

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SCOTTS VALLEY BAND OF POMO
INDIANS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,

Defendants.

CA No.: 1:26-cv-02814-TNM

**BRIEF FOR GOVERNOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE OF CALIFORNIA,
AS *AMICUS CURIAE* IN OPPOSITION TO PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

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INTEREST OF AMICUS CURIAE

Amicus curiae Governor Gavin Newsom, in his official capacity as Governor of the State of California, respectfully opposes the Scotts Valley Band of Pomo Indians’ motion for a preliminary injunction.

Under federal law, California (like other states) can be required to negotiate with tribal governments for compacts regulating class III tribal gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701–2721, 18 U.S.C. §§ 1166–1167—but only if the tribal government has jurisdiction over gaming-eligible lands. Under California state law, the Governor and his representatives are responsible for conducting those negotiations on behalf of the State. Cal. Const. art. IV, § 19(f).

Against this backdrop, the Governor respectfully submits this brief to draw the Court’s attention to the ways in which a preliminary injunction here threatens to harm California.

ARGUMENT

The proposed preliminary injunction threatens to harm California and its Governor, and the public interests that they represent. In particular, a preliminary injunction threatens to coerce California and its Governor into compact negotiations; expose them to new litigation risk; and undermine their bargaining position, given that litigation risk and the unprecedented uncertainty surrounding the gaming eligibility of the Vallejo site. These concerns are rooted in the experience of California’s negotiating team, who have already engaged in extensive compact negotiations with the Scotts Valley Band in a similar posture. Given the threatened harm to California and its interests, the Governor respectfully submits that the balance of the equities and the public interest would not support a preliminary injunction, and that the Court should carefully scrutinize whether a preliminary injunction would truly protect the status quo.

As an initial matter, a preliminary injunction threatens to coerce California, through its Governor, into negotiating for a casino at the Vallejo site—notwithstanding the Governor’s public concerns about that proposed casino project.¹ Under IGRA, the existence of gaming-eligible land generally triggers a state’s duty to enter into compact negotiations upon request: if a tribe “having jurisdiction over the Indian lands upon which a class III gaming activity . . . is to be conducted” requests that the relevant state engage in compact negotiations, then “the State shall negotiate with the Indian tribe in good faith to enter into such a compact.” 25 U.S.C. § 2710(d)(3)(A). Conversely, if a tribe has no gaming-eligible land, the state has no duty to negotiate. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Engler*, 304 F.3d 616, 618 (6th Cir. 2002). A preliminary injunction that renders the Vallejo site gaming-eligible (even on an interim basis, pending the outcome of this action and a final determination as to the site’s gaming eligibility) could thus be understood to require the State to negotiate for a casino at that site. *See Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1, 16 (D.D.C. 2025). At minimum, that preliminary injunction would pressure California and its Governor to err on the side of caution by proceeding as though they had such a duty to negotiate—as evidenced by the fact that they have already done exactly that, by resuming compact negotiations after this Court previously vacated

¹ The Governor’s Office publicly opposed the U.S. Department of the Interior’s invocation of IGRA’s “restored lands” exception to render the Vallejo site gaming-eligible, and has urged the Department to reconsider its gaming-eligibility determination for the Vallejo site. And as California’s representatives have made clear to the Scotts Valley Band, the fact that California and its Governor have subsequently engaged in good-faith compact negotiations does *not* mean that they have softened their opposition to the Department’s prior approval of gaming at the Vallejo site. On the contrary, California’s representatives have advised the Scotts Valley Band that California and its Governor reserve the right to litigate the question of the Vallejo site’s gaming eligibility, if necessary, at the appropriate time—as they have already brought litigation challenging the Department’s separate approval of a similar off-reservation casino project. *See California v. U.S. Dep’t of the Interior*, No. 3:25-cv-3850 (N.D. Cal., filed May 2, 2025). Such litigation has not yet become necessary or timely here: the Department has been reconsidering the gaming eligibility of the Vallejo site, and therefore likely had not taken final agency action to render the site gaming-eligible. *See Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1, 13–14 (D.D.C. 2025) (concluding that the reconsideration itself was not a final agency action and noting that “Interior is yet to hand down its final decision”).

the prior rescission of the Vallejo site's gaming eligibility. *See id.* at 28.

This concern is compounded by the prospect that a preliminary injunction could spark new litigation by the Scotts Valley Band against California and its Governor. Under IGRA, if a state and a tribe fail to agree to a gaming compact, the tribe can sue the state on the grounds that the state has failed to negotiate for a compact in good faith. *See* 25 U.S.C. § 2710(d)(7)(A)(i). Such litigation can lead to the issuance of “secretarial procedures” (that is, procedures prescribed by the federal Secretary of the Interior) to regulate tribal gaming, in lieu of a tribal-state gaming compact; such procedures can deprive the state of all regulatory control over tribal gaming. *See id.* § 2710(d)(7)(B)(iii)–(vii). And though of course California and its Governor would dispute whether the Scotts Valley Band could maintain such a lawsuit here, there is a serious risk that the Scotts Valley Band would pursue such litigation following entry of a preliminary injunction. Notably, despite the Scotts Valley Band's contrary implication, the two sides are *not* near consensus in compact negotiations. The statement that California and the Scotts Valley Band have “tentatively agreed to nearly all material terms” of a proposed compact (Davis Decl. ¶ 69, ECF No. 10-2 at 14) obscures at least one fundamental gulf that has separated the parties: in negotiations thus far, the parties have fundamentally disagreed on the size of the proposed casino. Given this significant disagreement, it would not be surprising if a preliminary injunction here gave rise to new litigation by the Scotts Valley Band against California and its Governor.

Given this litigation risk, a preliminary injunction also threatens to put California and its Governor in an unfavorable negotiating position. Faced with the prospect of such litigation, California's representatives would encounter a Hobson's choice. They could agree to the Scotts Valley Band's demand for a large casino in Vallejo—notwithstanding California's concerns about a large casino in Vallejo, and notwithstanding that the final gaming eligibility of the Vallejo site

has not yet been determined (so they may not need to agree to *any* casino at the Vallejo site). This could avoid litigation and its attendant risks; it would, however, abandon California’s concerns regarding the prospect of a large casino at the Vallejo site. Alternatively, they could continue to negotiate in good faith while favoring a smaller casino at the Vallejo site—and run the risk that California might (in ensuing litigation) lose any regulatory control over the Vallejo site, including as to size, even before it is clear whether the Vallejo site is truly eligible for gaming.

These concerns are based on hard experience. Representatives of California and its Governor already have extensive experience negotiating with the Scotts Valley Band over the Vallejo site in a similar posture: as noted, they returned to the bargaining table in good faith after this Court vacated the Department’s prior rescission of that site’s gaming eligibility. In those negotiations, the Scotts Valley Band has already pressed California hard to accept a large casino at the Vallejo site—even before it is clear whether California must accept *any* casino at the Vallejo site, and notwithstanding the Court’s warning that “Scotts Valley would be ill-served by placing undue reliance on” the Court’s vacatur of Interior’s prior rescission of gaming eligibility. *Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1, 28 (D.D.C. 2025). California’s representatives have seen little evidence that the Scotts Valley Band intends to proceed with caution—or that it will accept such caution from the State.

Given the ways in which the proposed preliminary injunction threatens to harm California’s interests, the Governor respectfully submits that neither the balance of the equities nor the public interest would support that preliminary injunction.² Indeed, the harms to California are

² The Court need not parse whether these harms to California and its Governor bear on the public-interest prong of the preliminary-injunction standard or the balance of the equities, for they bear on both. *Cf. Arriva Med. LLC v. U.S. Dep’t of Health & Hum. Servs.*, 239 F. Supp. 3d 266, 283 (D.D.C. 2017) (“[I]n the usual case, a pure injury to third parties should be reserved for the public-interest prong of the preliminary-injunction standard.”); *Whitaker v. Thompson*, 248 F. Supp. 2d 1, 8 (D.D.C. 2002) (framing the balance-of-the-equities inquiry as whether the plaintiffs’
(continued...)

especially noteworthy because they are closely tied to the interim nature of preliminary relief: California’s representatives have already experienced how difficult it is for California to negotiate over class III gaming at the Vallejo site while the ultimate gaming eligibility of that site remains unsettled. Conversely, many of the harms identified by the Scotts Valley Band will dissipate if the Band ultimately prevails in this litigation, even if it does not first obtain preliminary relief. For example, California and its representatives have already demonstrated their willingness to negotiate in good faith over the Vallejo site even while its ultimate gaming eligibility remains unsettled—so there is little question that they will return to the bargaining table if it is conclusively determined that the site is eligible for gaming. *Cf.* ECF No. 10, Motion for a Preliminary Injunction at 49–50 (arguing that the Scotts Valley Band will suffer irreparable harm from “lost governmental efforts, expenditures, and opportunities” in compact negotiations).

In the same vein, the Governor respectfully requests that the Court carefully scrutinize whether the proposed preliminary injunction would truly protect the status quo. “Preliminary injunctions are generally a ‘stopgap measure’ meant only to ‘preserve the relative positions of the parties’ until trial.” *Singh v. Berger*, 56 F.4th 88, 95 (D.C. Cir. 2022). Accordingly, “courts are institutionally wary of granting relief that disrupts, rather than preserves, the status quo.” *Id.* Here, however, the proposed preliminary injunction threatens to trigger affirmative acts by California and its Governor, by pressuring them to undertake further rounds of compact negotiations.³

irreparable harm “outweighs the threatened harm that the injunction would cause Defendants and third parties”). As a general matter (as the Scotts Valley Band correctly acknowledges), the balance of the equities and the public interest “merge when, as here, the Government is the opposing party.” *Singh*, 56 F. 4th at 107. And this general rule continues to make sense when analyzing potential third-party harms to California and its Governor: California is itself a government, and its public officials represent the interests of their public.

³ In other circuits, an injunction that had the effect of requiring an affirmative act—for example, engaging in compact negotiations—might well be described as “mandatory,” rather than “prohibitory.” *See Singh*, 56 F.4th at 96 (collecting cases from other circuits). Although the D.C. Circuit has been reluctant to embrace this dichotomy of “mandatory” versus “prohibitory” (continued...)

Similarly, a preliminary injunction threatens to expose California and its Governor to new litigation risk, which could lead to the issuance of new secretarial procedures that permanently deprive them of regulatory control over gaming at the Vallejo site. If a preliminary injunction would trigger these new circumstances and affirmative acts, it is far from obvious that the preliminary injunction protects the status quo.

In sum, the Scotts Valley Band's proposed preliminary injunction threatens to harm California and its interests. Accordingly, the Governor respectfully submits that the balance of the equities and the public interest would not support a preliminary injunction, and respectfully requests that the Court carefully scrutinize whether a preliminary injunction would truly protect the status quo.

CONCLUSION

The Governor respectfully draws the Court's attention to the foregoing ways in which a preliminary injunction would threaten harm to California and its public interests. Given these harms, the Governor respectfully submits that the motion for a preliminary injunction should be denied.

injunctions, it has made clear that “the established test for preliminary relief is sufficiently flexible to take account of” such concerns, and that preliminary injunctions that alter the status quo face “additional headwinds.” *Id.* at 96–97.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to LCvR 7(o), I hereby certify that this brief conforms to the requirements of Local Rule LCvR 5.4, complies with the requirements set forth in Federal Rule of Appellate Procedure 29(a)(4), and does not exceed 25 pages in length.

/s/Noel A. Fischer

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