., 2ND Sess. 2000, 2000 WL 793932 (Leg.Hist.)

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