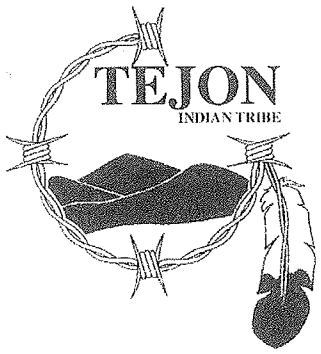

February 20, 2017

The Honorable Tani Cantil-Sakauye, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

Re: Letter Supporting Grant of Review; Rule of Court 8.500(g)
Stand Up for California, et al, v. State of California, et al.
Supreme Court Case No. S239630

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The Tejon Indian Tribe ("Tejon" or "Tribe") respectfully requests that the Court grant review of the above-referenced case for the reasons set forth in the petitions for review filed by the State of California and the North Fork Rancheria of Mono Indians. I write separately to place the case in context and explain the importance your review holds for our Tribe.

Tejon's Interest in the Proceeding

Tejon is a federally recognized Indian tribe located within California's Fifth Appellate District. Tejon does not hold beneficial title to any trust land—the federal government's prior historic attempts to establish a reservation for Tejon failed—and therefore Tejon currently lacks the Indian lands required to engage in tribal government gaming. Pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(A), and the Indian Restoration Act, 25 U.S.C. § 5108, our Tribe has requested the Secretary to take land located within our aboriginal area into trust for gaming purposes. The fractured Fifth District decision, if permitted to stand, would jeopardize our Tribe's sovereign and federal statutory right to pursue our pending request. This would have a significant, adverse impact on our approximately 800 tribal members, many of whom live at or below the poverty line, and the surrounding communities that stand to benefit from the jobs and economic opportunity that our proposed development would provide.

Tejon and other federally recognized Indian tribes have a sovereign right to engage in gaming and other forms of economic development on reservation and other trust lands for the advancement of our people. In 1987, the United States Supreme Court affirmed the inherent right of tribes in California to offer bingo and other games on their reservations. (See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).) A year later, Congress enacted IGRA to provide a statutory basis for the operation of

Indian gaming "as a means of promoting tribal economic development, tribal self-sufficiency, and strong tribal governments." (25 U.S.C. § 2702(1).)

Importance of the Case

This case concerns whether the Governor of California ("Governor") has the power, under state law, to concur in a federal determination by the Secretary of the Interior ("Secretary"). The determination involves a two-part inquiry by the Secretary into whether a gaming establishment on newly acquired trust lands would be in the best interest of the tribe and not detrimental to the surrounding community. IGRA expressly designates the Governor as the State representative responsible for concurring in that determination. (See 25 U.S.C. § 2719(b)(1)(A).)

In this case, a divided panel of the Fifth District Court of Appeal has upended IGRA's gubernatorial concurrence provision by voiding a concurrence issued by the Governor in August 2012 for the North Fork Rancheria, potentially casting doubt over a series of subsequent federal actions taken based on that concurrence. In contrast, a unanimous panel of the Third District Court of Appeal affirmed a separate concurrence issued the same day for the Enterprise Rancheria. The two opinions are irreconcilable.

On January 25, 2017, the Court granted review of the Third District decision (Supreme Court Case No. S238544). Tejon urges the Court to grant review of this case—and to hear argument on the merits—"to secure uniformity of decision," "to settle an important question of law," and to conform State law to federal law and the practice of other states. (Cal. R. Ct. 8.500, subd, (b)((1).) A decision by the Court to deny review and leave the Fifth District decision in place would significantly alter the careful balancing of federal and state interests reflected in IGRA. It would also profoundly affect Tejon's ability to pursue the goals that Congress sought to achieve through IGRA. (*See* 25 U.S.C. § 2702(1).)

Section 20 of IGRA prohibits Indian tribes from operating gaming facilities on lands located outside a reservation that were acquired in trust after 1988 unless they qualify under one of several exceptions. (See 25 U.S.C. § 2719.) The two Section 20 exceptions that have been used in California require either a "restored lands determination" or the Secretarial two-part determination at issue in this case. (See 25 U.S.C. § 2719(b)(1).) Several California tribes currently operate gaming facilities on newly acquired trust lands made eligible for gaming pursuant to the "restored lands" exception. In contrast, only three tribes in California have established new gaming eligible lands pursuant to a Secretarial determination.

A Secretarial two-part determination is the only exception under Section 20 of IGRA that is available to Tejon and most other federally recognized tribes in California. Although difficult to obtain, a Secretarial determination is the only provision under IGRA

that offers the possibility of leveling the playing field for tribes like Tejon with no current right to engage in tribal government gaming. Further, the Secretarial determination is the only IGRA exception that, through the gubernatorial concurrence requirement, allows the State's chief executive to veto the federal government's decision to allow gaming on newly acquired trust lands.

The two-part process has been made even more difficult by a handful of wealthy California tribes and card rooms who, for competitive reasons, have initiated both state and federal litigation as well as statewide political efforts to set "high legal and political hurdles" for its use. (*Stand Up for California! v. U.S. Dept. of the Interior* (D.D.C. Sept. 6, 2016 No. 12-2039) __ F.Supp.3d __, 2016 WL 4621065, at 2, appeal pending.) That relatively recent development—i.e., wealthy incumbent tribes using their resources to prevent competition from impoverished tribes that have yet to realize IGRA's promise—has been the subject of national press coverage. *See* Ian Lovett, *Tribes Clash As Casinos Move Away From Home*, N.Y. Times (March 3, 2014) available at https://www.nytimes.com/2014/03/04/us/tribes-clash-as-casinos-move-away-from-home.html.)

Secretarial two-part determinations are a critical vehicle for a limited number of tribes with unusual land situations to acquire Indian lands on which to conduct gaming. As this case and the *United Auburn* case demonstrate, however, such determinations are also likely to be targets for litigation initiated by incumbent casino interests seeking to prevent or delay competition from tribes like Tejon.

In summary, Tejon has a strong and compelling interest in the Court granting review of this case and reversing the Fifth District decision to provide for the uniform application of IGRA for all Indian tribes.

Respectfully submitted,

Octavio Escobedo III
Tejon Tribal Chairman

PROOF OF SERVICE

Re: *Stand Up for California, et al, v. State of California, et al,* Supreme Court Case No. S239630

I, L. Christine Siojo, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1440 Broadway, Suite 812, Oakland, CA 94612. I served a true copy of the attached

Amici Curiae Letter in Support of Petition for Review

on the following by placing a copy in an envelope addressed to the parties listed below, which envelope was then sealed by me and deposited in United States Mail, postage prepaid, at Oakland, California, on February 23, 2017.

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The Honorable Michael Jurkovich
c/o Clerk of Court
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Madera, CA 93637

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 23, 2017 at Oakland, California.

L. Christine Siojo