S238544

In the Supreme Court of the State of California

United Auburn Indian Community of the Auburn Rancheria,

Plaintiff and Appellant,

v.

Edmund G. Brown, Jr., as Governor,

Defendant and Respondent.

After a Decision by the Court of Appeal,
Third Appellate District, Case No. C075126

On Appeal from the Superior Court of Sacramento County,
Case No. 34-2013-800001412CUWMGDS

Application for Leave to File Amicus Curiae Brief and Amicus Curiae Brief of Stand Up For California! In Support of Plaintiff and Appellant

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Application For Leave to File Amicus Curiae Brief of Stand Up For California!

Pursuant to rule 8.520(f) of the California Rules of Court, Stand Up For California! applies for leave to file an amicus curiae brief in support of Plaintiff and Appellant United Auburn Indian Community of the Auburn Rancheria.

Stand Up is a non-profit 501(c)(4) corporation organized under the laws of the State of California, and serves as a community watchdog group that focuses on gambling issues affecting California citizens, including tribal gaming, card clubs, horse racing, satellite wagering, charitable gaming, and the state lottery. Stand Up has been involved in the ongoing debate about issues raised by gaming and its impact for two decades. Since 1996, Stand Up has assisted individuals, community groups, elected officials, members of law enforcement, local public entities and the State of California with respect to gaming. Stand Up is also recognized and acts as a resource of information to local, state, and federal policy makers.

The issue on which review has been granted in this case is: "May the Governor concur in a decision by the Secretary of the Interior to take off-reservation land in trust for purposes of tribal gaming without legislative authorization or ratification, or does such an action violate the separation of powers provisions of the state Constitution." Stand Up has a unique interest in that issue, as Stand Up was the appellant in a recent case in which the Fifth Appellate District held that the Governor had no authority to concur in the Secretary's two-part determination that led to the

acquisition of land in trust for the North Fork Rancheria of Mono Indians ("North Fork Tribe") to build a casino. *Stand Up for California! v. State of California* (2016) 6 Cal.App.5th 686. This court granted review of that decision, but has deferred further briefing pending a decision here. Case No. S239630 (review granted March 22, 2017).

Stand Up has read the parties' briefs filed in this court and, as appellant in a related appeal pending before this court, is familiar with the issues presented. The Governor's position is that his authority to concur in the Secretary's decision is derivative of his constitutional authority to negotiate a compact with tribes or, alternatively, that his concurrence was merely an executive action that implemented California's already-existing policy regarding gaming. Stand Up's experience litigating with the North Fork Tribe over its attempt to obtain land on which to build a casino belies the Governor's position. Stand Up believes that its brief will assist this court by showing the broad effects the Governor's concurrence had in relation to the North Fork Tribe's ability to conduct gaming on land acquired in trust under the two-part determination. The experience with the North Fork Tribe demonstrates that the Governor's claimed authority to concur interferes with the legislature's prerogatives over gaming policy, and has policy implications and effects that go far beyond anything authorized by a compact.

Stand Up therefore requests that its application to file an amicus curiae brief be granted.

Stand Up provides the following disclosures required by rule 8.520(f)(4) of the California Rules of Court: (1) no party or counsel for a party in this appeal authored or contributed to the funding of this brief, and (2) the global investment firm Brigade Capital Management made a monetary contribution to fund the preparation of this amicus brief.

Dated: September 21, 2017

SNELL & WILMER L.L.P.
Sean M. Sherlock
Todd E. Lundell
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By: _____
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Amicus Curiae Brief of Stand Up for California!

Introduction

The Governor's assertion that his authority to concur derives either from his authority to negotiate compacts or his executive authority is wrong. As the state's experience with the North Fork Rancheria of Mono Indians ("North Fork Tribe") illustrates, the Governor's concurrence has much broader effects than does simply negotiating a compact and interferes with the Legislature's ability to set the state's gaming policy as it concerns off-reservation gaming.

This brief will first set forth the factual and procedural background that enabled the North Fork Tribe to obtain off-reservation land on which it now claims the right to build and operate a class III casino notwithstanding that the Tribe has no compact with the state. We will then show how this history sheds light on the nature of the Governor's claimed authority to concur in the Secretary's two-part determination.

The North Fork Tribe Obtains Land Through the Two-Part Determination and Claims the Right to Conduct Gaming Despite Not Having A Compact With The State

The North Fork Tribe is a federally recognized Indian tribe with existing trust land near North Fork, California. [2AA Tab 11 at 410.][1] Rather than build a casino on that land, however, the

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[1] Citations to "__AA Tab __ at __" are to the appendix filed in the court of appeal in *Stand Up for California! v. State of California* (2016) 6 Cal.App.5th 686, in which this court has granted review (Case No. S239630). In connection with granting

Tribe's financial partner, Las Vegas-based Station Casinos, purchased a 305-acre parcel adjacent to State Route 99 in Madera County (the "Madera site"), approximately 40 miles from the Tribe's existing land near North Fork. [3AA Tab 20 at 554-555.] Invoking the two-part determination exception described fully in the parties' briefs, the Tribe then applied to the U.S. Department of the Interior and the Bureau of Indian Affairs to have that land taken into trust for purposes of building a casino. [3AA Tab 20 at 554.] The proposed casino will include an 83,065 square-foot main gambling hall, up to 2,500 Las Vegas-style slot machines, table games, and bingo. [*Id.* at 555.] The casino development will also include a 200-room hotel and 4,500 parking spaces. [*Ibid.*] Station Casinos has funded the development efforts, and in return the North Fork Tribe has signed a casino management contract with Station Casinos, giving Station Casinos the right to operate the casino and receive 24% of the casino's net income. [*Ibid.*]

In September 2011, then Assistant Secretary for Indian Affairs, Larry Echo Hawk, informed Governor Brown that the Secretary had made a favorable two-part determination and requested that Governor Brown concur in the determination. [*Id.* at 555-556.] One year later, Governor Brown concurred with the Secretary's determination. In doing so, the Governor cited no statute or constitutional provision authorizing such a concurrence

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review, this court requested and received the appendix and other record documents in that case. We therefore cite to those documents throughout this amicus brief.

but simply stated, "While I am reluctant to allow the expansion of gaming on land currently ineligible for it, I concur in your determination in this case because of several exceptional circumstances." [1AA Tab 6 at 88.] Subsequently, Station Casinos as owner granted the Madera site to the United States in trust for the North Fork Tribe. [1AA Tab 4 at 45.]

On the day the Governor concurred in the two-part determination, he also announced he had already negotiated and concluded a compact with the North Fork Tribe for the conduct and regulation of class III gaming at the Madera site. [3AA Tab 20 at 556.] Subsequently, the California Legislature passed AB 277, a bill to ratify the compact, which the Governor signed in July 2013. [1AA Tab 8 at 163.] That bill, however, never went into effect because a citizen referendum on AB 277 qualified for the November 2014 ballot, and a majority of voters (61 %) rejected the Legislature's ratification of the compact. *Stand Up for California!*, *supra*, 6 Cal.App.5th at 694. Without ratification, the compact itself never became effective.

The people of California's rejection of the compact, however, did not end the story. Under certain circumstances, IGRA provides that tribes that are unable to successfully negotiate tribal-state compacts may still engage in class III gaming on Indian land under procedures prescribed by the Secretary. 25 U.S.C. § 2710(d)(7)(B). In July 2016, the Secretary issued procedures authorizing the North Fork Tribe to conduct class III gaming on the Madera site despite the absence of any compact

with the state. *Stand Up for California!*, *supra*, 6 Cal.App.5th at 694. While litigation over those procedures is ongoing in the Eastern District of California [*Stand Up for California!, et al. v. Department of the Interior, Eastern District of California*, Case No. 2:16CV-02681], the Tribe has taken the position that there are no further impediments to building its proposed casino, which has now been authorized by the Secretary's two-part determination, the Governor's concurrence, and the Secretary's procedures.

Legal Discussion

I

The Governor's Authority to Negotiate Compacts Cannot Provide the Basis for His Concurrence in a Tribe's Acquisition of New Land for Gaming

In his brief to this court, the Governor insists that his constitutional authority to negotiate a compact with tribes for gaming on existing Indian lands includes any authority necessary to concur in the Secretary's two-part determination *to create new Indian lands* on which gaming can occur. [E.g., Gov. Br. at 21 ("By explicitly granting authority to the Governor to negotiate and conclude compacts for any type of gaming that is in accordance with IGRA, the Constitution and the Government Code also confer authority on the Governor to issue a concurrence in such a determination."); *id.* at 28 ("If the tribe's proposal is for a gaming facility on land that would be subject to the process in section 2719(b)(1)(A), then the Governor's authority must also include the power to evaluate the Secretary's determination,

and—if consistent with state law and policy—to concur in it."). The impact of the Governor's concurrence in the North Fork Tribe's land acquisition, however, belies the Governor's assertions. That concurrence did not merely create a nonbinding contract allowing the state to regulate aspects of the Tribe's gaming subject to legislative ratification, as a negotiated compact would, but went far beyond by authorizing gaming on new land without any proper legislative oversight. In other words, the Governor's concurrence, if valid, opens land to gaming, whether or not a compact is concluded.

The Legislature itself recognized the dramatic effects of the Governor's decision to concur in the two-part determination with regard to the North Fork Tribe's land acquisition. When it came time to vote on ratification of the North Fork compact, California legislators lamented that they had already been locked out of the decision regarding whether or not to designate this new land as "Indian land" for purposes of gaming. Senator Wright, Chair of the Senate Governmental Organization Committee,[2] pointed out that because the Secretary and Governor concurred in the Secretary's two-part determination, the Legislature had no say in whether to allow the creation of this new Indian land for gaming. The only decision left for the Legislature was whether gaming on the newly created Indian land would be class III, which would be conducted pursuant to a compact that benefited certain state

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[2] The Senate Governmental Organization Committee oversees bills relating to, among other things, public gaming. See http://sgov.senate.ca.gov/

entities and other tribes and stakeholders, or class II, which does not require a compact and therefore would not provide any of those benefits:[3]

> We are not voting today to determine whether or not there will or won't be gambling on the site. That decision was made by the Department of the Interior, and *there is nothing that we are able to do about that.* The decision that we are making today is whether or not there is a compact that allows us to partake of the revenues, so that Madera County, so that the Chukchansi, so that all of the other benefits that will accrue from the compact take place . . . . So members, you can vote "no" and then there's no revenue for you and no benefit, because they will go Class II and walk away, or you can vote "aye" and the state and the community as a whole can benefit from a gaming exercise that will take place. I ask for an "aye" vote.

[3AA Tab 16 at 507-508 (emphasis added).][4]

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[3] States have no authority whatsoever to regulate class II gaming on Indian land. 25 U.S.C. § 2710(a)-(c). Thus, once the Governor concurred in the creation of trust land for the North Fork Tribe, the Tribe thereafter was authorized to conduct such gaming on that land without state regulation.

[4] Senator Wright was correct that the initial decision authorizing the creation of the Madera site for gaming was made by the Secretary, but that decision was not effective until the Governor concurred with the Secretary's two-part determination. See 25 U.S.C. § 2719(b)(1)(A). Without the Governor's concurrence, the Secretary could not have taken the land into trust for gaming.

Senator Wright's statement, and the legislature's experience with the North Fork Tribe, highlights a key difference between the Governor's constitutionally authorized authority to negotiate a compact, and his improperly asserted authority to concur in the creation of new Indian land for gaming. Under the constitution, negotiated compacts are "subject to ratification by the Legislature." Cal. Const. art. IV, § 19(f). Thus, section 19(f)'s grant of power to the Governor requires action by the Legislature to be given effect; the Constitution expressly precludes the Governor from legally binding the state to a compact. This ratification requirement gives the Legislature the right to reject any compact negotiated by the Governor.

By contrast, the Governor is now asserting that he has unilateral authority to decide on behalf of the state whether to allow the creation of new Indian lands eligible for gaming, without any check by the Legislature, and contrary to the will of the people. Such unilateral authority cannot derive from the power the Governor shares with the Legislature over compacts with tribes.

Indeed, as Senator Wright aptly noted, the Governor's concurrence actually tied the Legislature's hands when it came to exercising its prescribed role to decide whether to ratify the compact. The Governor's actions presented the Legislature with a sort of Hobson's choice. The decision to create new Indian land eligible for gaming had been made by the Governor. Any legislator who opposed the creation of new Indian land for

gaming, or any legislator who simply wanted the Legislature as a body to have a say in setting the policy surrounding the creation of that new Indian land, could not have any impact on that decision by voting against the compact. The Legislature's choice was limited to whether to obtain certain benefits from that gaming by ratifying the compact.

The state's consideration of North Fork Tribe's compact demonstrates that the Governor's decision to concur in the creation of new land goes far beyond his authority to negotiate a compact in other ways too. Not only was the Governor's compact with the North Fork Tribe nonbinding on the state, the Governor's authority to negotiate that compact was narrowly defined, as compacts must be negotiated "in accordance with federal law." Cal. Const. art. IV, § 19(f). And IGRA itself specifically enumerates the permissible subjects of negotiation. 25 U.S.C. § 2710(d)(3)(C) (listing permissible subjects of negotiation); see also 25 U.S.C. § 2710(d)(4) (forbidding state from imposing any type of tax or fee as part of negotiations). Thus, in exercising his authority under section 19(f) to negotiate compacts, the Governor is expressly guided by policy decisions adopted by the federal and state legislatures. The same cannot be said of the Governor's concurrence in the North Fork Tribe's acquisition of land for gaming, which was a unilateral decision made by the Governor unguided by any legislative policy decisions. See Part II, post.

Finally, the North Fork Tribe's claimed right to conduct class III gaming under Secretarial procedures despite the fact that it has no compact with the state demonstrates that the authority to concur cannot be encompassed within the Governor's authority to negotiate compacts. Exercising their constitutional rights, the people of this state rejected the Governor's negotiated compact, which eliminated any plausible basis for asserting an implied authority to concur. As the Fifth District recognized in holding that the Governor had no authority to concur, "it would be perverse to find the Governor has an implied authority [to concur] based on an express power [to compact] that the state has finally decided not to exercise, after protracted consideration by the Governor, the Legislature, and the voters." *Stand Up for California! v. State* (2016) 6 Cal.App.5th 686, 700.[5]

By giving authority to the state to concur or not to concur in the Secretary's two-part determination, IGRA gives states unfettered discretion to allow or disallow the creation of new

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[5] For this reason, if this court holds that the Governor has implied authority to concur stemming from his authority to negotiate compacts, that decision would not validate the Governor's concurrence relating to the North Fork Tribe's acquisition of new land for gaming. The court of appeal's holding that the Governor "cannot exercise an implied power [to concur] in a case where the voters have vetoed an exercise of the express power on which the implied power was based" would still stand. Thus, even if this court finds an implied power to concur, the court should either (i) dismiss its grant of review in the North Fork case and allow that fact-based decision to stand, or (ii) take up on the merits the question whether the concurrence power may be exercised in circumstances where there is no possibility that the Governor may negotiate a valid compact with the tribe.

Indian land for the purpose of class II or class III gaming. *Confederated Tribes of Siletz Indians of Oregon v. United States* (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."). Recognizing the distinct difference between allowing gaming on existing tribal lands, and creating new Indian lands for purposes of gaming, Congress gave tribes no right to negotiate with or compel a state to concur in allowing off-reservation land to be taken into trust for purposes of gaming.

By contrast, as the North Fork Tribe's actions illustrate, tribes have some rights to compel the state to allow gaming even on off-reservation land once that land is taken into trust under the two-part determination. With regard to the North Fork Tribe's newly acquired trust land, therefore, the Governor's concurrence accomplished something his power to negotiate never could—that is, it gave the North Fork Tribe the right to conduct class III gaming on that land even without a compact.[6] Even more egregiously, the Governor's negotiated compact authorized only a single casino facility with up to 2,000 slot machines. [2AA

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[6] Whether the Secretary properly issued procedures for the North Fork Tribe to conduct class III gaming is still being litigated, and nothing said herein should be viewed as a concession that the those procedures were proper. The point is merely that if the Governor has power to concur in the creation of new Indian land for gaming, the North Fork Tribe will be entitled to conduct class III gaming on that land even without a compact unless a court determines that the Secretary's procedures were improperly issued.

Tab 9 at 188.] Yet, after that compact was rejected by the people, the Governor inexplicably proposed a compact that authorized two separate facilities having up to 2,500 slot machines. This compact ultimately was adopted as the Secretarial procedures that the North Fork Tribe now claims authorize gaming on its newly acquired land.[7] This process shows the perils of placing the concurrence power unchecked in the hands of the Governor, who can agree to the creation of new lands where class III gaming will occur without a compact and in much greater magnitude than could ever get past the Legislature.

It strains credulity to assert, as the Governor does here, that in adopting the constitutional amendment authorizing the Governor to negotiate nonbinding compacts according to policy choices crafted by the federal and state legislatures, the people of California simultaneously intended to give the Governor broad, undefined power to bind the state in creating new lands on which even class III gaming can occur without a compact. In rejecting the compact the Governor negotiated with the North Fork Tribe for gaming on off-reservation land, the people unequivocally rejected the Governor's interpretation of his authority. This court should do the same.

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[7] See Appellant's Request for Judicial Notice at 20-21, filed August 3, 2016, in *Stand Up for California! v. State of California* (2016) 6 Cal.App.5th 686, in which this court has granted review (Case No. S239630).

II

The Governor's Concurrence Created Policy Regarding Off-Reservation Gaming, Which Interfered with the Legislature's Prerogative to Do So

The Governor also argues that the authority to concur is an executive one, inherent to his office. To make this argument, the Governor downplays the effects and policy implications of any decision to concur in the Secretary's two-part determination. He disclaims any responsibility for creating new land on which gaming can occur—a decision that is rife with policymaking implications—asserting instead that it is the Secretary's decision to take land into trust under the two-part determination that "triggers the gaming." [Gov. Br. at 30.] The Governor further claims that he does not create state policy by concurring in the Secretary's decision, but merely "implement[s] California's existing gaming policy." [*Id.* at 20; see also *id.* at 46 (arguing that concurrence is "informed by considerations of existing state and federal policy").] And, despite acknowledging that there is "some" policymaking component to a decision whether or not to concur [*id.* at 49-50], the Governor insists that the decision is still executive in nature because he acts "entirely consistent with state law and policy." [*Id.* at 55.]

Again, the North Fork Tribe's acquisition of land on which it intends to build a casino against the wishes of the people of the State puts the lie to the Governor's assertions.

In concurring in the decision to take land into trust for the North Fork Tribe to conduct gaming, the Governor *set California*

public policy regarding off-reservation gaming that previously did not exist in California, and setting public policy is a legislative, not executive, function. *Carmel Valley Fire Prot. Dist. v. State of California* (2001) 25 Cal.4th 287, 299 (the Legislature "is charged with the formulation of policy"). Deciding whether or not to concur in a determination that allows for the creation of new Indian land for purposes of gaming involves making fundamental policy decisions regarding whether, how, and where to allow off-reservation gaming. Those policy decisions involve balancing the interests of nearby tribes and local communities, and implicate broader statewide policy regarding whether and under what circumstances off-reservation gaming should be allowed. Yet the Governor has never cited any constitutional or statutory provision that contained an expression of the existing policy that could serve to guide or limit the Governor in his exercise of the concurrence power. No such policy exists.

Indeed, as the Governor acknowledged in his concurrence in the Secretary's two-part determination with regard to the North Fork Tribe, "exceptional circumstances" were necessary to "allow the expansion of gaming on land currently ineligible for it . . . ." [1AA Tab 6 at 88.] Yet, contrary to the Governor's current claim that he was merely acting in accordance with already-existing policy, the Governor's concurrence letter did not point to any existing policies that could guide him in determining what constitutes "exceptional circumstances" or even whether such circumstances should justify an exception in the first instance.

Nor could the Governor have pointed to any such existing policies. The California Legislature has not addressed the policy issues implicated by off-reservation gaming. There is no existing policy granting the Governor power to concur in the Secretary's two-part determination, specifying the factors the Governor must take into consideration in deciding whether or not to concur, or otherwise governing the expansion of gaming onto newly acquired Indian land. Instead, the Governor simply created and applied an "exceptional circumstances" exception entirely out of whole cloth. The Governor stated that he considered, among other things, the facts that the North Fork Tribe's proposed gaming facility "will not be within a major metropolitan area" and another tribe will agree to forgo gaming on its "environmentally sensitive" coastal land. [1AA Tab 6 at 88-89.] But the question of where new gaming facilities are best located, if any should be built at all—e.g., whether gaming facilities are better located in rural or metropolitan areas, or whether they should be built more inland or coastal—are fundamental policy decisions that are at the core of the legislative function, and not within the purview of the executive. *Carmel Valley Fire Prot. Dist., supra,* 25 Cal.4th at 299.[8]

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[8] For similar reasons, the Ninth Circuit has held that "[t]he power delegated to the Secretary to acquire Indian trust lands for gaming purposes is a legislative power." *Confederated Tribes of Siletz Indians of Oregon v. U.S.* (9th Cir. 1997) 110 F.3d 688, 696 (holding that the executive's "ability to choose which land is to be taken into trust for gaming purposes" is "a legislative function" that can be restricted by Congress). If the power to place land in trust for Indian tribes for purposes of gaming is a legislative

Indeed, at the hearing to decide whether to ratify the North Fork Tribe's compact, Senators Yee and Lara pointedly expressed their displeasure with the Governor for having usurped the Legislature's policymaking role, and urged their fellow senators not to continue ratifying compacts for off-reservation gaming until the Legislature had considered and set the policy surrounding such gaming. For example, Senator Yee stated that it "is really problematic and troubling" that "we don't have, some way and somehow, a coherent policy to deal with some of these kinds of horrendous situations whereby we set up casinos and yet we're not looking at some of the surrounding areas and how that impacts those surrounding areas and particularly the people around them." [3AA Tab 16 at 505.] And, while Senator Yee urged his colleagues to "go ahead and support this particular compact," he also urged them not to support any future compacts for off-reservation gaming until the Legislature could fully consider the policy implications:

> moving forward, we cannot do that anymore unless we come up with some kind of understanding as to where can the legislature weigh in about where some of these tribes are going to locate their particular casinos and what input can we have in moderating that particular siting, so that all issues—not just simply sovereignty—not only economic development—and not only because of jobs, but more importantly its negative impact on the population

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function, then so too must be the state's power to concur in the creation of that very same Indian land for the same purposes.

> surrounding it and maybe outlying populations, that goes to those particular places and how do we at lease ensure that our communities and our families are still protected.

[*Ibid.*]

Senator Lara stated that he too was "concerned about the process or lack of process and policy parameters that have put us all in this place, to support or oppose a compact that may be great for one tribe but disadvantages others." [3AA Tab 16 at 505.] He further expressed his "serious concern[]" that the decisions to allow gaming off-reservation were made "absent a clear policy and policy parameter that discusses the need to address off-reservation gambling and gaming." [*Ibid.*] Like Senator Yee, Senator Lara stated that while "I am going to be supporting this compact today, . . . we have to get to the point where we reach some sort of policy consensus where we address this important issue to make sure we don't get jammed like this again . . . ."

Then, after the Legislature reluctantly ratified the compact with the North Fork Tribe, it sought to reassert its fundamental legislative role in setting policy over decisions regarding the creation of new Indian land for gaming. Senator De Leon, Chair of the Senate Appropriations Committee, informed the Governor that the California Senate was creating a working group "to examine the policy and procedural implications associated with off-reservation gaming agreements in light of the concerns raised during the June 27th Senate vote on AB 277," and asked the Governor *not to grant* any more concurrences until the

Legislature addressed the policy concerns related to them. [3AA Tab 16 at 512-13.] In the letter, Senator De Leon explained that—contrary to the Governor's current assertion that his concurrence merely "implement[s] California's existing gaming policy"—in reality, the Governor's concurrence and compact with the North Fork Tribe "represents a significant policy departure from previous agreements in California by allowing the North Fork tribe to build a casino off reservation property . . . ." [*Ibid.*] The letter informed the Governor of the many policy implications that he failed to consider in concurring in the creation of new land for gaming on behalf of the North Fork Tribe: "[T]here are many important issues to the State of California that arise from off-reservation gaming, including: issues related to fairness to other tribes who have restricted their gaming activities on reservation property impacts and interests of local and nearby communities, impacts to existing gaming interests and their workforce, the need to adequately address labor and environmental issues, maintaining the commitment to the voters from approved propositions addressing Indian gaming, among others." [*Ibid.*]

As Senator De Leon's letter makes clear, the Legislature has not yet made the fundamental policy determinations regarding off-reservation gaming that are implicated by the Governor's concurrence. The Governor's assertion that he can unilaterally make those decisions usurps the legislature's legitimate role in setting the policy of the state.

Conclusion

The North Fork Tribe's acquisition of off-reservation land on which it intends to build a casino demonstrates the fundamental flaws in the Governor's arguments regarding his own authority. This court should hold that the Governor's constitutional power to negotiate compacts does not authorize him to concur in such acquisitions of off-reservation land for purposes of gaming. The court should also hold that setting policy regarding such off-reservation gaming is the prerogative of the Legislature and not the Executive. Thus, until the Legislature sets that policy and empowers the Governor to act accordingly, the Governor lacks power to concur in the Secretary's two-part determination to take land into trust for gaming purposes.

Dated: September 21, 2017

SNELL & WILMER L.L.P.
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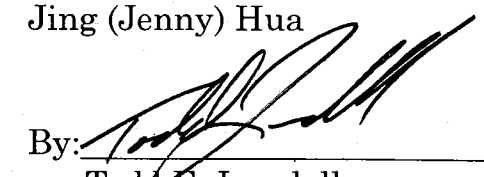
By: 

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Certificate of Word Count

The undersigned certifies that pursuant to the word count feature of the word processing program used to prepare this brief, it contains 4,463 words, exclusive of the matters that may be omitted under rule 8.520(c)(3).

Dated: September 21, 2017

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Sean M. Sherlock
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4847-8482-6959

Proof of Service

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On September 21, 2017, I served, in the manner indicated below, the foregoing document described as **Application for Leave to File Amicus Curiae Brief and Amicus Curiae Brief of Stand Up For California! In Support of Plaintiff and Appellant** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Please see attached Service List

☒ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)), as indicated on the service list.

☐ BY ELECTRONIC MAIL I caused such document(s) to be delivered electronically to the email indicated on the service list.

☐ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)), as indicated on the service list.

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

Executed on September 21, 2017, at Costa Mesa, California.

Rosemary McKay

Service List

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