IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FOUR

No. A144214

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. XAVIER BECERRA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Respondent and Appellee,

v.

ARDITH HUBER, individually, dba HUBER ENTERPRISES, et al.,
Petitioners and Appellants.

Superior Court of California
Humboldt County
No. DR110232
Hon. Dale A. Reinholtsen

APPELLANTS' PETITION FOR REHEARING

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To the Honorable Acting Presiding Justice and Honorable Associate Justices of the Court of Appeal of the State of California, First Appellate District, Division Four:

Petitioner Ardith Huber respectfully submits this Petition for Rehearing of the court's decision of September 25, 2018 in the above-captioned case pursuant to Rule 8.268 of the California Rules of Court and Government Code section 68081. Cal. Rules of Court (CRC) 8.268; Gov't Code 68081. This appeal raises complex and challenging issues. Petitioner believes, with respect, this court's decision is objectively mistaken and the issues identified below should be reheard for the reasons set forth in this Petition for Rehearing.

ARGUMENT

I. SINCE THIS COURT MISTAKENLY HELD THAT RESPONDENT'S CIVIL REGULATORY CLAIMS UNDER THE DIRECTORY ACT AND THE FIRE SAFETY ACT WERE "CRIMINAL/PROHIBITORY IN NATURE," ISSUES THAT WERE NOT PROPOSED OR BRIEFED BY ANY PARTY TO THE PROCEEDING, THIS COURT IS REQUIRED TO GRANT THIS PETITION FOR REHEARING UNDER GOVERNMENT CODE SECTION 68081.

In this section, petitioner Ardith Huber (petitioner) shall first set forth the legal standard under Government Code Section 68081, as construed by relevant court decisions, that makes rehearing mandatory in this case. (Gov't Code § 68081.) Second, petitioner shall identify the specific issues arising under the Directory Act and Fire Safety Act decided by this court that were neither proposed nor briefed by any party to the proceeding, nor could have been deemed fairly included within the issues raised on appeal. Thus, this court must grant petitioner's timely petition for rehearing under the express command of Government Code section 68081.

A. Government Code section 68081 requires that before an appellate court renders a decision in a proceeding "based upon an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing" and the court's failure to do so requires that "a rehearing shall be ordered upon timely petition of any party."

Government Code section 68081 requires this Court to order a rehearing upon the timely petition of any party in the event that it "renders a decision in a proceeding . . . based upon an issue which was not proposed or briefed by any party to the proceeding" and the court failed to "afford the parties an opportunity to present their views on the matter through supplemental briefing." (Gov't Code § 68081.)

More specifically, Government Code section 68081 provides as follows:

> Before the Supreme Court, a court of appeal, or the appellate division of a superior court renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based upon an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party.

(Gov't Code § 68081.) When the parties have not been afforded an opportunity to present their views on the issues forming the basis of the appellate court's decision through supplemental briefing and such issues were not proposed nor briefed nor could be reasonably deemed to be fairly included within the issues proposed and briefed by the parties, the appellate court is required by statute to order a rehearing.

In *California Casualty*, the Second District of the Court of Appeal opined portentously that although the case before it was "small, as cases go," it raised "a significant principle" shared by the case at bar: "judges, including appellate judges, are required to follow the law." Whenever an appellate court decides a case "on a point not raised by the parties, and without notice to the parties that it might do so," it is obligated to grant a timely filed petition for rehearing. (*California Casualty Ins. Co. v. Appellate Department* (1996) 46 Cal.App.4th 1145, 1147 (*California Casualty*); *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864 (*Alexander*).) As will be shown in the next subsection, the problem here is strikingly similar to the error that the Court of Appeal found in *California Casualty*: the appellate court decided key issues no party to the proceeding had ever raised and about which the court had failed to inform the parties that it might even consider. (46 Cal.App.4th

at p. 1149.) The reviewing appellate court in *California Casualty* declared that "it was error to decide the case without warning the parties that the court was considering that ground, and giving them an opportunity to brief it." (*Ibid*., citing *Alexander,* 44 Cal.3d at p. 864.) The same reviewing Court of Appeal also assigned as error the decision of the prior appellate tribunal to grant the petition for rehearing. (*California Casualty,* 46 Cal.App.4th at p. 1149.)

B. Since this court upheld respondent's claims that petitioner had violated the Directory Act and the Fire Safety Act because those ostensibly civil regulatory statutes are "criminal/prohibitory in nature and thus within the grant of criminal jurisdiction" of Public 280 to California, issues never proposed or briefed by any party, and did so without affording the parties the opportunity to present their views on the matter through supplemental briefing, this court is required to grant the Petition for Rehearing.

In a sweeping decision with broad implications for state assertions of regulatory authority over tribal governments, this court held that "this case falls outside the grant of civil adjudicative jurisdiction in Public Law 280[1]" and, thus, the court held that it had no power to decide any of the civil regulatory issues presented to the extent they concern a tribal member conducting business on her own reservation in the absence of "exceptional circumstances." (Slip op., at 20, 26; *New Mexico v. Mescalero Apache Tribe* (1983) 462 U.S. 324, 331-332). As this court construes Public Law 280 and related case law, "Congress withheld from states in the civil arena . . . 'general state civil regulatory control'" and, equally

[1] Public Law 280 (Pub.L. 83–280, August 15, 1953) is codified as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326.

important, Congress only "affirmatively granted" to state courts "adjudicative authority over 'private legal disputes' involving 'reservation Indians.'" (Slip op., at 12-14; *Bryan v. Itasca County* (1976) 426 U.S. 373, 385 (*Bryan*); *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 209 (*Cabazon*)). In reaching this conclusion, this court gave dispositive weight to the wording in section 4(a) of Public Law 280, as codified in 28 U.S.C. § 1360(a), which provides in pertinent part as follows:

> [California, in addition to other specified states] shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in . . . [all Indian country within the State] to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State . . . .

(Section 4(a) of Public Law 280, as codified in 28 U.S.C. § 1360(a)). As this Court explained, "[b]ecause the Attorney General sues with the manifest purpose of law enforcement on behalf of the public at large, and because this case is not one in which we may fairly say . . . is 'private in substance' (see *County of Inyo v. Jeff* (1991) 227 Cal.App.3d 487, 494 . . .), we agree with [petitioner] that it falls outside the grant of civil jurisdiction in Public Law 280." (Slip op. at 13-14.) On this basis, the court held that it lacked adjudicatory subject matter jurisdiction to even hear respondent's California's Unfair Competition Law ("UCL")[2] claims which relied

[2] Bus. & Prof. Code, §§ 17200 et seq. ("UCL").

on violations of the Directory Act[3], the Fire Safety Act[4] and the Stamp Tax Act[5] as predicate "unlawful acts" warranting entry of a permanent injunction and an award of civil penalties. (Slip op., at 5, 14.)

If this court had applied the same reasoning to the respondent's claims that petitioner had violated the Directory Act and the Fire Safety Act, standing alone, it would have been compelled to find that it lacked adjudicative subject matter jurisdiction over all such claims and would, therefore, have had to dismiss the case brought by respondent and vacate the permanent injunction. Instead, the court fundamentally changed course and discovered a previously unargued, unbriefed and unproposed legal basis to partially rescue the respondent's case against petitioner from the inexorable logic of the court's own jurisdictional analysis.

In Section III-C of the court's September 25, 2018 opinion, entitled "Public Law 280: Criminal/Prohibitory Jurisdiction," the court embarked upon a discussion of an issue entirely new issue to this appeal and one never proposed nor briefed by any party to the proceeding. (Slip op., at 20-24.) Here is how the court raised this previously unlitigated issue:

> Having concluded that this case falls outside the grant of civil adjudicative jurisdiction in Public Law 280, we come to the next question posed by the holding in *Bryan*—whether subject matter jurisdiction exists over any of the claims alleged in this case because the statutes being asserted here may be deemed criminal/prohibitory in nature and thus within the grant of criminal jurisdiction in section 2 of Public Law 280 (codified in 18 U.S.C. § 1162).

[3] Rev. & Tax Code, § 30165.1 ("Directory Act").

[4] Health & Saf. Code, §§ 14950-14960 ("Fire Safety Act").

[5] Rev. & Tax Code, §§ 30108, 30131, 30121, 30161 & 30474 (Stamp Tax Act).

(Slip op., at 20-21.) In the foregoing passage, this court converted an appeal about the scope of California's civil regulatory jurisdiction, both within and without Indian Country, into an appeal about whether the challenged civil regulatory statutes were actually "criminal/regulatory in nature and thus within the grant of criminal jurisdiction in section 2 of Public Law 280 (codified in 18 U.S.C. § 1162)." (*Ibid.*) It did so, impermissibly, "without warning the parties that the court was considering that ground, and giving them an opportunity to brief it." (*California Casualty, supra,* 46 Cal.App.4th at p. 1149; *Alexander, supra,* 44 Cal.3d at p. 864.) Under Government Code section 68081, the court, having failed to afford the opportunity to the parties to "present their views on the matter through supplemental briefing," must order a rehearing "upon timely petition of any party." (Gov't Code § 68081; *California Casualty, supra,* 46 Cal.App.4th at p. 1149; *Alexander,* 44 Cal.3d at p. 864.)

The momentous issue of whether the ostensibly civil regulatory statutes at issue here were actually "criminal/regulatory in nature" had not been proposed by any party in the proceeding, had not formed the basis of any part of the lower court's decision to issue the challenged permanent injunction and had not even been raised by the California Attorney General in the Respondent's Brief. Indeed, the term "criminal/prohibitory" does not even appear in either the Respondent's Brief or the decision of the lower court. That is so because all the parties in this case and the trial court itself assumed implicitly and without question that the Directory Law and

the Fire Safety Law were both obviously civil regulatory in nature and not "criminal/prohibitory in nature." (See Order Granting the People's Motion for Summary Adjudication, Denying Defendant's Motion for Summary Judgment, and Entering Permanent Injunction, Clerk's Transcript ("CT"), pp. 001367–001372; Respondent's Brief, *passim*.)

Furthermore, petitioner submits that the legal conclusion reached by this court that the Directory Law and the Fire Safety Law were both "criminal/prohibitory in nature" is manifestly incorrect as smoking and the sale of cigarettes are both generally permissible in the State of California, but subject to civil regulation that is based on a subjective civil policy judgment that even this court concedes elsewhere in its opinion has been interpreted by the U.S. Supreme Court as primarily "economic" in nature. As this court explained incongruently in its preemption analysis:

> A key teaching of *Moe, Colville,* and *Milhelm* is that the high court views the issue of state regulation of cigarette sales on Indian reservations through an *economic lens,* looking not only at the cost advantages of selling noncomplying cigarettes, but to the incentives to lawbreaking that such sales create and the impact of upstream purchasing in the wholesale market for illicit cigarettes. . . . Looking at this case in the same way, [petitioner] Huber's cigarette sales on the Table Bluff Rancheria in violation of the Directory Act and the Fire Safety Act were no different in kind from the sales of non-tax stamped cigarettes at issue in *Moe*, *Colville,* and *Milhelm*; by flouting those statutes, she gained a cost advantage over retail sellers who bought at wholesale from complying manufacturers.

(Slip op., 34 (emphasis added); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation* (1976) 425 U.S. 463, 481-483 (*Moe*); *Washington v.*

Confederated Tribes of Colville Indian Reservation (1980) 447 U.S. 134, 154-155 (*Colville*); *Department of Taxation & Finance of New York v. Milhelm Attea & Bros., Inc.* (1994) 512 U.S. 61, 73-76 (*Milhelm*).)

The court cannot have it both ways. The Directory Act and the Fire Safety Act cannot be primarily economic and civil regulatory in nature for purposes of preemption analysis and suddenly become "criminal/prohibitory in nature" for purposes of the court's jurisdictional analysis. If they are primarily economic in nature, they should not be deemed tantamount to criminal prohibitions. Finally, this highly subjective, complex determination of the criminal/prohibitory nature of the statutes in question is clearly not an issue that could be fairly deemed within the issues that were proposed and briefed by the parties. Petitioner had no way of knowing nor could have reasonably anticipated that this court would conclude without warning that the statutes that had been deemed without question to be civil regulatory in nature by all the parties and the court below were essentially "criminal/prohibitory in nature."

This case is formally indistinguishable from *California Casualty* in which the Court of Appeal determined that the parties had not been given an opportunity to brief whether there had been a proper objection to the evidence the petitioner had contended had been erroneously admitted into evidence. Since this issue had not been raised nor briefed by the parties, and was not fairly included within the issues raised, the Court of Appeal was required by section 68081, there as here, to "afford the parties an opportunity to present their views on the matter through supplemental

briefing" before resolving the case on a such a basis. Having failed to afford the parties an opportunity for supplementary briefing, this court must grant petitioner's timely petition for rehearing under Government Code section 68081. (Gov't Code § 68081.)

II. SINCE THIS COURT MISCHARACTERIZED THE TRIAL COURT'S DECISION AS HAVING "CORRECTLY CONCLUDED THAT THE BALANCE OF FEDERAL, TRIBAL, AND STATE INTERESTS WEIGHS IN FAVOR OF CALIFORNIA," WHEN, IN FACT, THE TRIAL COURT UNDERTOOK NO SUCH BALANCING OF INTERESTS WHATSOEVER AND EXPRESSLY ESCHEWED ANY SUCH BALANCING, THIS COURT HAS MISTAKENLY STATED THE LAW OF THE CASE AND MUST GRANT A REHEARING TO CORRECT ITS ERROR.

This court mistakenly characterized the law of the case as stated in the decision of the trial court when this court erroneously asserted that the "trial court correctly concluded that the balance of federal, tribal, and state interests weighs in favor of California." (Slip op., p. 35.) In fact, the trial court never engaged in any such balancing of federal, tribal and state interests, as it was required to do, never made any determination even remotely similar to such a balancing of interests and, indeed, expressly eschewed even the need to undertake any such balancing as a result of the off-reservation effects of petitioner's on-reservation business operations. (CT, p. 001371, ¶ 25.)

What the trial court actually held on the issue of the need to balance such interests was the following: "Where, as here, an Indian's cigarette business extends beyond the boundaries of her reservation, the state may enforce its cigarette laws without weighing the federal, state, and tribal interests at stake." (*Ibid.*) **This is**

reversible error. Instead of actually balancing the federal, tribal and state interests, as required by *Bracker*, the trial court applied a procrustean litmus test based on off-reservation "contacts," which, in its erroneous estimation, *ipso facto*, without further inquiry, conferred adjudicative subject matter jurisdiction, as if it had discovered the "minimum contacts" necessary to assert long-arm jurisdiction under state law. (CT, pp. 001370-71, ¶ 25; *White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136, 142-145 (*Bracker*); see, e.g., Code Civ. Proc. § 410 (example of state long-arm statute).)

Instead of applying the required balancing test, the trial court applied the very type of reflexive, reductionistic "mechanical" test the *Bracker* court held should never be applied in lieu of the required balancing of federal, tribal and state interests in every assertion of state regulatory authority over an Indian lawfully doing business on her own reservation. As explained by the *Bracker* court, "[t]his inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty but has called for a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." (*Bracker, supra,* 448 U.S. at p.145.)

Bracker further identified "two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be preempted by federal law. . . . Second, it may unlawfully infringe 'on the right of reservation Indians to make their own laws and

be ruled by them.' *Williams v. Lee,* 358 U.S. 217, 220 (1959). . . . The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members." (*Bracker, supra,* 448 U.S. at pp. 142-143.)

The U.S. Supreme Court has never held that the moment there are off-reservation effects, the need to balance federal, state and tribal interests automatically ceases. Where the State seeks to regulate Indian commerce that affects tribal members on their own reservation, the reviewing court may not evade the legal necessity of balancing state, federal and tribal interests merely because of the presence of some off-reservation "contacts," as the trial court put it, especially where, as here, the right to tribal self-government is directly infringed by invasive state regulation. (CT, p. 001371, ¶ 25.)

Thus, this court's mischaracterization of the trial court's decision as having applied the required balancing test, when the trial court, in fact, expressly declined to do exactly that, misrepresents the law of the case. Consequently, "owing to [a] mistake of law . . . [this court's] decision has done an injustice in [this] particular case . . . and it is seriously doubted" whether it has been correctly decided. (*In re Estate of Jessup* (1889) 81 Cal. 408, 471-472 (*Jessup*); CRC 8.268(a)(1).) The petition should be granted because rehearing is necessary to correct the erroneous decision of this court on the preemption issue that incorrectly stated that the trial court had applied the requisite balancing test, when such was not the case and the trial court had actually expressly eschewed the need to engage in the requisite

balancing test. (Slip op., p. 35.) This court's mischaracterization of the law of the case thus obscures what would otherwise constitute obvious reversible error.

III. SINCE THIS COURT FAILED TO RECOGNIZE THAT THE RIGHT OF TRIBAL SELF-GOVERNMENT IS AN *INDEPENDENT BARRIER* TO THE ASSERTION OF STATE REGULATORY AUTHORITY OVER INDIAN RESERVATIONS AND TRIBAL MEMBERS, THIS COURT MADE A PREJUDICIAL FINDING OF LAW AND MUST GRANT A REHEARING TO CORRECT ITS ERROR.

This court has erroneously conflated two independent tests required by U.S. Supreme Court precedent to evaluate the legality of every assertion of state regulatory authority over Indian reservation and tribal members. As explained in the previously section of this Petition for Rehearing, the *Bracker* court identified "two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be preempted by federal law. . . . Second, it may unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them.' *Williams v. Lee*, 358 U.S. 217, 220 (1959) [*Williams*] . . . . The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members." (*Bracker*, *supra*, 448 U.S. at pp. 142-143.)

This court, however, failed to treat these two tests as independent, but instead expressly treated the right of tribal self-government as a subsidiary, dependent component of the federal "Indian preemption" test. As this court stated incorrectly, "Huber's complaint about the weight of the injunction does raise a further question

under *the ultimate test for Indian preemption*—whether enjoining on-reservation conduct by an enrolled tribe member infringes on 'the right of reservation Indians to make their own laws and be ruled by them.' (*Williams, supra,* 358 U.S. at p. 220.)" (Slip op., p. 36 (emphasis added).) In the foregoing quotation and subsequent discussion of the misstated, conflated preemption standard, the court incorrectly treats "the issue of possible infringement of tribal self-government" as a derivative prong of its "Indian preemption" analysis, rather than a stand alone test that must be robustly applied to determine whether the State regulatory regime imposed on petitioner has impermissibly impaired the right of tribal self-government. (*Ibid.*)

The unavoidable legal and practical effect of the coercive imposition of the Directory Act and the Fire Safety Act on Petitioner's on-reservation, tribally authorized business is ***the overt nullification of tribal law by operation of state law***. In other words, the license granted by the Wiyot Tribe in exercise of its sovereign right of self-government was rendered completely nugatory and void by California state law as misinterpreted by this court when it conflated its preemption analysis with the independent test concerning infringement of the right of tribal self-government. A "license" is, of course, a form of official governmental "permission . . . to commit some act that would otherwise be unlawful." (See Black's Law Dict. (9th ed. 2009) p. 1002, col. 2.) By imposing the Directory Act and the Fire Safety Act on Petitioner's cigarette business under the mistaken theory that it is a permissible exercise of criminal/prohibitory jurisdiction under Public Law 280, this

court has evaded its obligation to take seriously the right of tribal self-government and evaluate the extent to which the State's exercise of coercive regulatory power subverts tribal self-government and economic development. In this case, in contrast to such unhelpful precedent as *Black Hawk*, there is an ***undeniable conflict*** between the two state statutes at issue and Wiyot tribal law. The state statutes this court seeks to uphold here reflect a fundamentally different civil policy judgment about tobacco use and sales than reached by the Wiyot Tribe and, as interpreted by this court, effectively render Wiyot tribal ordinances a nullity along with the internal democratic tribal political process that produced them. (*People ex rel. Harris v. Black Hawk Tobacco, Inc.* (2011) 197 Cal.App.4th 1561, 1565 ("*Black Hawk*").) This court gives short shrift to its evaluation of the adverse impact on tribal law resulting from the assertion of state regulatory jurisdiction here because it erroneously treats the right of tribal self-government test as a derivative, dependent and subsidiary prong of a more general "Indian preemption" test when controlling precedent requires that they be treated as independent, stand alone criteria. (*Bracker*, *supra,* 448 U.S. at pp. 142-145; *Williams*, *supra*, 358 U.S. at p. 220.) A rehearing must be granted to correct this erroneous articulation of the right to tribal self-government test as a component of the independent Indian preemption standard. (*Jessup*, *supra*, 81 Cal. at pp. 471-472; CRC 8.268(a)(1).)

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IV. SINCE THIS COURT INCORRECTLY FOUND THAT "THE WIYOT RIGHT TO SELF-GOVERNANCE IS NOT IMPLICATED" IF REGULATORY ENFORCEMENT "OCCURS OFF-RESERVATION," THIS COURT MADE A PREJUDICIAL FINDING OF LAW AND MUST GRANT A REHEARING TO CORRECT ITS ERROR.

In its haste to dismiss the Wiyot right to tribal self-government as an independent barrier to the assertion of state regulatory power under the Directory Act and the Fire Safety Act, this court invoked a type of procrustean, mechanical litmus test similar to that invented by the trial court when it relied on off-reservation "contacts" as determinative of its jurisdiction. Instead of off-reservation "contacts," this court focused mechanically on "off-reservation" enforcement and found that, "[t]o the extent enforcement occurs off-reservation, the Wiyot right to self-governance is not implicated." Yet this is precisely the type of mechanical test rejected in *Bracker*. (*Bracker*, *supra*, 448 U.S. at pp. 142-145.) If the effect of "off-reservation" enforcement is to render Wiyot tribal law a nullity, then "off-reservation" enforcement is no cure-all for a state regulatory regime that nonetheless infringes "the right of reservation Indians to make their own laws and be ruled by them." (*Ibid.; Williams*, 358 U.S. at p. 220.) Off-reservation enforcement no more relieves this court of its obligation to evaluate the practical effects of the state regulatory statutes at issue on the right of tribal self-government than did the presence of off-reservation "contacts" or effects relieve the trial court of its duty to undertake the same inquiry. There is no talismanic simplified test that may lawfully replace the hard work of sustained, probing inquiry into the effect of the identified state regulatory statutes on the right of tribal self-government. (*Ibid.*) As this court

has impermissibly relieved itself of the obligation to make such an inquiry by invoking a specious "off-reservation" enforcement test for state law legitimacy, it has erred and must grant the Petition for Rehearing to correct its prejudicial misstatement of applicable law. (*Jessup*, *supra*, 81 Cal. At 471-472; CRC 8.268(a)(1).)

CONCLUSION

This court has made four prejudicial and mistaken findings of law that warrant granting this Petition for Rehearing to correct its error. First, since this court mistakenly held that respondent's civil regulatory claims under the Directory Act and the Fire Safety Act were "criminal/prohibitory in nature" without affording any opportunity whatsoever to the parties to express their views on this extraordinary conclusion through supplementary briefing and the legal basis for such a conclusion was never briefed or proposed by any party to the proceeding, this court is required to order a rehearing to correct its error under Government Code section 68081. (Gov't Code § 68081.)

Second, since this court mischaracterized the trial court's decision as having "correctly concluded that the balance of federal, tribal, and state interests weighs in favor of California," when, in fact, the trial court undertook no such balancing of interests whatsoever, this court has mistakenly stated the law of the case and must grant a rehearing to correct its error. (Slip op., p. 35).

Third, since this court failed to recognize that the right of tribal self-government is an *independent barrier* to the assertion of state regulatory authority

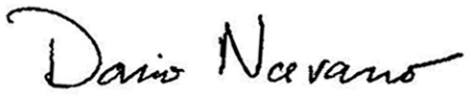
over Indian reservations and tribal members by conflating it with the "Indian preemption" standard, this court made a prejudicial finding of law it must correct by granting petitioner's request for a rehearing.

Fourth, since this court mistakenly found that "the Wiyot right to self-government is not implicated" if regulatory enforcement "occurs off-reservation," this court made a prejudicial finding of law it must correct by granting the requested rehearing.

For each of the foregoing reasons, petitioner Ardith Huber respectfully requests that this court grant a rehearing on the foregoing issues and amend its opinion consistent with this petition. The judgment of the superior court should be reversed in its entirety and the challenged permanent injunction vacated.

Dated: October 9, 2018

Respectfully submitted,



Dario Navarro
Attorney for Petitioners

CERTIFICATE OF COMPLIANCE

I certify that pursuant to CRC 8.204(c) the text of this Petition for Rehearing, including footnotes and excluding the cover information, table of contents, table of authorities, signature blocks, and this certification, consists of 4,717 words in 13-point Times New Roman font as counted by the word-processing program used to generate the text.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at South Lake Tahoe, California on October 9, 2018.

By: _____

Dario Navarro
Attorney for Petitioners

PROOF OF SERVICE

Case Name: **People of the State of California, *ex rel.* Xavier Bercerra, Attorney General of the State of California v. Ardith Huber, *et al.***

Case Number: **A144214**

1. At the time of service, I was at least 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place. My residence or business address is 3170 U.S. Highway 50, Suite 2, South Lake Tahoe, CA 96150.

2. I served a copy of *Appellants' Petition for Rehearing* by enclosing it in a sealed addressed envelopes to the persons at the addresses listed in item 4 and

   ☑ **BY FIRST-CLASS MAIL:** I deposited the sealed envelope with the United States Postal Service with first-class postage fully prepaid at a United States Post Office in South Lake Tahoe, California; and

   ☑ **BY ELECTRONIC MAIL:** I personally e-mailed a true copy of said document to said persons via electronic mail to the e-mail address listed in item 4 for Nicholas M. Wellington, Esq., Deputy Attorney General.

3. The *Appellants' Petitioner for Rehearing* was placed in the mail:

   a. on *(date)*: **October 9, 2018**
   b. at *(City and State)*: South Lake Tahoe, California.

4. The envelopes were addressed and mailed as follows (e-mail address omitted):

The Honorable Xavier Becerra Attorney General of California Karen Leaf, Esq. Senior Assistant Attorney General **Nicholas M. Wellington, Esq.** Deputy Attorney General 1515 Clay Street, 20th Floor Oakland, CA 94612 E-mail: Nicholas.Wellington@doj.ca.gov	Counsel for Respondent-Appellee People of the State of California ex rel. Xavier Bercerra, Attorney General of California
Hon. Dale A. Reinholtsen c/o Superior Court Clerk Humboldt County Courthouse Humboldt County Superior Court 825 5th Street, Eureka, CA 95501	Judge of the Superior Court

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed at South Lake Tahoe, California on **October 9, 2018.**

Dario Navarro

Dario Navarro