In the

Court of Appeal

of the

State of California

FIFTH APPELLATE DISTRICT

F086849

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS,

Plaintiff-Appellant,

v.

EDMUND G. BROWN, JR.,

Defendant-Respondent,

NORTH FORK RANCHERIA OF MONO INDIANS,

Intervener.

APPEAL FROM THE SUPERIOR COURT OF MADERA COUNTY
HON. MICHAEL J. JURKOVICH · NO. MCV072004

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Picayune was very up front in its Opening Brief. It has pursued this appeal because it was told by two federal courts that any challenges to the validity of the Governor's concurrence must be brought in state court, where the Governor can be joined as a party. Picayune did so. But after returning to state court, Picayune was told that its claims regarding the Governor are moot, though ripe against North Fork. (5 AA 991–1005, 1009–10.) Continuing the litigation with North Fork, Picayune received a favorable judgment—the People's vote rendered the Governor's concurrence void *ab initio*—but the Governor was not a party to that judgment. (Picayune's Req. for Jud. Notice, Ex. A at pp. 1–3.)

Picayune's appeal is thus intended to mitigate the risk that Picayune takes its judgment (once the concurrent appeal with North Fork (Appeal No. F088551) is concluded) to federal court only to be told again that the Governor was needed in the judgment itself. As Picayune highlighted in its Opening Brief, Picayune is hopeful that risk is low—Federal Rule of Civil Procedure 19's equitable considerations should protect it. (See Appellant's Opening Brief at pp. 14–15 & fn.3.) But prudence is the better part of valor, and Picayune has taken this appeal to guard against that risk.

On the merits, the trial court's dismissal of Picayune's claims against the Governor was prejudicially erroneous. Picayune has stated live claims; writ relief will lie in addition to declaratory relief; and, at a minimum,

nothing on the face of the Complaint precludes amendment. Even the Governor's brief confirms the live dispute by disagreeing with the trial court's void *ab initio* conclusion. (Respondent's Brief at pp. 24–25.)

In the pages below, Picayune responds to and rebuts the Governor's argument. The Governor is correct that the People have spoken. (Respondent's Brief at pp. 12–13.) But he refuses to hear what they said. Both this Court in *Stand Up II* and the trial court below have understood their role in jealously guarding the People's will and their exercise of their reserved constitutional powers. Here, that meant holding that the People's annulment rendered the Governor's original concurrence void *ab initio*—it never had legal effect—so as to protect and to effectuate "their intent to reject class III gaming on the 305-acre Madera site taken into trust in February 2013." (*Stand Up for California! v. State* (2021) 64 Cal.App.5th 197, 216 ("*Stand Up II"*)).

The Governor does not address many of Picayune's arguments in its Opening Brief. Picayune's arguments invoking cases like *City of Cerritos v. California* (2015) 239 Cal.App.4th 1020, and *Honan v. Title Insurance & Trust Co.* (1935) 9 Cal.App.2d 675, and those confirming that if a "substantial issue" remains on an accepted declaratory relief claim, a case is not moot, simply go unrebutted. And where the Governor does respond, he responds in error. Picayune is thus purposefully targeted in this reply, but it would be remiss not to note that much of its argument stands unrebutted in

the end. This Court should reverse the dismissals below and add the Governor to the judgment so that this state constitutional law issue can finally be put to rest.

ARGUMENT

The trial court erred by holding that Picayune's claim for declaratory relief was moot as to the Governor. It was also mistaken in concluding that Picayune failed to state a mandamus claim. And it abused its discretion by denying Picayune leave to amend its writ petition. The Governor's arguments to the contrary rest largely on a misunderstanding of the role that concurrences play under IGRA, as independently necessary conditions that must be satisfied in order to offer gaming. His continued insistence that the concurrence was not void *ab initio* is not only wrong, but also confirmatory of the persistence of the parties' dispute.

I. THIS CASE IS NOT MOOT

A. The Governor's Brief Confirms that There Is a Live Dispute over Whether His Concurrence Is Void *Ab Initio*

In its Opening Brief, Picayune explained that this case is not moot because it involves "an actual, present controversy[.]" (Opening Brief at p. 33 [quoting *Californians for Native Salmon etc. Assn. v. Dep't of Forestry* (1990) 221 Cal.App.3d 1419, 1427].)[1] The Governor had conceded in his

[1] The Governor does not dispute that Picayune has alleged a "proper subject[.]" (*Id.*)

demurrer that "[t]here was an actual controversy between the parties regarding the legal effectiveness of Governor Brown's 2012 concurrence when Picayune filed its Complaint in 2016[.]" (5 AA 933.) But he argued that *United Auburn* and *Stand Up II* mooted that controversy because they "fully adjudicated, and foreclosed further questions on, the legality and effectiveness of [the] concurrence." (5 AA 934.)

Picayune of course agrees with the Governor that *United Auburn* held that the Governor initially had the power to concur (but that such power was a defeasible one), and that *Stand Up II* held that the People exercised their reserved constitutional power to annul, and thereby defease, the Governor's concurrence with respect to the Madera Site. As Picayune discussed in its Opening Brief, however, the parties continue to "*disagree[]*" about whether "the 'annulment' effectuated by Proposition 48 rendered the 2012 concurrence void *ab initio*, such that it *never* had effect under California law." (Opening Brief at p. 37.) Indeed, the Governor has now reaffirmed in his brief before this Court that the parties' disagreement persists, as he argues that the concurrence was *not* void *ab initio*. (Respondent's Brief at pp. 24–25.)

Though the trial court, following *Stand Up II*, has already resolved that dispute in Picayune's favor (as the People's vote *did* render the Governor's concurrence void *ab initio* and annulled), the Governor was not

a party to that judgment. (Picayune's Req. for Jud. Notice, Ex. A at pp. 1–3.) Hence, this appeal.

As Picayune explained at length in its Opening Brief (Opening Brief at pp. 18–19, 38–39), a valid concurrence is an independent condition that must be satisfied for North Fork to offer gaming at the Madera Site. (25 U.S.C. § 2719, subd. (b)(1)(A); see p. 10, *infra*.) If this Court holds that the Governor's concurrence was void *ab initio*, then North Fork should not be allowed to offer gaming. Certainly, such a ruling would "afford [Picayune] at least some relief." (*City of Cerritos v. California* (2015) 239 Cal.App.4th 1020, 1031.) It therefore follows that "the court should not dismiss [the] case as moot." (*Id.*; see Opening Brief at p. 37 [explaining that "*some* relief *could have been* awarded—the confirmation that the annulment rendered the Governor's concurrence as void *ab initio*—and thus there was no mootness"].)

B. Far from Mooting This Case, the Federal Court Litigation Necessitated State Court Litigation

Picayune also explained in its Opening Brief that the federal litigation in *Stand Up for California! v. U.S. Department of the Interior* (D.D.C. 2016) 204 F.Supp.3d 212, and *Picayune Rancheria of Chukchansi Indians v. U.S. Department of the Interior* (E.D. Cal. Aug. 18, 2017), No. 1:16-CV-0950-AWI-EPG) 2017 WL 3581735, did not moot this case. (See Opening Brief at pp. 38–41.) To the contrary, that federal litigation required Picayune to

come to state court to get a definitive determination regarding the legal status of the Governor's concurrence, a question of state law, where the Governor could be a party.

In his demurrer, the Governor argued—as he does now—that Picayune was challenging the Secretarial Procedures. (5 AA 936.) This is incorrect. Picayune did not argue this, and the trial court never relied on the Secretarial Procedures in its mootness analysis. (5 AA 996–1005.) And for good reason.

Picayune is not, in this case, challenging the Secretarial Procedures but the validity of the Governor's concurrence, which is "a *separate* condition necessary to conduct gaming on the Madera Site." (Opening Brief at pp. 38; see *Confederated Tribes of Siletz Indians of Or. v. U.S.* (9th Cir. 1997) 110 F.3d 688, 696 ["[T]he Governor must agree that gaming should occur on the newly acquired trust land before gaming can in fact take place."]; *Stand Up for California!*, 204 F.Supp.3d at p. 250 ["each is a separate requirement for gaming to take place on newly-acquired, non-reservation lands" (fn. omitted)].)[2] The validity of the Governor's concurrence, as a matter of state constitutional law, was a question appropriate for resolution in the court below and this Court, too.

[2] As discussed below, see pp. 14-17, *infra*, this Secretarial Procedures argument that the Governor has floated is a *merits* argument, not one concerning mootness. (See *Chafin v. Chafin* (2013) 568 U.S. 165, 174.)

Both federal courts to hear Picayune's challenges to federal entitlements regarding the Madera Site indicated that the validity of the Governor's concurrence should be resolved in state court. In the District of Columbia action, the court explained that it could not resolve "claims in any way involving the Governor's concurrence" because the State was an indispensable party that could not be joined due to sovereign immunity. (*Stand Up for California!*, 204 F.Supp.3d at p. 254.) And in the Eastern District of California action, the court likewise held that California was "a necessary party" with respect to claims involving the Governor's concurrence power. (*Picayune Rancheria of Chukchansi Indians*, 2017 WL 3581735, at p. *10.) Far from mooting this case, then, the prior federal litigation necessitated it.

If the Governor is allowed to escape this litigation on mootness grounds, Picayune runs a risk—hopefully attenuated under Federal Rule of Civil Procedure 19—that a federal court will say the Governor was needed in the judgment itself. (See Opening Brief at pp. 13–15.) With a judgment in hand against North Fork, Picayune may thus be sent back to state court, where the Governor will again try to escape the litigation by arguing that the case is moot. This perpetual yo-yo makes no sense, particularly where the Governor's brief confirms a live controversy.

C. The Governor's Contrary Arguments Are Wrong

i. There Is a Live Controversy

In the face of an admitted controversy, the Governor argues uphill. He begins by arguing that "to the extent there is a present controversy related to Governor Brown's concurrence, it is between Picayune and North Fork, not between Picayune and the Governor." (Respondent's Brief at pp. 16–17.) The Governor asserts that Picayune implicitly acknowledges the lack of a controversy because of its feedback loop concern. (*Id.* at p. 18.) And the Governor argues that this case is moot because he does not plan to act on the now-annulled concurrence. (*Id.* at pp. 19–20.)

Each of these arguments fails for related reasons. Beginning with the Governor's effort to use Picayune's words against it, the relevant controversy for mootness purposes is not the "feedback loop" that Picayune described as a "possibility (albeit remote)." (Opening Brief at p. 13.) The possibility of a feedback loop is simply one of Picayune's motivations for appealing the decisions below. The reason this case is not moot is instead that there is an actual and present disagreement between the parties over whether the Governor's concurrence is void *ab initio*—a disagreement that the Governor doubles down on in his brief.[3]

[3] The Governor's discussion of *Cardellini v. Casey* (1986) 181 Cal.App.3d 389, is thus irrelevant. While that case involved the "potential for a future dispute" (*id.* at p. 396), this case involves an actual, present disagreement.

State law—through the Governor's concurrence—provides a veto over gaming on land like the Madera Site. (See 25 U.S.C. § 2719, subd. (b)(1)(A); *Confederated Tribes*, 110 F.3d at p. 696 ["[T]he effect of the [Governor's concurrence] provision is that the Governor must agree that gaming should occur on the newly acquired trust land before gaming can in fact take place."].) And thus, contrary to the Governor's claim, a very live, very state-specific question is presented.

Moving to the Governor's argument that he does not have any plans to effectuate his voided concurrence, he misses the point. It is still his concurrence that was annulled. (Opening Brief at pp. 21-23.) Thus, whether the Governor has plans to effectuate his concurrence or an ability to control North Fork's actions is irrelevant to the question of whether the case is moot. The Governor still has the ability to confirm the effect of the annulment of his concurrence—just as he did before *United Auburn* and *Stand Up II* were decided—and yet he has taken no steps to do so.[4] Put differently, the

[4] The Governor accordingly cannot distinguish *Chafin v. Chafin* (2013) 568 U.S. 165, on the ground that it involved "parties with directly adverse interests who actively pursued incompatible outcomes" (Respondent's Brief at p. 20), because the same is true here. The Governor's reliance (as predicted, see Opening Brief at p. 42) on *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, is also misguided. (See Respondent's Brief at pp. 21–22.) There, the court held that the Governor and Attorney General were not proper parties in a suit challenging the constitutionality of a statutory provision that barred actions by private individuals, because the Governor and Attorney General "ha[d] no control over the commencement of private actions." (*Connerly*, 146 Cal.App.4th at pp. 747-48.) Here, by

Governor's position that the concurrence was not void *ab initio* is an affirmative position creating a controversy. A mootness finding would require and reflect (if found) that the Governor is ambivalent on the void *ab initio* question—a position the Governor has, to date, refused to take. Moreover, the Governor could have made the same argument after the Secretary took the Madera Site into trust in 2012 and issued procedures governing gaming in 2016. The Governor nevertheless took the position that there was a live controversy between himself and Picayune until *United Auburn* and *Stand Up II* were decided in 2020 and 2021, respectively. (5 AA 933.) A live controversy remains now, too.

ii. The Governor Is Confused Regarding the Federal Court Litigation

With respect to the federal court litigation, the Governor continues to misunderstand the IGRA framework and the import of Picayune's claims. As discussed, Picayune is not seeking to overturn the agency decisions that it challenged in the District of Columbia and Eastern District of California. It is instead challenging the validity of the Governor's concurrence, which is "a *separate* condition necessary to conduct gaming on the Madera Site." (Opening Brief at p. 38 [citing *Stand Up II*, 64 Cal.App.5th at p. 201].) The Governor may disagree that his concurrence is an independent requirement

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contrast, the Governor undoubtedly has control over whether to renounce his concurrence, and he has chosen so far not to do so.

for North Fork to offer gaming, but that is a merits argument, not a mootness one.

And it is a merits question that this Court and the Ninth Circuit have resolved in Picayune's favor. (See *Stand Up II* at p. 216 ["[The] concurrence is one of IGRA's conditions that must be satisfied for class III gaming to be allowed at the site."]; *Confederated Tribes*, 110 F.3d at p. 696 ["[T]he Governor must agree that gaming should occur on the newly acquired trust land before gaming can in fact take place."]; see also *Stand Up for California!*, 204 F.Supp.3d at p. 250 ["each is a separate requirement for gaming to take place on newly-acquired, non-reservation lands" (footnote omitted)].)[5]

The Governor's confusion is further revealed by his argument that Picayune's claims are time barred, and that "resolving the question of whether Proposition 48 rendered Governor Brown's concurrence void *ab*

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[5] The Governor argues that he does not "confuse[] merits arguments with mootness" because he "do[es] not rely on speculation as to what 'IGRA means or should mean.'" (Respondent's Brief at pp. 20–21 [quoting Opening Brief at p. 39].) In the very next sentence, however, the Governor says that "the pertinent questions have been resolved in federal court" (*id.* at p. 21), thereby confirming that he refuses to accept that a valid concurrence is independently necessary to offer gaming. The questions that were resolved in federal court were the validity of certain agency decisions. (See *Stand Up for California!*, 204 F.Supp.3d at p. 226; *Picayune Rancheria of Chukchansi Indians*, 2017 WL 3581735, at p. *14.) The question in this case—which the federal courts did not answer—is the validity of the Governor's concurrence as a matter of state constitutional law, which needed the Governor for resolution. (See, e.g., *Picayune Rancheria of Chukchansi Indians*, 2017 WL 3581735.)

initio will 'have no practical effect'" as a result. (Respondent's Brief at p. 24 [quoting *Lincoln Place Tenants Assn. v. City of L.A.* (2007) 155 Cal.App.4th 425, 454].) This is wrong (and a merits argument regardless).

Despite this Court's judgment in *Stand Up II*, North Fork continues to press forward with its casino. And, in the process, it will need *future* and on-going approvals. Indeed, there are recent actions that North Fork and the federal government have taken—well within the statute of limitations—that depend on the validity of the Governor's concurrence, as well as actions that they must take in the future. For example, in 2024 the Chair of the National Indian Gaming Commission ("NIGC") approved a management contract that North Fork had entered into regarding gaming at the Madera Site.[6] Under the applicable regulations, such a contract is void if "gaming covered by the contract" is not "conducted in accordance with" IGRA. (25 C.F.R. §§ 531.1(a), 533.7.) If this Court were to hold that the Governor's concurrence was void *ab initio*, then Picayune could use that judgment to bring a timely challenge to the NIGC's approval. Likewise, under 25 U.S.C. § 2713, the Chair of the NIGC could also bring an action against North Fork for violating the requirements of IGRA. The bottom line is that if North Fork

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[6] See News Release, Red Rock Resorts, Inc., *North Fork Rancheria of Mono Indians and Station Casinos LLC announce the Approval of a Management Agreement by the NIGC* (Jan. 11, 2024), https://redrockresorts.investorroom.com/2024-01-11-North-Fork-Rancheria-of-Mono-Indians-and-Station-Casinos-LLC-announce-the-Approval-of-a-Management-Agreement-by-the-NIGC.

continues to proceed—violating the People's will and their exercise of their reserved constitutional powers—there are plenty of timely claims available to enforce this Court's opinions and its judgments.

iii. The Concurrence Is Void *Ab Initio*

Underscoring the actual and present nature of the parties' dispute, the Governor addresses the merits and argues that the concurrence was not rendered void *ab initio* by Proposition 48. (See Respondent's Brief at pp. 24–25.) He quotes from *Stand Up II*'s statement in the background section that "[t]he Governor's concurrence fulfilled a condition set forth in IGRA" (64 Cal.App.5th at p. 202), and from the Court's framing of one of the questions presented as "whether the Governor's concurrence, once given, can be invalidated by subsequent action of the electorate" (*id.* at p. 210). And he concludes from these references that the People's annulment of his concurrence did not have the effect of rendering his concurrence void *ab initio*. (Respondent's Brief at p. 25.) The Governor, just as North Fork did before him, seizes on the phrases "impliedly revoked" and "no longer valid" and ignores this Court's repeated and purposeful use of "annulment," or some form of it. (*Id.* [quoting *Stand Up II* at pp. 210–11].) Fighting this Court's reasoning in *Stand Up II*, he argues that because the annulment was implied through the referendum on the compact, it somehow had less effect on the concurrence. (*Id.*)

Picayune has already refuted these arguments in its Respondent's Brief in Appeal No. F088551. They are wrong here, too. Beginning with the language, the Court used a form of the word "annul" more than twenty times when describing the legal effect that Proposition 48 had on the Governor's concurrence. "Annulment" has a plain legal meaning: "The act of nullifying or making void." (*Black's Law Dict.* (12th ed. 2024).) "Nullification," likewise, is "[t]he act of making something void or of no effect." (*Id.*) Numerous courts throughout the country agree that an annulment renders something void *ab initio*. (See, e.g., *Am Cont'l Ins. Co. v. Steen* (2004) (en banc) 151 Wash.2d 512, 520; *Price v. Cole* (Mass. App. Ct. 1991) 574 N.E.2d 403, 405; *In re Williams* (Bankr. C.D. Cal. 1991) 124 B.R. 311, 316; *E. Refractories Co. v. Forty Eight Insulations Inc.* (2d Cir. 1998) 157 F.3d 169, 172.) There is no reason to believe that *Stand Up II* used the term any differently. Indeed, when the trial court reached the conclusion regarding North Fork, it held just that. (Picayune's Req. for Jud. Notice, Ex. A at pp. 7, 24-25.) By using "annul" as often as it did, this Court intended the normal meaning: void *ab initio*. Such construction is consistent with this Court's obligation to jealously guard the People's right to referendum. (*Stand Up II*, 64 Cal.App.5th at p. 213.)

Moving to *Stand Up II*'s logic, this Court understood that the goal of Proposition 48 was to "reject class III gaming on the . . . Madera site[.]" (64 Cal.App.5th at p. 216.) That goal could be achieved only if one or more of

the necessary preconditions to conduct gaming were removed. (25 U.S.C. § 2719, subds. (a), (b).) The Court recognized that the Governor's "concurrence is one of IGRA's conditions that must be satisfied for class III gaming to be allowed at the site," and it reasoned, accordingly, that Proposition 48 must have intended to eliminate that condition, such that it could not be relied upon in the future. (64 Cal.App.5th at p. 216.)

The Governor's quotation of stray phrases—some of which do not even appear in the discussion section of the opinion—cannot detract from that conclusion. The Governor does not attempt to reconcile his position with *Stand Up II*'s repeated invocation of "annul" and its variants. And his argument that "Proposition 48 addressed AB 277, not the Governor's concurrence" (Respondent's Brief at p. 25) was squarely rejected by *Stand Up II*. This Court considered the argument that "Proposition 48 addressed the compact-ratifying statute . . . and did not pertain to the concurrence[.]" (64 Cal.App.5th at p. 215.) And, it explained that "[r]estricting the voter's rejection of the compact-ratifying statute to the compact itself is the equivalent of inferring the voter's intended to approve the Governor's concurrence." (*Id.* at p. 216.) The Court concluded that "[t]he probability of this approach accurately identifying the people's will is, in our view, extremely low." (*Id.*) The Court held that "the people's rejection of Proposition 48 impliedly expressed their will to annul the Governor's August 30, 2012 concurrence for the Madera site." (*Id.*) The Governor offers no

basis for this Court to reconsider that decision. Rather, confirming its meaning for both the Governor and North Fork will finally put this state law issues to rest.

II. WRIT RELIEF SHOULD HAVE BEEN AVAILABLE, AND AT A MINIMUM THE COURT BELOW SHOULD HAVE GRANTED LEAVE TO AMEND

A. Picayune Stated a Mandamus Claim

As explained in its Opening Brief, Picayune has stated a mandamus claim both because the Governor breached a ministerial duty and because he abused his discretion. (See Opening Brief at pp. 52–60.) Specifically, the Governor had an obligation *not* to concur in the Secretary's two-part determination after the People retroactively annulled his concurrence through Proposition 48, and he both violated that obligation and abused his discretion by failing to correct the concurrence's invalid issuance. As Picayune has explained, mandamus regularly lies to correct such breaches and abuses. (See *Khan v. L.A. City Emps.' Ret. Sys.* (2010) 187 Cal.App.4th 98, 105.)

The Governor resists this straightforward conclusion on several grounds. First, the Governor argues that he had no ministerial duty not to concur in the Secretary's two-party determination because Proposition 48 did not withdraw his power to concur as to the Madera Site. (Respondent's Brief at pp. 27-28.) Second, the Governor asserts that he did not abuse his discretion because the Governor's power to concur is separate from its

annulment. (*Id.* at pp. 28-30.) And third, the Governor contends that in any event, Picayune's proposed remedy is too broad. (*Id.* at pp. 30-31.)

The Governor's first two responses are essentially a rehash of his argument that Proposition 48 did not render the concurrence void *ab initio*. As discussed above, however, Proposition 48 did in fact withdraw the Governor's power to concur as to the Madera Site—indeed, in the words of *Stand Up II*, Proposition 48 effectuated a "[r]etroactive [a]nnulment" of the concurrence (64 Cal.App.5th at p. 210)—and the Governor accordingly had a specific, ministerial duty not to concur. The Governor breached that duty and abused his discretion by failing to disavow his prior, invalid concurrence. The very point of annulment is to go back in time, and by annulling the concurrence, the People created a ministerial duty *not* to concur as to the Madera Site.[7] "[J]ealously guard[ing]" the People's right to referendum is fully consistent with creating a duty not to concur based on the People's vote. (*Id.* at p. 213.)

The Governor's response regarding the scope of relief also fails, as courts regularly grant mandamus to correct breaches and abuses, even where the official to whom the writ is directed was acting in good faith at the time

[7] Answering the Governor's argument (Respondent's Brief at pp. 26–27) the 61% of voters who rejected gaming at the Madera Site (1 AA 14) used "forceful language" (*Quackenbush v. Superior Ct*. (1997) 57 Cal.App.4th 660, 663) to confirm a duty not to concur and to create obligations to undo what he had done before.

of the challenged decision. This Court regularly mandates that lower courts vacate their prior orders. (See *Lunsted v. Superior Court* (2024) 100 Cal.App.5th 138, 151; *People v. Superior Court* (2018) 28 Cal.App.5th 223, 243.) And courts regularly compel curative steps after setting aside unlawful actions. (See, e.g., *Board of Trustees of Calaveras Unified School District v. Leach* (1968) 258 Cal.App.2d 281.) In *Calaveras*, for example, the writ compelled a sheriff to retrieve and return documents, just as here it means the Governor must undo the actions he took regarding his concurrence. (*Id.* at pp. 289–90.) Corrective action is appropriate in both.

The Governor cites *California Ass'n of Professional Scientists v. Department of Finance* (2011) 195 Cal.App.4th 1228 ("*CAPS"*), in which the court held that the Department of Finance had no ministerial duty to seek appropriations from the Legislature for salary adjustments. The Governor seems to glean from *CAPS* a rule that an officer cannot be mandated to provide information that a recipient could obtain through other channels. (See Respondent's Brief at p. 31.) But *CAPS* said nothing of the sort. The court there simply observed after holding that one of the relevant statutes imposed no obligation on the Department of Finance that the Legislature would likely receive information about the need for appropriations regardless. (See *CAPS*, 195 Cal.App.4th at pp. 1236–37.) Here, the Governor *did* have an obligation not to concur, and mandamus is available to correct his breach of that obligation.

B. Nothing on the Face of Picayune's Complaint Suggested that Amendment Was Futile

In any event, the trial court abused its discretion by denying Picayune leave to amend its writ claim. As Picayune explained in its Opening Brief, where a "plaintiff has not had an opportunity to amend the complaint in response to [a] demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747 [collecting cases].) The same standard applies to motions for judgment on the pleadings. (See *Tukes v. Richard* (2022) 81 Cal.App.5th 1, 27 ["We consider a request for leave to amend when reviewing judgment following a motion for judgment on the pleadings in the same way as when reviewing judgment following a demurrer." (citation omitted)].)

Here, the trial court erred by denying Picayune's motion for leave to amend based on what it perceived to be flaws in Picayune's proposed amended petition. (See 4 AA 745–46.) As just discussed, Picayune *did* state a mandamus claim; but regardless, the relevant inquiry for the trial court was not whether Picayune *could have* stated a mandamus claim, but whether anything on the face of the complaint made amendment impossible. The trial court identified nothing about Picayune's original complaint that "show[ed] on its face that it [wa]s incapable of amendment." (*City of Stockton*, 42 Cal.4th at p. 747.)

The Governor hardly grapples with this procedural error. The Governor, like the trial court, identifies nothing on the face of Picayune's complaint that shows that Picayune's mandamus claim is incapable of amendment, and he therefore provides no basis to affirm the trial court's failure to grant leave. The law is that black and white.

CONCLUSION

This Court should reverse the dismissals below and direct the trial court to reinstate Picayune's claims against the Governor, so that he may be added to the judgment and ordered to take curative steps.

DATED: June 17, 2025 PAUL HASTINGS LLP

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Dated: June 17, 2025

By: /s/ Navi S. Dhillon
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