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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, a federally recognized Indian tribe,

Plaintiff,

v.

THE CHAIR OF THE NATIONAL INDIAN GAMING COMMISSION, et al.,

Defendants.

STATION CASINOS LLC, a Nevada limited liability corporation, et al.,

Nominal Defendants.

Case No. 1:26-cv-04343-KES-SAB

PICAYUNE'S OPPOSITION TO NORTH FORK RANCHERIA OF MONO INDIANS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

Date: October 5, 2026
Time: 1:30 p.m.
Judge: Hon. Kirk E. Sherriff
Courtroom: 6, 7th Floor

Action Filed: June 5, 2026
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Plaintiff Picayune Rancheria of the Chukchansi Indians ("Picayune") respectfully submits this opposition to the Motion to Dismiss First Amended Complaint filed by North Fork Rancheria of Mono Indians of California ("North Fork"). (ECF No. 36 ["MTD"].)

INTRODUCTION

North Fork is not being straight with the Court. North Fork's own legal positions prompted litigation in California state court regarding the validity of the concurrence. North Fork fought tooth and nail in state court, including seeking review in the California Supreme Court. That litigation spanned nearly a decade. North Fork lost, and the judgment is final.

Now, the gist of North Fork's motion is that the entire state court litigation was meaningless, including the two published decisions from the California Court of Appeal. The Court can easily turn away North Fork's baseless contentions. At the threshold, North Fork's motion omits much. For example, North Fork does not tell this Court that Picayune was informed by two different federal courts that it needed to go to state court to resolve the question of whether Governor Jerry Brown had issued a valid concurrence. This is because the validity of a concurrence is a question of state law. Further, Governor Brown could not be joined as a party to the prior federal litigation. And, because a valid concurrence is a necessary precondition to certain gaming under the Indian Gaming Regulatory Act ("IGRA"), litigation in California state court became necessary to resolve the dispute. As noted above, that litigation has resulted in a final judgment against North Fork.

North Fork also omits that it lost twice in state court. In the first round, the California Court of Appeal held that the People through Proposition 48 had "annulled" the concurrence, rendering it invalid. *See Stand Up for California! v. State of Cal.*, 64 Cal. App. 5th 197, 216 (2021) ("*Stand Up II*"). After that loss, North Fork pivoted to arguing that the concurrence had been valid prior to the vote on Proposition 48, and therefore North Fork could still rely upon it. In effect, North Fork was arguing that Proposition 48 did not have retroactive effect. That led to the second round of litigation. The California Court of Appeal rejected North Fork's position, determining that the concurrence never had any legal effect and instead had been rendered void ab initio. *Picayune Rancheria of Chukchansi Indians v. N. Fork Rancheria of Mono Indians*, 117 Cal. App. 5th 91 (2025) ("*Picayune Rancheria*"). So, North Fork's retroactivity theory failed.

Although reluctant to admit it, North Fork is making the same retroactivity argument in this Court. A final judgment precludes it. And North Fork's procedural arguments fare no better. For example, North Fork relies primarily on a claim of sovereign immunity. The First Amended Complaint asserts two claims. The second claim seeks to enforce the Secretarial Procedures pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii). As North Fork recognizes, that section "waives tribal sovereign immunity." MTD 9. But, according to North Fork, § 2710 is inapplicable because this litigation concerns Secretarial Procedures, not a tribal-state compact. Not so. The Ninth Circuit has already held that Secretarial Procedures are the functional equivalent of a tribal-state compact. *Stand Up for California! v. U.S. Dep't of the Interior*, 959 F.3d 1154, 1160 (9th Cir. 2020). And the same argument advanced here by North Fork was firmly rejected just last year by another federal court in California. *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-cv-6162, 2025 WL 3141202 (N.D. Cal. Nov. 10, 2025) (Corley, J.). This Court should do the same.

Spinning the sovereign immunity argument, North Fork also moves to dismiss Picayune's first claim under Rule 19, arguing North Fork is a required party that cannot be joined due to sovereign immunity. The first claim, brought under the Administrative Procedure Act, seeks to set aside the decision of the National Indian Gaming Commission ("NIGC") to approve the Management Contract between North Fork and its Las Vegas business "partners." But North Fork is already in the room. And even if it were not, the interests of North Fork are more than adequately represented by existing parties, including North Fork's own sophisticated business partners.

In yet more spin, North Fork asserts Picayune seeks to collaterally attack the Secretarial Procedures. That is simply untrue. Picayune seeks to *enforce* those procedures, not attack them. For the reasons below, North Fork's arguments fail, and its motion to dismiss should be denied.

BACKGROUND

A. Class III Gaming Under IGRA

IGRA provides "a statutory basis for the operation of gaming by Indian tribes." 25 U.S.C. § 2702(1). Relevant here, IGRA prohibits class III gaming (i.e., Las Vegas-style gambling, *id.* § 2703(8)) on lands taken into trust by the federal government after October 17, 1988, unless an exception applies. *Id.* § 2719(a), (b). North Fork and its casino partners tried to invoke an

exception, referred to as the "two-part determination," that allows an Indian tribe to offer class III gaming if the following preconditions are met: First, the Secretary of the Interior must make a "determin[ation] that a gaming establishment . . . [1] would be in the best interest of the Indian tribe and its members, and [2] would not be detrimental to the surrounding community." *Id.* § 2719(b)(1)(A). Second, it must be the case that "the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." *Id.* And third, the tribe must enter into a compact with the State or—if the State fails to negotiate in good faith—the Secretary must prescribe procedures under which gaming will be conducted. *Id.* § 2710(d)(1)(C), (d)(3)(A), (d)(7). Critically, each precondition "is a separate requirement for gaming to take place." *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F. Supp. 3d 212, 250 (D.D.C. 2016), *aff'd* 879 F.3d 1177 (D.C. Cir. 2018). Thus, while "[t]he Secretary's two-part determination is not contingent upon the Governor's concurrence," "*gaming* on land acquired in trust by the Secretary after October 17, 1988, is contingent upon the Governor's concurrence." *Id.* at 249-50 (emphasis in original).

B. North Fork's Casino Project

North Fork is a federally recognized Indian tribe with a rancheria in the Sierra Nevada foothills. *Stand Up II*, 64 Cal. App. 5th at 202. In March 2005, North Fork requested that the Department of the Interior take into trust for North Fork's benefit a 305-acre parcel of land in Madera County—the Madera Parcel—so that North Fork could build and operate a large casino where it would offer class III gaming. *See Picayune Rancheria*, 117 Cal. App. 5th at 98. In September 2011, the Secretary of the Interior, at North Fork's request, made a two-part determination that North Fork's proposed casino project would (1) be in the best interest of the tribe and its members, and (2) not be detrimental to the surrounding community. *Id.* at 99. On August 30, 2012, then-Governor Brown issued a letter concurring in the Secretary's determination. *Id.* And the following day, the Governor and North Fork executed a tribal-state gaming compact for the proposed casino project. *Id.* at 100. In November 2012, the Secretary made the final decision to take the Madera Parcel into trust, and it was taken into trust in February 2013. *Id.*

Although the Governor has the power to negotiate the terms of a gaming compact, the California Constitution provides that tribal-state gaming compacts are "subject to ratification by

the Legislature." Cal. Const., art. IV, § 19(f). The Legislature subsequently tried to ratify the Compact via Assembly Bill No. 277 (AB 277), which the Governor signed in July 2013. *Picayune Rancheria*, 117 Cal. App. 5th at 101. AB 277 did not immediately go into effect, however, because it was subject to California's statewide referendum process. Under that process, if a voter referendum on a piece of legislation qualifies for the ballot, the legislation does not go into effect (if at all) until after the vote on the referendum. Cal. Const., art. II, §§ 9, 10. Opponents of North Fork's proposed casino project succeeded in getting a referendum—Proposition 48—onto the ballot, and in November 2014, 61 percent of Californian voters voted to reject AB 277. *Picayune Rancheria*, 117 Cal. App. 5th at 101. As a result, AB 277 never went into effect.

Following the referendum, the State refused to negotiate another gaming compact, and North Fork filed suit in federal court alleging that the State had failed to negotiate in good faith. *North Fork Rancheria of Mono Indians of Cal. v. California*, No. 15-cv-419, 2015 WL 11438206 (E.D. Cal. Nov. 13, 2015). As noted above, if a State does not negotiate in good faith to reach a compact, the Secretary must prescribe procedures under which class III gaming will be conducted. 25 U.S.C. § 2710(d)(7)(B)(iv). The federal court ruled for North Fork and, in July 2016, the Secretary issued procedures governing class III gaming at the Madera Parcel. *Picayune Rancheria*, 117 Cal. App. 5th at 102 n.3. As relevant, the procedures provide that North Fork may conduct class III gaming only "on eligible Indian Lands held in trust for the Tribe . . . and on which Class III Gaming may lawfully be conducted under IGRA." FAC ¶ 6 (citation and emphasis omitted).

C. Federal Court Litigation

North Fork's need for a concurrence at the Madera Parcel has been raised in federal court previously. But, identifying the question as one of state law, federal courts have declined to reach the issue unless and until there was answer from the California state court system. For example, in December 2012, Picayune and others sued the Department of the Interior and the Bureau of Indian Affairs in the District of Columbia, challenging certain federal approvals and acts by the Secretary. *Stand Up*, 204 F. Supp. 3d 212. Picayune argued, among other things, that the Secretary's decision to take the Madera Parcel into trust violated IGRA because Governor Brown's concurrence was invalid. *Id.* at 235. In a decision that the D.C. Circuit later affirmed, the district court concluded

that it could not "address the validity of the California Governor's concurrence under California law" because the State could not be joined as a party due to sovereign immunity, and "any challenge to the validity of the Governor's concurrence may not proceed in the State's absence." *Id.* at 251-53. The court also noted that "[t]he issue regarding the legality of the gubernatorial concurrence . . . has not been finally resolved by the California state court system." *Id.* at 255. Accordingly, the court held, Picayune's "claims in any way involving the Governor's concurrence must be dismissed due to the absence of an indispensable party." *Id.* at 254.

In July 2016, Picayune filed a suit in the Eastern District of California, where it also challenged federal approvals. *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of the Interior*, No. 1:16-cv-950, 2017 WL 3581735 (E.D. Cal. Aug. 18, 2017). As in the D.C. action, the court dismissed Picayune's claims, which "depend[ed] (at least in part) upon the validity of the Governor of California's . . . concurrence." *Id.* at *1. The court explained "[t]he State of California remains a necessary party for the same reasons articulated by the District of Columbia district court." *Id.* at *10. And the court noted, as the D.C. court had, that state court litigation was ongoing in which California was defending the validity of the Governor's concurrences. *Id.* at *9-10. Federal courts, in other words, thought state courts should resolve the state law concurrence issue first.

D. State Court Litigation

As just discussed, both federal courts referenced ongoing state court litigation regarding the Governor's concurrence power. As relevant, the California Supreme Court held in *United Auburn Indian Community of Auburn Rancheria v. Newsom*, 10 Cal. 5th 538 (2020)—which involved a different gubernatorial concurrence—that "California law permits the Governor's concurrence in the Interior Secretary's determination to allow class III gaming on Indian land taken into trust for an Indian tribe after IGRA was enacted." *Id.* at 564. It also concluded, however, that the Governor's power "isn't an indefeasible one," and that "the legislative branch is capable of enacting legislation that would reduce the Governor's concurrence power." *Id.* at 563. The Court of Appeal subsequently held in *Stand Up II*—a challenge brought by the proponents of Proposition 48 to the concurrence at issue here—that "the people of California retain[] the authority to annul a concurrence . . . after it has been issued by the Governor." 64 Cal. App. 5th at 212. And the court

held that California voters annulled Governor Brown's concurrence with respect to the Madera Parcel when they rejected AB 277 through Proposition 48. *See id.* at 216.

With *United Auburn* and *Stand Up II* on the books, and with the federal courts having directed it to resolve the validity of the concurrence in state court, Picayune sought a state-court judgment holding that the concurrence was invalid. North Fork resisted entry of that judgment, taking the position that the concurrence was valid for a period of time. Years of hard-fought litigation in both trial and appellate courts followed, ultimately leading to the decision in *Picayune Rancheria*. There, the trial court held that the Governor's concurrence on which North Fork seeks to rely was "void ab initio," meaning it was "ineffective from its inception." 117 Cal. App. 5th at 113-14. The Court of Appeal agreed. *Id.* In so holding, the court expressly rejected North Fork's argument that federal law preempted California voters' ability to annul a governor's concurrence. *Id.* at 111-12. North Fork filed a petition for review, which the California Supreme Court denied. *See Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, No. S294956 (Cal. Jan. 23, 2026), *denied* Apr. 1, 2026. North Fork did not file a petition for a writ of certiorari in the U.S. Supreme Court. The judgment in *Picayune Rancheria* is now final with respect to North Fork and the Madera Parcel: They lack a valid concurrence.

E. North Fork's Continued Plans To Offer Gaming at the Madera Parcel

Despite *Picayune Rancheria*'s clear holding that North Fork lacks a valid concurrence—meaning that it is missing one of IGRA's legal prerequisites for offering class III gaming—North Fork has chosen to plow ahead with its planned facility, the North Fork Mono Casino & Resort (the "North Fork Project"), which would make 2,400 slot machines and 40 house-banked card and percentage games open to the public. FAC ¶ 60. In 2023, while that litigation was pending, North Fork, Red Rock Resorts, Inc. (together with other Nominal Defendants, "Red Rock"), and the North Fork Rancheria Economic Development Authority (the "Authority") executed a Management Contract, pursuant to which Red Rock has committed to assisting North Fork and the Authority in operating the North Fork Project on the Madera Parcel. *Id.* ¶ 56.

In 2024, the Chair of the NIGC approved that Management Contract. *Id.* ¶ 5. Under the applicable regulations, a management contract must ensure "that all gaming covered by the contract

will be conducted in accordance with [IGRA] and governing tribal ordinance(s)." 25 C.F.R. § 531.1(a). Management Contracts that are not "approved by the Chairman in accordance with the requirements of part 531 of this chapter and this part, are void." *Id.* § 533.7. Even after the California Supreme Court denied review in *Picayune Rancheria* in April 2026—meaning that the question of the concurrence's validity has now conclusively been resolved against them—North Fork and Red Rock have continued construction of the North Fork Project. As of August 2026, they anticipate an opening date in Fall 2026. *See* North Fork Mono Casino Homepage, https://perma.cc/85YV-FXU8.

STANDARD OF REVIEW

Under both Rules 12(b)(6) and 12(b)(7), the Court must "accept as true the allegations in [Picayune's] complaint and draw all reasonable inferences in [Picayune's] favor." *Paiute-Shoshone Indians of Bishop Cmty. of Bishop Colony v. City of Los Angeles*, 637 F.3d 993, 996 n.1 (9th Cir. 2011); *see Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). To avoid dismissal under Rule 12(b)(6), a plaintiff need allege only "enough facts to state a claim to relief that is plausible on its face" and the facts as alleged are taken as true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Courts in this District recognize, by contrast, that the "party moving for dismissal under Rule 12(b)(7) bears the burden of producing evidence in support of the motion." *Bernard v. Freedom Mortg. Corp.*, No. 2:25-cv-511, 2025 WL 2388390, at *3 (E.D. Cal. Aug. 18, 2025) (citing *Biagro Western Sales, Inc. v. Helena Chem. Co.*, 160 F. Supp. 2d 1136, 1141 (E.D. Cal. 2001)), *report and recommendation adopted*, 2026 WL 731082 (E.D. Cal. Mar. 16, 2026). Under Rule 12(b)(7), dismissal is appropriate if a party "who is required to be joined if feasible cannot be joined," and if the Court determines the action cannot, "in equity and good conscience, . . . proceed among the existing parties." Fed. R. Civ. P. 19(b); *see Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 851 (9th Cir. 2019). Rule 12(b)(7) motions are "disfavored." *Capital Bank, N.A. v. Gagnes Fin. Grp.*, No. 1:20-cv-1470, 2021 WL 6750743, at *3 (D.D.C. Mar. 31, 2021). "The Ninth Circuit has held that a court should grant a 12(b)(7) motion to dismiss *only* if the court determines that joinder would destroy jurisdiction and the nonjoined party is necessary

and indispensable." *Biagro*, 160 F. Supp. 2d at 1141 (emphasis added). Courts in this District deny motions where, as here, the moving party did not support its motion with evidence. *See, e.g.*, *Lennar Mare Island, LLC v. Steadfast Ins. Co.*, 139 F. Supp. 3d 1141, 1151 (E.D. Cal. 2015) ("Because LMI bears the burden to produce relevant evidence, but has not, a dismissal under Rule 12(b)(7) cannot be based on a theory of the Navy's necessity under Rule 19(a)(1)(A).").

ARGUMENT

A. North Fork's Arguments To Dismiss Under Rule 19 Lack Merit.

North Fork offered no evidence in support of its motion. Under *Lennar*, this Court could deny the motion on that ground alone.[1] Setting aside North Fork's evidentiary default for argument's sake, however, North Fork appears to make two distinct arguments in moving to dismiss under Rule 12(b)(7): First, that Picayune's IGRA claim must be dismissed against North Fork because North Fork is immune from suit. MTD 9-12. And second, that Picayune's claims against the NIGC and the Nominal Defendants must be dismissed because North Fork is a required party that cannot be joined. *Id.* at 12-15. For the reasons below, North Fork is wrong on both counts.

1. North Fork Is Not Immune from Suit.

North Fork concedes that the provision under which Picayune has sued it, 25 U.S.C. § 2710(d)(7)(A)(ii), "waives tribal sovereign immunity." MTD 9; *see Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 791 (2014) ("*Bay Mills*") ("IGRA partially abrogates tribal sovereign immunity in § 2710(d)(7)(A)(ii) . . . ."). Under § 2710(d)(7)(A)(ii), "[t]he United States district courts shall have jurisdiction over . . . any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact . . . that is in effect." And the Ninth Circuit has held, in interpreting § 2710, that "Secretarial Procedures are functionally equivalent to a compact." *Stand Up*, 959 F.3d at 1160. Section 2710(d)(7)(A)(ii) thus authorizes an "Indian tribe"—Picayune—to bring an action "to

[1] North Fork's motion is procedurally flawed twice over. It *is* a party to this suit, so there is no party that needs to be joined. North Fork is here. If North Fork's argument instead is that it is immune, that is wrong on the merits (discussed *infra*) and wrong on the process. The Ninth Circuit has confirmed the "appropriate manner" for asserting such arguments at the pleading stage is "a Rule 12(b)(1) motion to dismiss." *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). North Fork has not moved under Rule 12(b)(1).

enjoin a class III gaming activity located on Indian lands"—the Madera Parcel—"conducted in violation of" Secretarial Procedures.

North Fork's primary response is that § 2710(d)(7)(A)(ii) "is limited to claims involving violations of a compact." MTD 10.[2] As just noted, though, the Ninth Circuit already held in *Stand Up* that compacts and Secretarial Procedures are equivalent for purposes of § 2710. In that case, the court considered whether IGRA, in carving out an exemption from the prohibitions of the Johnson Act for "gaming conducted under a Tribal-State compact," 25 U.S.C. § 2710(d)(6), also implicitly carved out an exemption for gaming conducted pursuant to Secretarial Procedures. *See* 959 F.3d at 1159. The court held that it did. Although § 2710(d)(6) did not specifically reference Secretarial Procedures, the court explained, neither did § 2710(d)(1), which provides that "Class III gaming activities shall be lawful on Indian lands *only if* such activities are . . . conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State." *Id.* Because "Secretarial Procedures, by definition, are issued only when no Tribal-State compact has been reached," the court explained, it must be the case that that § 2710(d)(1) treats compacts and Secretarial Procedures as functionally equivalent—otherwise, "Secretarial Procedures would always, by definition, violate the very Act that creates those Procedures." *Id.* at 1159-60. And if compacts and Secretarial Procedures are equivalent under § 2710(d)(1), the court held, they must be equivalent under § 2710(d)(6), because "an interpretation in which Secretarial Procedures are functionally equivalent to a compact in the context of § 2710(d)(1), but not in the context of the exception to the Johnson Act in § 2710(d)(6), would contravene the presumption that a given term is used to mean the same thing throughout a statute." *Id.* at 1160 (internal quotation marks omitted).

What is true of § 2710(d)(1) and § 2710(d)(6) is true of § 2710(d)(7), too. North Fork points to § 2710(d)(7)(A)(iii), which authorizes the Secretary to sue to enforce Secretarial Procedures, and suggests that this authorization somehow prevents Tribes from suing to enjoin Secretarial Procedures under § 2710(d)(7)(A)(ii). MTD 9-10. But the Secretary's authority to sue under § 2710(d)(7)(A)(iii) does not come at the expense of tribes' authority under § 2710(d)(7)(A)(ii).

[2] North Fork also argues that no compact is "in effect" and that Picayune is estopped from arguing otherwise. *See* MTD 10-12. Picayune alleges that the North Fork Project violates the Secretarial Procedures, though.

Rather the two provisions are complementary, with each authorizing different plaintiffs to seek injunctions of unlawful class III gaming.[3]

The Hon. Jacqueline Scott Corley of the Northern District reached that exact conclusion in *Blue Lake*, when she rejected the argument that North Fork advances here. The plaintiff tribes in *Blue Lake* alleged, as relevant, that the defendants were offering class III gaming on the plaintiffs' Indian lands in violation of the governing Secretarial Procedures. *See* 2025 WL 3141202, at *4. And the defendants argued, as North Fork does here, that § 2710(d)(7)(A)(ii) does not authorize lawsuits to enjoin Secretarial Procedures, notwithstanding the Ninth Circuit's decision in *Stand Up*. *See id.* at *5. The court disagreed. It explained "*Stand Up* reasoned the compacts are equivalent to secretarial procedures for purposes of Sections 2710(d)(1) and 2710(d)(6) because there is a 'presumption that a given term is used to mean the same thing throughout a statute.'" *Id.* (citation omitted). And it concluded as a result that "compacts are equivalent to secretarial procedures in § 2710(d)(7), which immediately follows a subsection *Stand Up* addressed." *Id.* The court noted further that "Defendants' interpretation of Section 2710(d)(7)(A) 'robs IGRA's remedial scheme, which relies on Secretarial Procedures to ensure good-faith negotiation by states, of its force.'" *Id.* (quoting *Stand Up*, 959 F.3d at 1160). "Under Defendants' reading," the court explained, "Tribes would lose the ability to enjoin unlawful Class III activity on their lands whenever a state refuses to negotiate a new compact in good faith—a situation over which Tribes have no control." *Id.*

North Fork tries to distinguish *Blue Lake* on the ground that it "involved litigation affirmatively brought by plaintiff tribes to enforce *their own compacts and Secretarial Procedures*." MTD 11. But *Blue Lake* interpreted the meaning of § 2710(d)(7)(A)(ii), and North Fork concedes that § 2710(d)(7)(A)(ii) abrogates tribal sovereign immunity. *See* p. 8, *supra*. *Blue Lake* answers North Fork's argument in full.[4] North Fork also cites cases for the general proposition that

[3] The Ninth Circuit rejected a similar argument in *Stand Up*. In that case, the court noted that § 2710(d)(7)(B)(vi) provides that where a State consents to a compact chosen by a mediator, that compact "shall be treated as a Tribal-State compact." But the statute "does not indicate, as with a mediator-selected compact to which the state consents, that the Procedures 'shall be treated as a Tribal-State compact.'" 959 F.3d at 1159 (citation omitted). The court nevertheless held that Secretarial Procedures, like mediator-selected compacts, are equivalent to tribal-state compacts.

[4] North Fork also asserts that "Ninth Circuit precedent confirms that subsection (ii) is limited to claims involving violations of a compact." MTD 10. But the case it cites, *Arizona v. Tohono O'odham Nation*,

§ 2710(d)(7)(A)(ii) abrogates tribal sovereign immunity only for claims that fall within the statute's terms. *See* MTD 10-12 (citing *Bay Mills*, 572 U.S. at 791; *Comanche Nation v. Ware*, 174 F.4th 717, 728 (10th Cir. 2026)). For the reasons just discussed, though, § 2710(d)(7)(A)(ii) authorizes Picayune's claim here. North Fork's arguments in favor of sovereign immunity accordingly fail.

2. North Fork Is Not a Required Party.

Nor should Picayune's claims be dismissed on the ground that North Fork is a required party that cannot be joined. *See* MTD 12-14. At the outset, North Fork *is* currently joined to the suit. Its argument is disconnected from the case's posture. But if North Fork's point is that it is a necessary party to Picayune's APA claim and it does not choose to participate, North Fork is wrong. "A party is required to be joined if it has a legally protected interest in the subject matter of a suit and proceeding in its absence would impair that interest." *Welsh v. Loudbear*, 178 F.4th 484, 490 (9th Cir. 2026) (internal quotation marks and alterations omitted). Note the words: "[L]egally protected interest in the subject matter." On the APA claim, the subject matter of the suit is (i) whether the APA has been complied with and (ii) whether a necessary condition for gaming under California law (as incorporated into IGRA) exists given the People's vote on Proposition 48 and the now final decision in *Picayune Rancheria*. As to the former, the Ninth Circuit has already held that "there is no legally protected interest in particular agency procedures," *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990), so North Fork is not required there. As to the latter, North Fork has already litigated that issue and lost—so North Fork can hardly claim (and certainly did not prove in its motion) a "*legally protected*" interest in a Governor's concurrence that has conclusively been determined to be void ab initio.

And even were it otherwise, "[a]s a practical matter, an absent party's ability to protect its interest will not be impaired by its absence from the suit where its interest will be adequately represented by existing parties to the suit." *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 852 (9th Cir. 2019) (citation omitted). Here, North Fork's interests will

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818 F.3d 549 (9th Cir. 2016), dealt with a situation where a plaintiff brought claims under a compact, in addition to tort claims not based on the compact, *see id.* at 554-55. In holding that § 2710(d)(7)(A)(ii) authorized suit for the compact claims but not the tort claims, the court in no way suggested that claims based on compacts should be treated differently from claims based on Secretarial Procedures.

be adequately represented by the NIGC and Red Rock. Thus, even if North Fork had a protectable interest with respect to the APA claim (and North Fork has not provided any evidence that it does), there would be no need to join North Fork under Rule 19.

This Court considers three factors when assessing whether an existing party will adequately represent an absent party's interest: "[1] whether the interests of a present party to the suit are such that it will undoubtedly make all of the absent party's arguments; [2] whether the party is capable of and willing to make such arguments; and [3] whether the absent party would offer any necessary element to the proceedings that the present parties would neglect." *Id.* (citation omitted). Each factor weighs against joinder here. The NIGC has the incentive and the ability to make the same arguments as North Fork in defense of its approval of the Management Contract, and there is nothing North Fork would offer that the NIGC would neglect. Indeed, the very cases on which North Fork relies confirm that "the United States, based on its trust relationship with Indian tribes, generally may adequately represent an Indian tribe unless there exists a conflict of interest between the United States and the tribe." *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 997 (9th Cir. 2020) (internal quotation marks omitted). North Fork points to no such conflict. Further, Red Rock can adequately represent North Fork's interest with respect to both of Picayune's claims. In this very case, Red Rock *has in fact moved to dismiss Picayune's claims*, and in doing so it has raised substantially identical arguments to those made by North Fork. *Compare* MTD 19-21 (arguing that the NIGC cannot consider whether gaming covered by a Management Contract violates IGRA), *with* Nominal Defs.' MTD 9-12 (same); *compare also* MTD 17-19, 21-23 (arguing that Picayune's claims are an impermissible collateral attack and that IGRA authorizes only the Secretary to enforce violations of Secretarial Procedures), *with* Nominal Defs.' MTD 12-17 (same). Even if there were some question as to whether the NIGC "share[s] an interest in . . . the continued operation of [gaming] at tribal casinos," *Maverick Gaming LLC v. United States*, 123 F.4th 960, 975 (9th Cir. 2024), there can be no question that North Fork's casino partners share that interest here.

3. Considerations of Equity and Good Conscience Are Firmly Against North Fork.

Even if the Court were to determine that North Fork is a required party that cannot be joined, dismissal would be appropriate only if the Court determines that the action cannot proceed among

the existing parties "in equity and good conscience." Fed. R. Civ. P. 19(b). In making that determination, the Court considers "(1) the extent to which a judgment rendered in the [party's] absence might prejudice that [party] or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures; (3) whether a judgment rendered in the [party's] absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder." *Id.* Here, each factor favors Picayune.

With respect to the first factor, as just discussed, a judgment rendered in North Fork's absence will not prejudice it, because its interests are adequately represented by the NIGC and the Nominal Defendants. Likewise, with respect to the second, there is no prejudice to lessen or avoid.[5] With respect to the third, a judgment rendered in North Fork's absence would be adequate because it would effectuate a "complete, consistent, and efficient settlement of controversies" regarding the lawfulness of offering class III gaming at the Madera Parcel. *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 111 (1968). And with respect to the fourth, Picayune would have no adequate remedy if this action were dismissed. North Fork argues that Picayune "has already twice had its day in federal court and lost both cases," MTD 14 (emphasis omitted), but the upshot of those challenges was that Picayune was required to return to state court to obtain a judgment on the validity of the Governor's concurrence. Picayune has now obtained that judgment, as directed, and it has returned to federal court to vindicate it. North Fork's view appears to be that there is no forum in which its illegal gambling can be policed. That cannot be the law.

4. The Public Rights Doctrine Also Precludes Dismissal

Even if dismissal under Rule 19 were otherwise appropriate (and, as explained, it is not), "[a] lawsuit that would otherwise be dismissed under Rule 19(b) . . . may continue where it seeks

[5] North Fork could also avoid any prejudice by appearing through one of its officers, which would not require North Fork to waive its sovereign immunity—a result this Court could also order. *See Bay Mills*, 572 U.S. at 796 ("tribal immunity does not bar such a suit for injunctive relief against *individuals*, including tribal officers, responsible for unlawful conduct" (citing *Ex parte Young*, 209 U.S. 123 (1908)); *Vann v. U.S. Dep't of Interior*, 701 F.3d 927, 929-30 (D.C. Cir. 2012); *see also* 4 James Wm. Moore et al., *Moore's Federal Practice* § 19.02[3][b] (3d ed. 2024) (stating that "[i]f the court determines that the absentee is necessary and that joinder is feasible, it may permit the plaintiff to effect it or may order that the absentee be joined").

to vindicate public rights." *Federated Indians of Graton Rancheria v. United States Dep't of the Interior*, No. 24-cv-8582, 2025 WL 2096171, at *8 (N.D. Cal. July 18, 2025). Here, Picayune seeks to vindicate the rights of California voters who have exercised their reserved constitutional power to reject gaming at the Madera Parcel—an exercise Congress expressly invited by incorporating state law into IGRA. *See* pp. 21-22, *infra*. California recognizes that the People's right to participate directly in their governance is "one of the most precious rights of our democratic process," and courts should "apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled." *Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976) (citations omitted). This suit seeks respect for the vote of the People, and "election law litigation inherently implicates public rights." *Adoption of Joshua S.*, 42 Cal. 4th 945, 957 n.4 (2008).

Nor would allowing the litigation to proceed absent North Fork "destroy the legal entitlements of the absent parties." *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996) (citation omitted). Here, North Fork does not have the legal right to offer class III gaming on the Madera Parcel; never has had the right to offer such gaming; and, indeed, never has offered class III gaming on the Madera Parcel. At the core of this suit sits the *absence* of such a right, as the Court of Appeal's decision in *Picayune Rancheria* confirms. That makes this case distinguishable from others declining to apply the public rights doctrine, such as the Ninth Circuit's decision in *Maverick Gaming*, where the absent party had long offered gaming. 123 F.4th at 983.

And, lastly, a word about state law: With federal courts having told Picayune to secure a state court judgment on the validity of the Governor's concurrence—which Picayune now has done—it would be manifestly against the public interest and inequitable to refuse to give effect to that judgment in this forum. But this Court need never get there; North Fork is not even required with respect to the APA claim. Rather, the Ninth Circuit has just this year confirmed that "[e]ven if a legally protected interest exists, the court must further determine whether that interest will be *impaired* or *impeded* by the suit." *Welsh*, 178 F.4th at 490-91 (internal quotation marks omitted). The tribe in *Welsh*, like North Fork here, trumpeted a "wall of circuit authority." *Id.* at 490. But just as the appeal failed there, it fails here. North Fork cannot show that it has a "legally protected

interest" in gaming when it has no Governor's concurrence, and it cannot claim to be impaired by this suit. It already lost in *Picayune Rancheria.*

5. The Secretary Is Not a Required Party.

North Fork also argues that the Secretary is a required party whose absence requires dismissal. *See* MTD 15-16. That argument fails for two reasons. First, Picayune does not challenge any actions by the Secretary, and as explained below, North Fork's arguments to the contrary are a distraction. *See* pp. 15-17, *infra*. Second, even if the Secretary were required (which he is not), his joinder would be feasible because any sovereign immunity has been waived, *see* 5 U.S.C. § 702, or could be addressed through an equitable cause of action, *see Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). The appropriate remedy would thus be to join him, not dismiss the case. *See E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1080 (9th Cir. 2010).

B. The Complaint States a Claim Under the APA and IGRA.

1. North Fork's Collateral Attack Arguments Are Both Wrong and Misleading.

North Fork's lead arguments on the merits seek to misdirect. North Fork argues Picayune is making a collateral attack on decisions made in 2012 (to take the Madera Parcel into trust) and 2016 (the issuance of Secretarial Procedures). MTD 17-19. North Fork made this same argument in the state court litigation, and the court there did not bite. *See* Brief of Intervenor-Appellant North Fork Rancheria of Mono Indians at North Fork Opening Brief at 32-36, *Picayune Rancheria*, 117 Cal. App. 5th 91, 2025 WL 637423, at *34-38. Nor should this Court. North Fork is wrong.

Picayune's complaint frames the issues. Picayune in this case challenges *neither* the issuance of Secretarial Procedures *nor* the federal government's decision to take the Madera Parcel into trust. Rather, Picayune alleges here that: (1) the NIGC should not have approved the Management Contract that North Fork entered into with its casino partners because gaming on the Madera Parcel cannot occur under IGRA, and (2) North Fork's confirmation that it will offer gaming notwithstanding the State Court's binding decision runs afoul of the *terms* of the Secretarial Procedures, which allow for gaming on "eligible" lands, which the Madera Parcel is not. To be sure, Picayune is of the view that under the law *gaming* cannot occur on the Madera Parcel, but this

Court needn't decide (and Picayune does not allege) that the Government shouldn't have taken the Madera Parcel into trust or that the Secretarial Procedures were invalid.[6]

Instead, the Court need only know that IGRA has *many* requirements that must be met before gaming may occur, and one is missing here: the Governor's concurrence. Helpful to this Court, in *Picayune Rancheria*—a decision that *binds* North Fork—the Court of Appeal explained the conditions necessary for gaming to occur on land like the Madera Parcel. "For Land taken into trust after October 17, 1988 (like the Madera Site)" the court explained, "gaming is prohibited by IGRA, unless an exception applies." *Picayune Rancheria*, 117 Cal. App. 5th at 98. "The exception relied upon by North Fork for the Madera Site" is the "'two-part determination.'" *Id.* That exception "provides that land taken into trust after October 17, 1988, may be used for gaming if 'the [Interior] Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands [1] would be in the best interest of the Indian tribe and its members, and [2] would not be detrimental to the surrounding community, *but only if the Governor of the State in which the gaming activity is to be conducted concurs in the [Interior] Secretary's determination.*'" *Id.* (emphasis in original) (quoting 25 U.S.C. § 2719(b)(1)(A)). But these added conditions do not eliminate IGRA's other requirements—they are in addition to, not to the exclusion of, the other requirements. Thus, "[t]o invoke the foregoing exception, at least three conditions must be met: (1) the Interior Secretary must issue a two-part determination; (2) the Governor of the state where the trust lands are located must concur in the two-part determination; and (3) there must be a valid tribal-state compact or valid procedures prescribed by the Interior Secretary." *Id.* And, importantly, the conditions are distinct. "The validity of a Governor's concurrence simply does not affect the

[6] North Fork claims Picayune seeks "a declaration nullifying the Secretary's 2012 decision taking the Madera Site into trust as gaming-eligible land." MTD 13. That is patently false. North Fork also claims Picayune attacks the Secretarial Procedures, but North Fork itself implicitly recognizes throughout its motion that Picayune seeks to vindicate those procedures. North Fork acknowledges, for example, that "Picayune contends that the Secretarial Procedures . . . should . . . be construed to preclude class III gaming." MTD 2 (emphasis omitted). That is correct, but it means that Picayune's goal is to enforce the procedures, not "nullify" them. *Id.*

validity of a Secretarial two-part determination: each is a separate requirement for gaming to take place on newly-acquired, non-reservation lands." *Stand Up*, 204 F. Supp. 3d at 250.

Thus, contrary to North Fork's arguments, Picayune's claims here are not an attack on the 2012 trust decision or the issuance of the Secretarial Procedures. Instead, Picayune's suit is about the absence of one of *many* conditions North Fork needs to satisfy to offer gaming: the absence of the Governor's concurrence. And as to the absence of that condition, North Fork has fought tooth and nail for years (including through this year in a petition to the California Supreme Court, *see* Petition For Review, *Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, No. S294956 (Cal. Jan. 23, 2026), *denied* Apr. 1, 2026) on the merits of that state law issue, claiming the concurrence is valid. But it is not. The California courts have now confirmed "the voter's rejection of Proposition 48 included an implied annulment of the Governor's concurrence that rendered the concurrence void ab initio." *Picayune*, 117 Cal. App. 5th at 114.

That absence means recent entitlement decisions, like the NIGC's decision to approve the Management Contract, can be challenged as authorizing gaming IGRA does not. The Ninth Circuit has already confirmed, "[t]he NIGC is statutorily obliged to reject any . . . proposal that does not conform to IGRA." *AT & T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 909 (9th Cir. 2002) (citing 25 U.S.C. § 2706(b)(10) (requiring NIGC to promulgate regulations and guidelines to implement IGRA); 25 C.F.R. § 531.1(a) ("[A]ll gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act.")). Indeed, the Ninth Circuit recognized that "the NIGC has previously refused to approve management agreements when it believed the proposed gaming activity will not be conducted 'on Indian lands' for IGRA purposes." *Id.*

Thus, unlike in *Big Lagoon Rancheria v. California*, 789 F.3d 947, 953 (9th Cir. 2015), this is not a collateral attack on either the land-to-trust decision or the issuance of the Secretarial Procedures. As *Picayune Rancheria* confirms, the need for Secretarial Procedures is *separate* from the need for a Governor's concurrence. 117 Cal. App. 5th at 98. And, if Picayune prevails, the land will still be in trust for North Fork, which may operate a hotel and resort if it wishes. What North Fork will not be able to do is offer gaming. Because there is no Governor's concurrence, no gaming can occur consistent with IGRA. And, because no gaming can occur, the NIGC was wrong

to approve the Management Contract, and North Fork's promised gaming would violate its own Secretarial Procedures, which require IGRA compliance.

2. The Chair's Approval of the Management Contract Was Unlawful.

As just noted, the NIGC acted arbitrarily and capriciously in approving the Management Contract because the gaming covered by the contract will not be conducted in accordance with IGRA. North Fork resists that conclusion by again trying to recast Picayune's arguments as collateral attacks on decisions made by the Secretary. *See* MTD 19-21. According to North Fork, the applicable statute and regulations "do not authorize the Chair to reconsider the tribe's underlying authorization to game, let alone to countermand the decisions of the Secretary." *Id.* at 19. Rather, North Fork says, the Chair can disapprove a contract based only on a limited set of criteria that do not include compliance with IGRA. *Id.* at 20 (citing 25 U.S.C. § 2711(e)(1)-(4)).

The law does not assign to the NIGC such a meaningless and perfunctory role. Rather, as Picayune has explained, the Chair "may approve a management contract if it meets the standards of part 531." 25 C.F.R. § 533.6(a). Those standards require, as relevant, that the contract "[p]rovide that all gaming covered by the contract will be conducted in accordance with [IGRA]." *Id.* § 531.1(a). And a contract cannot provide that all gaming will be conducted in accordance with IGRA if the gaming lacks a requirement that IGRA imposes—here, a valid concurrence.

The Ninth Circuit has already addressed this precise question and rejected the reading that North Fork advances. In *AT & T Corp.*, the court considered a challenge to a lottery held by the Coeur d'Alene Tribe in Idaho, which allowed participants to purchase tickets by telephone from outside the State. 295 F.3d 899 at 901. Although the compact between the tribe and the State did not specify that off-reservation telephone purchases would be permitted, a Management Contract that NIGC approved made clear they would be. *See id.* at 902. AT&T sued in federal court seeking, among other things, a declaration that it was not required to provide service for the lottery because the lottery's off-reservation purchases violated IGRA. *See id.* at 903. AT&T did not challenge the NIGC's approval of the Management Contract.

The district court ruled in AT&T's favor and held, as relevant, that IGRA required lottery participants to be present on Indian lands when purchasing a ticket. *See id.* The Ninth Circuit

reversed. *See id.* at 910. The court explained that "management contracts must meet IGRA requirements before they can win NIGC approval," and that "NIGC must consider the legality of Class III gaming before approving . . . management contracts." *Id.* at 907-08. Citing 25 U.S.C. § 2706(b)(10) and 25 C.F.R. § 531.1(a), the court noted that "[t]he NIGC is statutorily obliged to reject any lottery proposal that does not conform to IGRA," and thus that "the NIGC's approval of the Tribe's management contract evidences the NIGC's determination that IGRA permits operation of the Lottery even though it allows ticket sales via off-Reservation phone calls." *Id.* at 909. Because the NIGC's approval of the contract was a final agency decision regarding the lawfulness of the lottery, the proper mechanism for challenging the lottery's compliance with IGRA was a challenge to that agency action, not a suit against the tribe. *See id.* ("Unless and until the NIGC's decision is overturned by means of a proper challenge and appeal, the IGRA governs the Lottery.").

AT & T Corp. thus makes plain that the NIGC must assess whether gaming covered by a Management Contract will comply with IGRA. North Fork suggests in a footnote that *AT & T Corp.* is distinguishable because the lottery there "was presented to the NIGC on a blank slate." MTD 20 n.8. But as the foregoing discussion makes clear, the Ninth Circuit did not couch its analysis in the way North Fork suggests. Rather, the court squarely held that "[t]he NIGC is statutorily obliged to reject any lottery proposal that does not conform to IGRA." 295 F.3d at 909. Because Proposition 48 had already occurred, and *Stand Up II* had already held that the concurrence was annulled as a result, the NIGC was obligated to reject the Management Contract at issue here.[7]

3. Picayune Is Authorized To Sue Under Section 2710(d)(7)(A)(ii).

North Fork argues next that Picayune's claim fails because only the Secretary can sue to enforce Secretarial Procedures under 25 U.S.C. § 2710(d)(7)(A)(iii). *See* MTD 21. As Picayune

[7] North Fork cites *Frank's Landing Indian Community v. National Indian Gaming Commission*, 202 F. Supp. 3d 1204 (W.D. Wash. 2016), but that case—which did not involve a management contract—has no relevance here. The question in *Frank's Landing* was whether the court could order the NIGC to recognize an Indian community as an Indian tribe under IGRA, when the Secretary of the Interior had chosen not to. *See id.* at 1207-08. The court understandably held that it could not. As the court explained, "IGRA unambiguously states that the community of Indians must be recognized by the Secretary of the Interior." *Id.* at 1207. Because the Secretary had chosen not to recognize the community, that was the end of the matter.

has already explained, though, § 2710(d)(7)(A)(ii) authorizes tribes to sue to enjoin violations of Secretarial Procedures as well. *See* pp. 8-10, *supra*. That argument accordingly fails.

4. North Fork's Purported Federalism and Administrative Law Objections Fail.

As a last resort, North Fork argues that Picayune's claims "fail under basic principles of federalism and administrative law." MTD 22. That, too, is wrong. Wrong because North Fork raised the issue just this year to the California Supreme Court, which promptly declined review. Wrong because the California Court of Appeal already ruled against North Fork on the *merits* of that argument just last year. And wrong because it is wrong. Even if this Court were to consider North Fork's federalism arguments anew, this Court should rule in Picayune's favor. The California Court of Appeal's analysis was spot on.

a. Picayune Challenges the NIGC's Approval Based on the Record Before It.

North Fork argues that Picayune is impermissibly attempting to evaluate the Secretary's 2012 decision to take the Madera Parcel into trust, and the Secretarial Procedures issued in 2016, based on subsequent California state law cases holding that Governor Brown's concurrence was invalid. *See* MTD 22-23. As explained above, though, Picayune does not challenge the 2012 or 2016 decisions. *See* section B.1, *supra*. Rather, Picayune challenges the NIGC's 2024 decision to approve the Management Contract. And at the time the NIGC made that decision, *Stand Up II* had already held, in a decision that became final when the California Supreme Court denied review in 2021, that the People of California "annul[led]" Governor Brown's concurrence through Proposition 48, "as an expression of their intent to reject class III gaming on the 305-acre Madera site taken into trust in February 2013." 64 Cal. App. 5th at 216. Because the annulment of the concurrence was part of "the contemporaneous record before the [NIGC] at the time they acted," MTD 22, it is proper for this Court to consider it in evaluating the lawfulness of the Chair's approval.

b. The Concurrence Is Invalid Under Both State and Federal Law.

North Fork next asserts that it is "well-established" that federal officials may rely on the "facially valid actions of state officials" in the discharge of their federal duties. MTD 23. That argument fails for several reasons.

For one, the argument is belied by the facts. Governor Brown's concurrence was not

"facially valid" at the time of the Chair's approval, because the vote on Proposition 48 had already happened, and *Stand Up II* had already held that the concurrence had been annulled. In California, the People's decisions made through referendum are the single greatest expression of state action, as "[t]he foundation of our state government is the principle that '[a]ll political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.'" *Stand Up II*, 64 Cal. App. 5th at 211 (quoting Cal. Const., art. II, § 1). Justices of the California Court of Appeal are *also* state officials tasked, like this Court, with "say[ing] what the law is." *McClung v. Emp. Dev. Dep't*, 34 Cal. 4th 467, 469-70 (2004). Thus, when the Chair approved the Management Contract, state actors charged constitutionally to declare "what the law is" had confirmed that the concurrence was "annulled."

For another, North Fork misunderstands the role that state law plays under IGRA generally, and with respect to gubernatorial concurrences specifically. IGRA is a classic example of "cooperative federalism," which "seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme." *Pauma Band of Luiseno Mission Indians of Pauma & Yuima Rsrv. v. California*, 813 F.3d 1155, 1160 (9th Cir. 2015). In the context of gaming on lands taken into trust after 1988, the role that IGRA gives to States is "a veto or approval" in the form of a gubernatorial concurrence. Virginia W. Boylan, *Reflections on IGRA 20 Years After Enactment*, 42 Ariz. St. L.J. 1, 11 (2010). As discussed, a valid concurrence is an independently necessary precondition for gaming, and "the effect of the provision is that the Governor must agree that gaming should occur on the newly acquired trust land before gaming can in fact take place." *Confederated Tribes of Siletz Indians of Oregon v. United States*, 110 F.3d 688, 696 (9th Cir. 1997).

And the validity of a concurrence is governed by state law. As the Ninth Circuit has explained, a "concurrence (or lack thereof) is given effect under federal law, but the authority to act is provided by state law." *Id.* at 697. California state law, in turn, checks the Governor's power to concur by making it subject to referendum. *See generally Stand Up II*, 64 Cal. App. 5th 197; *see also Confederated Tribes*, 110 F.3d at 697-98 (discussing state law checks on Governor's concurrence power). Because the People annulled Governor Brown's concurrence through

Proposition 48—and because *Stand Up II* confirmed that annulment—the Chair could not "give[] effect" to the concurrence by approving the Management Contract. Having invited state law into the analysis, it was not for Congress to change state law. "Rather, Congress relied on state law to resolve whether a governor had the authority to concur and the terms and conditions for the valid exercise of any such authority." *Picayune Rancheria*, 117 Cal. App. 5th at 112. "Given this reliance on state law, it necessarily follows that Congress did not impliedly preempt the state law that answers those questions about a governor's concurrence authority." *Id.*

The cases North Fork cites are not to the contrary. North Fork places great weight on *Leser v. Garnett*, 258 U.S. 130 (1922), in which the Supreme Court held that state constitutional provisions and legislative procedures could not interfere with the authority of the state legislature to ratify a federal constitutional amendment. MTD 23. But *Leser* involved a unique situation in which state legislatures were playing a "ratifying function rather than engaging in traditional lawmaking," *Moore v. Harper*, 600 U.S. 1, 28 (2023), and the Supreme Court recently distinguished *Leser* in *Moore*, where it held that state legislatures *are* confined by their state constitutions in other contexts in which the Federal Constitution assigns them a specific role. More fundamentally, North Fork's *Leser* argument would mean that the Governor's concurrence power cannot be constrained *at all* by state law, notwithstanding the Ninth Circuit's admonition that the Governor's "authority to act is provided by state law." *Confederated Tribes*, 110 F.3d at 697.

North Fork also cites a handful of cases involving the retrocession of state jurisdiction to the federal government under 25 U.S.C. § 1323(a). In 1968, President Johnson issued an executive order in which he authorized the Secretary of the Interior to accept States' retrocessions. Exec. Order No. 11435, 33 Fed. Reg. 17339 (Nov. 23, 1968). Some courts subsequently held that an acceptance of retrocession by the Secretary made that retrocession effective, regardless of whether retrocession was valid under state law. *See, e.g.*, *United States v. Lawrence*, 595 F.2d 1149, 1151 (9th Cir. 1979). North Fork infers from these cases that the validity under state law of state officials' actions is "immaterial" to the effect of those actions under federal law. MTD 24 (emphasis omitted) (quoting *Lawrence*, 595 F.2d at 1151). As already explained, though, the Ninth Circuit's decision in *Confederated Tribes*—which postdates the retrocession cases and specifically addressed the

nature of the Governor's concurrence power—held that when "the Governor concurs, or refuses to concur, it is as a State executive, under the authority of state law." 110 F.3d at 697. To illustrate the nature of state law limitations on gubernatorial power, *Confederated Tribes* cited with approval an example from a different federal scheme in which a state legislature had required a governor to obtain local approval before consenting to federal action. *Id.* at 697-98. Under North Fork's conception of the concurrence power, such constraints would have been "immaterial" to the effect of the Governor's concurrence under federal law. *Confederated Tribes* squarely rejected that position, and this Court is bound to as well.

If all that were not enough, North Fork made and lost the foregoing arguments, citing the same authority, in *Picayune Rancheria*. *See* Brief of Intervenor-Appellant North Fork Rancheria of Mono Indians at North Fork Opening Brief at 36-43, *Picayune Rancheria*, 117 Cal. App. 5th 91, 2025 WL 637423, at *38-45. It is thus precluded from arguing here that the state law status of the Governor's concurrence is irrelevant to North Fork's ability to offer gaming under federal law. Under California law, the doctrine of issue preclusion bars relitigation if five conditions are met: "First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." *People v. Strong*, 13 Cal. 5th 698, 716 (2022) (citation omitted). Each of those conditions is met here.

The issue that North Fork seeks to litigate in this Court—whether "federal officials may rely on the facially valid actions of state officials in discharging their federal responsibilities," and whether actions by federal officials can "be set aside based on state-law challenges to the underlying actions of state officials," MTD 23—is identical to an issue that was actually litigated in *Picayune Rancheria*, namely whether "federal actions taken in reliance on facially valid actions of state officials are evaluated at the time they are made and thus survive any subsequent challenges to the state-law validity of the underlying actions of state officials," Brief of Intervenor-Appellant North Fork Rancheria of Mono Indians at North Fork Opening Brief at 36, *Picayune Rancheria*, 117 Cal.

App. 5th 91, 2025 WL 637423, at *38. With respect to the third condition, the issue was necessarily decided, because *Picayune Rancheria* rejected North Fork's reliance on *Leser* and the retrocession cases, 117 Cal. App. 5th at 107-08, and its judgment depended in part on that rejection, *see Williams v. Drs. Med. Ctr. of Modesto, Inc.*, 100 Cal. App. 5th 1117, 1132 (2024) ("An issue will be considered necessarily decided so long as the issue was not entirely unnecessary to the judgment in the prior proceeding." (internal quotation marks omitted)). And with respect to the fourth and fifth conditions, there can be no question that *Picayune Rancheria*, an order affirming a grant of summary judgment, was a final decision on the merits to which North Fork was a party.

c. North Fork Misunderstands the Role of States Under IGRA.

Finally, North Fork contends that "Picayune's theory misunderstands the limited function of the concurrence—and of state law generally—under IGRA." MTD 24. But while North Fork is certainly correct that "States have no inherent regulatory authority over tribal gaming," *id.*, North Fork also concedes, as it must, that at least some "authority is provided by IGRA," *id.* In passing IGRA, Congress recognized that tribal gaming raised both "federal and state concerns and provided that both had to be satisfied by requiring action by the appropriate federal and state officials." *Confederated Tribes*, 110 F.3d at 693. And it accordingly established a program of cooperative federalism in which States and state law were given a full and independent veto right over gaming. Boylan, *supra*, at 11. That program, moreover, takes state officials and constitutional constraints as it finds them. Any other conclusion would run afoul of bedrock principles of federalism, as "it is characteristic of our federal system that States retain autonomy to establish their own governmental processes." *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 816 (2015). Indeed, "[a] State is *entitled* to order the processes of its own governance." *Alden v. Maine*, 527 U.S. 706, 752 (1999) (emphasis added).

"Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Federalism demands respect for that judgment of California law, and Defendants would be wrong to suggest otherwise. "There is no cause, in this case, to construe federal law in a manner that interferes with 'States' arrangements for conducting their own governments.'" *Sheriff*

v. Gillie, 578 U.S. 317, 327-28 (2016) (citation omitted). To the contrary, if Congress thought it could or wanted to change a State's governing structure, it must say so plainly, and even then, such congressional action should be treated with great skepticism. A "plain statement rule is nothing more than an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461. The law's "working assumption" is that "federal legislation" alleged to be "trench[ing] on the States' arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power, in the absence of the plain statement *Gregory* requires." *Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004). "Absent [that] clear statement to the contrary," federal legislation "should be read to preserve, not preempt, the traditional prerogative of the States to delegate their authority to their constituent parts." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 429 (2002). Here, there is none of that. As *Confederated Tribes* confirms, Congress, through IGRA, adopted state law regarding the Governor's concurrence in full.

North Fork suggests that giving full effect to States' role under IGRA would raise the Appointments Clause problems discussed in *Confederated Tribes* and *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. United States*, 367 F.3d 650 (7th Cir. 2004). *See* MTD 24-25. But that analysis is exactly backwards. *Confederated Tribes* and *Lac Courte Oreilles* both held that Governors' concurrence power is not sufficiently significant to render them Officers of the United States, *in part because* Governors are constrained by other state actors. *See Confederated Tribes*, 110 F.3d at 697-98; *Lac Courte Oreilles*, 367 F.3d at 660-61. The ability of California citizens to retroactively annul Governors' concurrences, to the extent it bears on the Appointments Clause question at all, makes the concurrence power *less* significant, not more.

CONCLUSION

We ask that the Court deny North Fork's motion in full.

Respectfully submitted,

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