

**No. 21-15751**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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CHICKEN RANCH RANCHERIA OF ME-WUK INDIANS, BLUE  
LAKE RANCHERIA, CHEMEHUEVI INDIAN TRIBE, HOPLAND  
BAND OF POMO INDIANS, and ROBINSON RANCHERIA,

*Plaintiffs-Appellees,*

v.

GAVIN NEWSOM, Governor of California,  
and STATE OF CALIFORNIA,

*Defendants-Appellants,*

On Appeal from the United States District Court  
for the Eastern District of California  
Case No. 1:19-CV-00024-AWI-SKO; Hon. Anthony W. Ishii

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**NOTICE OF ERRATA**

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George Forman (CA Bar No. 47822)  
Jay B. Shapiro (CA Bar No. 224100)  
Margaret C. Rosenfeld (CA Bar No. 127309)  
FORMAN & ASSOCIATES  
4340 Redwood Hwy., Ste. E352  
San Rafael, CA 94903  
Tel: (415) 491-2310  
E-mail: [george@gformanlaw.com](mailto:george@gformanlaw.com)

Attorneys for Amici Curiae  
*Bear River Band of Rohnerville Rancheria, the Cahuilla Band  
of Indians, the Cachil Dehe Band of Wintun Indians of the  
Colusa Indian Community, and the Soboba Band of Luiseño  
Indians*

To the Clerk of the Court, Parties and their Attorneys of Record Herein:

PLEASE TAKE NOTICE that Amici Curiae Bear River Band of Rohnerville Rancheria, the Cahuilla Band of Indians, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community and the Soboba Band of Luiseño Indians has discovered an error on page 5 of the Amici Curiae brief filed July 8, 2021 as Docket Entry number 15 wherein June 30, 2020 should be June 30, 2022. A corrected Amici Curiae brief has been filed as an attachment to this notice dated July 9, 2021.

Dated: July 9, 2021

Respectfully submitted,

FORMAN & ASSOCIATES

George Forman

Jay B. Shapiro

Margaret Crow Rosenfeld

/s/ George Forman

Counsel for Amici

No. 21-15751

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**BRIEF OF AMICI CURIAE BEAR RIVER BAND OF ROHNERVILLE RANCHERIA,  
CAHUILLA BAND OF INDIANS, CACHIL DEHE BAND OF WINTUN INDIANS OF  
THE COLUSA INDIAN COMMUNITY, AND THE SOBOBA BAND OF LUISEÑO  
INDIANS IN OPPOSITION TO DEFENDANTS'-APPELLANTS' MOTION FOR STAY  
PENDING APPEAL**

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George Forman (CA Bar No. 47822)  
Jay B. Shapiro (CA Bar No. 224100)  
Margaret C. Rosenfeld (CA Bar No. 127309)  
FORMAN & ASSOCIATES  
4340 Redwood Hwy., Ste. E352  
San Rafael, CA 94903  
Tel: (415) 491-2310  
E-mail: george@gformanlaw.com

Attorneys for Amici Curiae  
*Bear River Band of Rohnerville Rancheria, the Cahuilla Band  
of Indians, the Cachil Dehe Band of Wintun Indians of the  
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Indians*

## INTRODUCTION

The Amici Tribes<sup>1</sup> – all Native American Indian Tribes recognized by the Secretary of the Interior ("Secretary") as maintaining government-to-government relations with the United States – hereby submit this brief in support of *Chicken Ranch's*<sup>2</sup> Opposition to the State's<sup>3</sup> motion to stay the March 31, 2021 order of the district court granting *Chicken Ranch's* motion for summary judgment and ordering the parties to commence negotiations pursuant to the remedial provisions of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2710(d)(7)-(8). *Chicken Ranch* and the State both have consented to the filing of this brief.

## INTEREST OF AMICI

Each of the Amici Tribes is a party to a separate class III gaming compact ("1999 Compact") with the State of California that took effect in May, 2000, and will expire on June 30, 2022, unless replaced or extended before that date. Each of the Amici Tribes operates a class III gaming facility on its Indian lands pursuant to its 1999 Compact and depends on revenues from its gaming activities for much of the funding its government uses to provide the Amici Tribe's citizens with a wide array of essential programs and services generally not available from other sources.

Between early 2015 and July 2020, each of the Amici Tribes attempted to negotiate a new class III gaming compact with the State as part of the 1999 Compact Tribes Steering Committee ("CTSC"). The Amici Tribes continued to participate in the CTSC after the *Chicken Ranch* Tribes withdrew in 2018 and filed

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<sup>1</sup> Collectively, the Bear River Band of Rohnerville Rancheria, the Cahuilla Band of Indians, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community and the Soboba Band of Luiseño Indians.

<sup>2</sup> *Chicken Ranch* refers to the Plaintiffs-Appellees Chemehuevi Indian Tribe, Chicken Ranch Rancheria, Hopland Band of Pomo Indians and Robinson Rancheria.

<sup>3</sup> Unless otherwise indicated, the State refers to Defendant-Appellants Governor Gavin Newsom and the State of California.

this action in the district court, in the hope that further negotiations would result in an agreement. Only when those negotiations appeared to have reached an impasse over the State's proposed compact provisions did each of the Amici Tribes withdraw from the CTSC and make its own last, best offer of a compact to the State. When the State rejected those offers, each Amici Tribe sued the State for failing to negotiate in good faith. Each of those actions was related to this case and assigned to Judge Anthony Ishii.

Once briefing on the Amici Tribes' and the State's respective cross-motions for summary judgment concludes on or about July 22, 2021, those Tribes will be in the same circumstances as are the *Chicken Ranch* Tribes: *i.e.*, the 1999 Compacts that allow the Amici Tribes to operate the class III gaming activities on which their governments depend to fund essential government services and programs will expire, and those Tribes may be unable to continue operating their class III gaming activities beyond June 30, 2022, unless they can obtain either new compacts or, instead, procedures ("Procedures") prescribed by the Secretary of the Interior.

The Amici Tribes' actions seek relief on the same grounds as are asserted by the *Chicken Ranch* Tribes, plus a number of additional grounds. Therefore, a decision in this appeal likely will have a controlling effect on at least some aspects of the Amici Tribes' own actions.

### **BENEFIT TO THE COURT OF CONSIDERING AMICI TRIBES' ARGUMENT**

With less than a year remaining on the terms of the Amici Tribes' respective class III gaming compacts, and the district court not yet having taken the Amici Tribes' and the State's cross-motions for summary judgment under submission<sup>4</sup>, the Amici Tribes would be even more vulnerable to losing the right to operate class III

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<sup>4</sup> The hearing on those motions, if it is held, will occur on August 9, 2021.

gaming than are Appellee Tribes, given the time needed to conclude new compacts or obtain Procedures, regardless of how this Court rules on the merits. This brief will focus on the inherent delays in new compacts or Secretarial Procedures taking effect, and thus why a stay would be extremely prejudicial not only to the Appellee Tribes, but also to the Amici Tribes and all of the other California Tribes still operating under compacts that will expire on June 30, 2022.

### ARGUMENT

**IF THE DISTRICT COURT'S JUDGMENT IS STAYED  
PENDING THE OUTCOME OF THIS APPEAL, THERE IS  
LITTLE OR NO CHANCE THAT EITHER NEW COMPACTS  
OR SECRETARIAL PROCEDURES COULD BE IN EFFECT  
BY JUNE 30, 2022.**

If the Court grants the State's motion for a stay, the *Chicken Ranch* Tribes' 1999 Compacts almost surely will expire before replacement compacts or Secretarial Procedures can take legal effect, resulting in significant and irreparable harm not only to the *Chicken Ranch* Tribes, but also to Amici Tribes and all other California Tribes that are trying to negotiate or litigate for compacts to replace their 1999 Compacts.

Regardless of the outcome, when this Court eventually rules on the merits of this appeal, completing the process of obtaining new compacts or issuance of Procedures will take time. If this Court affirms the district court's order, the parties will have to exhaust IGRA's remedial procedures. If the first round of court-ordered negotiations produces a new compact, legislative ratification and Secretarial review and approval will have to be obtained, and notices of approval published in the Federal Register. 25 U.S.C. § 2710(d)(7)-(8). If negotiations fail, the district court must send the parties to mediation, which process will have to be exhausted before the Secretary can prescribe class III Procedures in lieu of new compacts and publish notice of the Procedures in the Federal Register. *Id.* at §

2710(d)(7)(B)(vii). The post-mediation process can take another 60 days. *See* 25 C.F.R. Part 291, §§ 291.7-291.9. Thus, IGRA's process for post-judgment negotiation and mediation would take a minimum of four months, followed by an additional 60 days – or more – for the Secretary to consult with the Tribes and offer the State the opportunity for input before prescribing Procedures in lieu of compacts and causing notice of the Procedures to be published in the Federal Register.

If this Court reverses the district court's judgment, the parties would need to return to the negotiating table with no limit on how long the State could persist in stonewalling negotiations, putting the Tribes entirely at the State's mercy.<sup>5</sup> The Appellee Tribes will have to negotiate new compacts, obtain ratification by the Legislature, and then review by the Secretary, who would have 45 days to approve or disapprove them. If the compacts are approved, notice to that effect would have to be published in the Federal Register in order for the new compacts to take effect.

The California Legislature's calendar could create additional obstacles to timely replacing the Tribes' 1999 Compacts. Indeed, due to that calendar, as a practical matter the appeal would have to be decided *this calendar year* in order to have any chance for negotiating and ratifying new compacts by June 30, 2022.

Under California's Constitution, article IV, section 8, a statute other than a budget bill or an urgency bill passed by a 2/3 majority in each house takes effect on January 1 of the year following the year in which it was enacted (budget and urgency bills take effect immediately). *See Sutter's Place v. Kennedy*, 71 Cal.App.4th 674, 691 (1999) (discussing effective dates of legislative enactments, citing Cal. Const., article IV, section 8, subd. (c) & (d)). The last date to submit a

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<sup>5</sup> The Ninth Circuit advises visitors to its website that oral arguments in civil appeals typically take place 12-20 months from the notice of appeal date, and decisions typically are issued 3-12 months after that. *See* FAQs #17-18 at <https://www.ca9.uscourts.gov/content/faq.php>.

bill for ratification by the Legislature will likely be February 18, 2022.<sup>6</sup> Thus, the parties would need to have completed negotiations by the beginning of February, 2022 (which means, realistically, they must start negotiating by early December 2021). That means the Court's decision in this appeal, and any requests for rehearing, would have to be resolved before then. It is not reasonable to think this Court could resolve even an expedited appeal so quickly, if only because of the size of the record.

Assuming that this Court issues a decision by the beginning of December 2021, that there are no petitions for panel rehearing or *en banc* review, and the parties quickly agree to new compacts that are submitted for ratification by the State legislature prior to the February 18, 2022 deadline, there still would be no assurance that the new compacts will take effect by June 30, 2022, unless the ratification bill is an urgency measure passed by a 2/3 vote in each house. Even then, the bill would have to be signed by the Governor and sent to the Department of the Interior, which would have 45 days to review the new compacts. If the Department of the Interior does not disapprove the compacts, it will publish notice of approval in the Federal Register, a process that can take an additional several weeks. Only then could new compacts take effect.

The issuance of a stay pending appeal almost certainly would ensure that the *Chicken Ranch* Tribes will not receive a ruling before their compacts terminate, with devastating effects on the governments and economies not only of the Appellee Tribes, but also of the Amici Tribes and all other California Tribes

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<sup>6</sup> The last date to submit a bill typically is the Friday of the third full week in February. The last date to submit a bill this year was February 19, 2021. See 2021 Legislative Calendar and Deadlines at <https://www.assembly.ca.gov/legislativedeadlines>. Similarly, the last dates to submit bills in 2020 and in 2018 were February 21 and February 16, respectively. (See [https://www.senate.ca.gov/sites/senate.ca.gov/files/revised\\_2020\\_senate\\_calendar.pdf](https://www.senate.ca.gov/sites/senate.ca.gov/files/revised_2020_senate_calendar.pdf), and [http://senate.ca.gov/sites/senate.ca.gov/files/2018-tentative-legislative-calendar\\_0.pdf](http://senate.ca.gov/sites/senate.ca.gov/files/2018-tentative-legislative-calendar_0.pdf). Amici Tribes ask that the Court take judicial notice of these facts. Fed. R. Evid. 201(b).



currently operating under the 1999 compacts, given that a similar stay surely would be sought by the State in an appeal in the Amici Tribes' actions.

In both negotiations and litigation with the Amici Tribes, the State has expressed its willingness to continue negotiating for new compacts. Therefore, keeping in place the district court's order directing the parties to commence negotiations under IGRA's remedial process will not impose any "hardship" on the State that it has not already agreed to assume. For the State, the only difference would be that it could not use the imminent expiration of the Tribes' current 1999 Compacts as additional leverage in the negotiations.

### **CONCLUSION**

For all of the reasons set forth above, the Amici Tribes support the denial of the State's motion to stay the district court's March 31, 2021 order pending its appeal.

Dated: July 9, 2021

Respectfully submitted,

FORMAN & ASSOCIATES

George Forman

Jay B. Shapiro

Margaret Crow Rosenfeld

/s/ George Forman

Counsel for Amici