No. 24-1161

IN THE
Supreme Court of the United States

MAVERICK GAMING LLC,
Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT SHOALWATER BAY INDIAN TRIBE

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QUESTION PRESENTED

Whether the district court abused its discretion when it dismissed under Federal Rule of Civil Procedure 19 a suit that sought to invalidate a Tribe's gaming compact and to prevent the Tribe from conducting all Class III gaming when the plaintiff conceded that the absent Tribe had legally protected interests in all counts of the complaint, when the plaintiff sought relief that it could not obtain under the Administrative Procedure Act, and when the lower courts found (in findings unchallenged here) that there was an actual conflict of interest between the United States and the Tribe.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

The real parties in interest in this litigation are the Shoalwater Bay Indian Tribe ("Shoalwater") and twenty-eight other federally recognized Indian Tribes in Washington. As the courts below recognized, Maverick's suit – although styled in part as an action under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq*., to challenge recently-approved Compact Amendments – in fact seeks to "invalidate the gaming compacts of all tribes in Washington," Pet. App. 7a, and to declare the Tribes' gaming activities unlawful – upending contracts that have been in place for decades, threatening hundreds of millions of dollars in tribal investments, eliminating thousands of tribal jobs, and "eviscerat[ing] the Tribe[s'] very ability to govern [themselves], sustain [themselves] financially, and make decisions about [their] own gaming operation," Pet. App. 59a (internal quotation marks omitted). Petitioner Maverick Gaming LLC ("Maverick") "did not include any of these tribes as parties to the suit," Pet. App. 7a, yet the Tribes have an obvious interest in defending attacks on their gaming compacts and gaming operations. So, as Shoalwater properly argued below, under Rule 19, litigation attacking its compact could not proceed without it. And, like other sovereigns – including States and the United States – Shoalwater has sovereign immunity from suit that limits its involuntary joinder in litigation such as this. After carefully considering the facts and arguments before it, the district court dismissed this case for failure to join the Tribes, and the Ninth Circuit affirmed.

Maverick now asks this Court to intervene, but this fact-specific dispute is unworthy of review. To start,

Maverick's question presented is not actually presented. Maverick's question presumes that the Ninth Circuit has adopted a *per se* rule requiring dismissal of APA actions "whenever" an absent sovereign claims an interest in the action. But that is not the law in the Ninth Circuit and not the law that was employed below. Rather, the Ninth Circuit's approach to Rule 19 is "practical and fact-specific." Pet. App. 21a (internal quotation marks omitted). Case law in the Ninth Circuit – which goes both ways in the face of tribal invocations of Rule 19 – confirms as much.

For similar reasons, Maverick fails to identify a conflict in the Circuits. The conflict Maverick claims is premised on a set of two opposing bright-line rules: The supposed rule requiring dismissal under Rule 19 in the Ninth Circuit, and a supposed rule in all other Circuits prohibiting such dismissals in APA cases. But the latter rule is as illusory as the former. In truth, every Circuit to have addressed the question recognizes that APA actions should be dismissed under Rule 19 in some – but not all – circumstances where a Tribe or other sovereign party is absent. Given the consensus, there is no need for this Court's intervention.

Equally important, Maverick's litigation choices, the specific agency actions at issue, and the lower courts' specific factual findings – unchallenged here – render this case a poor vehicle to determine how Rule 19 applies in cases of APA review.

Maverick complains, for example, that the Ninth Circuit's application of Rule 19 deprived it of a forum for its claims. But Maverick conceded that the Tribe had an interest in all claims in the complaint – including the

challenge to the State's gaming statute in Count III, which may have been allowed to proceed if not for Maverick's concession. Maverick further conceded that an actual conflict of interest between a Tribe and the United States renders the United States an inadequate representative of tribal interests, even in APA cases. The courts below found an actual conflict here, and Maverick has not challenged that finding. These strategic concessions – not Ninth Circuit law – ensured Maverick's case would be dismissed under any approach to Rule 19.

Likewise, this case is nothing like "typical" APA litigation. For one thing, the relief Maverick sought was extraordinary. As noted, Maverick sought not just to overturn an agency decision approving specific compact amendments, but to invalidate the underlying decades-old tribal compacts and to declare tribal gaming activities unlawful. Moreover, unlike "typical" APA cases, the agency never had a chance to address Maverick's contentions in the agency proceedings, at least in part because Maverick raised none of its claims in that forum. That is important. The United States has argued in past cases that it adequately represents all absent parties in APA cases because courts and the parties are limited by the agency's rationale. But that justification has no application here, where the agency never had the chance to speak.

Nor is that the only "justification" Maverick asserts that has no application here. As noted, Maverick itself conceded that the Tribe possesses legally protectible interests in all claims in this suit, including the APA claim. That means that the Tribe's interests are concededly not

(as the United States often contends) merely "contingent" pending conclusion of any APA challenge to the agency's final decision. That argument is unavailable to Maverick – and thus to the Court – in this case.

As if all that were not enough, there is on this record additional reason for pause: After filing its petition, Maverick sought bankruptcy protection under Chapter 11, casting doubt on whether Maverick (or its successors in interest) can or will pursue this litigation to its end.

The district court and the Ninth Circuit correctly applied Rule 19 when they concluded that Shoalwater and other Tribes in Washington were necessary and indispensable parties to this suit. Their fact-bound determinations do not merit review.

STATEMENT

I. Sovereign Immunity And Rule 19

"Indian tribes are 'domestic dependent nations' that exercise 'inherent sovereign authority.'" *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)). "Among the core aspects of sovereignty that tribes possess … is the 'common-law immunity from suit traditionally enjoyed by sovereign powers.'" *Id.* (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)). As a result of this immunity, "an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has

waived its immunity." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998).

Sometimes, a plaintiff seeks to avoid tribal sovereign immunity by omitting a Tribe as a formal party to a case. When that occurs, a court applies Federal Rule of Civil Procedure 19, which governs whether a case should proceed in the absence of a particular party. If the absent party is "necessary and indispensable," the case must be dismissed. *Seneca Nation v. Hochul*, 58 F.4th 664, 669 n.19 (2d Cir. 2023).[1]

Rule 19 prescribes a three-step inquiry for making this determination. First, a court assesses whether the absent party "must be joined" to the suit. Fed. R. Civ. P. 19(a)(1). As relevant here, an absent party must be joined – *i.e.*, is "required" or "necessary" – when that party "claims an interest relating to the subject of the action and is so situated that disposing of the action in the [party's] absence may[] … as a practical matter impair or impede the person's ability to protect the interest." *Id.* 19(a)(1)(B)(i).

Second, if the absent party is necessary, a court must then determine whether the absent party can be "joined." *Id.* 19(a)(2). When the absent party possesses sovereign immunity, joinder is not possible. *See Kiowa*, 523 U.S. at 754.

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[1] Due to stylistic edits in 2007, Rule 19 no longer references the terms "necessary" and "indispensable." Lower courts, however, often continue to use those terms. *See Republic of Philippines v. Pimentel*, 553 U.S. 851, 855 (2008) (noting that the 2007 changes to Rule 19 were "stylistic only").

Third, "[i]f [the party] who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). Rule 19 prescribes four factors for courts to consider when making this determination. *Id.* The balancing of these factors is committed to the district court's discretion. *N. Arapaho Tribe v. Harnsberger*, 697 F.3d 1272, 1277, 1282–84 (10th Cir. 2012); *see Republic of Philippines v. Pimentel*, 553 U.S. 851, 864 (2008).

This three-step analysis "can be complex, and determinations are case specific." *Pimentel*, 553 U.S. at 863. This Court's cases, however, are "clear" that "[a] case may not proceed when a required-entity sovereign is not amenable to suit." *Id.* at 867.

II. The Indian Gaming Regulatory Act

In 1987, this Court held that States lack authority to enforce their generally applicable gaming regulations in Indian country without express congressional authorization. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The next year, Congress enacted the Indian Gaming Regulatory Act ("IGRA") "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments," while also "provid[ing] a statutory basis for the regulation of gaming by an Indian tribe." 25 U.S.C. § 2702(1)–(2). To achieve these ends, IGRA categorized gaming into three classes, regulating the third class most heavily. Pet. App. 9a. This "Class III" gaming

includes slot machines and sports betting. 25 U.S.C. § 2703(7)(B), (8); 25 C.F.R. § 502.4(c).

IGRA 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." 25 U.S.C. § 2710(d)(1)(C). These tribal-state compacts "prescribe[] rules for operating gaming, allocate[] law enforcement authority between the tribe and [the] State, and provide remedies for breach of the agreement's terms." *Bay Mills*, 572 U.S. at 785. Once a Tribe and a State enter into a gaming compact, it is sent to the Secretary of the Interior for approval. 25 U.S.C. § 2710(d)(3)(B), (d)(8). The Secretary may disapprove a compact only if it violates (1) "any provision of" IGRA, (2) "any other provision of [f]ederal law that does not relate to jurisdiction over gaming on Indian lands, or" (3) "the trust obligations of the United States to Indians." *Id.* § 2710(d)(8)(B).

III. Tribal Gaming In Washington

Class III gaming has been life-changing for many in Indian country. It is "not only 'a source of substantial revenue' for tribes, but the lifeblood on 'which many tribes ha[ve] come to rely.'" *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022) (quoting *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097, 1099–1100 (9th Cir. 2003) (alteration in original)). In Washington State in particular, "Class III gaming has been a source of great economic value to the tribes." Pet. App. 12a.

Outside of Indian country, Washington prohibits most forms of Class III gaming. Pet. App. 11a. But a few years after IGRA went into effect, the Washington legislature directed the Washington Gambling Commission to negotiate Class III compacts authorizing on-reservation gaming in accordance with IGRA. Wash. Rev. Code § 9.46.360(2); *see* Pet. App. 11a. "Washington has since negotiated and entered into gaming compacts with all twenty-nine federally recognized tribes within its borders." Pet. App. 11a. Many of those compacts have been in place for more than three decades. *See* Wash. State Gambling Comm'n, *Tribal Gaming Compacts and Amendments*, https://wsgc.wa.gov/tribal-partnerships/tribal-gaming-compacts-and-amendments (last visited Aug. 23, 2025).

In 2020, the Washington legislature permitted tribal gaming compacts that "authorize … tribe[s] to conduct and operate sports wagering on [their] Indian lands." Wash. Rev. Code § 9.46.0364(1). Tribes in Washington have now negotiated twenty gaming compact amendments permitting sports wagering on tribal lands. Pet. App. 13a–14a. The Secretary of the Interior approved those compact amendments. *Id.*

IV. Shoalwater Bay Indian Tribe's Gaming Operations

Although Washington, the United States, and the Tribes all work cooperatively in the context of tribal gaming today, that was not always the case. For years, Washington refused to negotiate a gaming compact with Shoalwater, and Shoalwater was forced to take action. Pet. App. 14a. It "began operating 108 gambling machines at the Reservation's casino over the objection of

[Washington] and without a compact." *Id.* But then the United States got involved. It "filed an *in rem* forfeiture action and seized the Tribe's gambling machines." *Id.* And when "the Tribe installed a different type of gaming machine on tribal property the following year," the federal "National Indian Gaming Commission issued a Notice of Violation and Order of Closure, which accused [Shoalwater] of violating IGRA by conducting [C]lass III gaming activities on its land without a tribal-state compact." Pet. App. 14a–15a. "The conflict persisted until the United States Department of the Interior's Office of Hearings and Appeals enjoined the National Indian Gaming Commission from taking further enforcement action against the Tribe in 2002, at which point [Shoalwater] and [Washington] were able to reach an agreement." Pet. App. 15a. That agreement allowed the Tribe to conduct gaming on its reservation lands.

Shoalwater has "since negotiated and received the Secretary's approval for three amendments to its compact." *Id.* The most recent amendment "authorizes the Tribe to offer sports gambling." *Id.* It went into effect on September 15, 2021. *Id.*

Today, Shoalwater's gaming enterprise is critical to the Tribe's economic well-being. *Id.* It provides tribal employment and "serves as a gathering place for the Tribe and its surrounding community and is a source of pride for the Tribe's members." *Id.* It also finances essential government services. Those services include an environmental restoration project to save the Tribe's reservation, which the Pacific Ocean currently engulfs at a rate of approximately 100 to 130 feet of coastline each year. *See American Indian and Alaska Native Public*

Witness Hearing Before the Subcomm. on Interior, Env't, and Related Agencies of the H. Comm. on Appropriations, 119th Cong. (2025) (Testimony of Quintin Swanson, Chairman, Shoalwater Bay Indian Tribe), https://docs.house.gov/meetings/AP/AP06/20250226/117917/HHRG-119-AP06-Wstate-SwansonQ-20250226.pdf.

V. This Case

1. Maverick is a casino gaming company with cardrooms in Washington. Pet. App. 6a. It seeks to offer sports wagering in its cardrooms. *Id.* On January 11, 2022, Maverick filed this action "alleg[ing] that Washington's tribal-state compacts and the sports betting compact amendments violate IGRA, the Equal Protection Clause, and the Tenth Amendment of the United States Constitution." Pet. App. 7a. Maverick sued the United States, various federal officials (collectively, "Federal Respondents"), Washington, and state officials. *Id.* Despite seeking to invalidate all tribal gaming compacts and compact amendments, Maverick did not name Shoalwater or any other Tribes in Washington as defendants. *See id.*

Maverick's Complaint included three counts. Count I asserted that, because the tribal-state gaming compacts are purportedly unlawful, the Secretary of the Interior violated the APA when she approved them. First Am. Compl. ("FAC") ¶¶ 164–175 (W.D. Wash. July 5, 2022), ECF No. 66. As part of this claim, Maverick asked for a judgment "declaring that the Compact Amendments" violate the Constitution and other federal law and "declaring that the Tribes' sports-betting activities" do so as well. *Id.* ¶ 176. Count II asserted that State

Respondents violated equal protection, IGRA, and the anti-commandeering principle by executing and administering the Tribes' gaming compacts and sports-betting amendments. *Id.* ¶ 189. Count III asserted that State Respondents violated equal protection by exempting tribal gaming activities on tribal lands from Washington's prohibition of most forms of Class III gaming. *Id.* ¶ 198. In its prayer for relief, Maverick directly targeted the Tribes and their compacts. It asked for a judgment, among other things, "[v]acating and setting aside the Secretary of the Interior's approval of the Compacts and Compact Amendments"; "[d]eclaring that the Compacts and Compact Amendments" violate the Constitution and other federal law and therefore are void; and "[d]eclaring that the Tribes' [C]lass III gaming activities" do the same. FAC ¶ 207(1), (4), (5). Maverick's complaint thus sought to invalidate all tribal gaming compacts in Washington, no matter how old and how settled the tribal reliance interests.

2. Shoalwater intervened for the limited purpose of moving to dismiss under Rule 19. Pet. App. 18a. Seventeen Tribes in Washington filed an amicus brief supporting Shoalwater's motion and also raising Rule 19 on their own behalf. Tribal Amicus Br. (W.D. Wash. Oct. 11, 2022), ECF No. 87-1.

The district court granted Shoalwater's motion. "Maverick did not dispute that [Shoalwater] ha[d] a legally protected interest that could be impaired by the instant litigation." Pet. App. 49a (internal quotation marks omitted). And the district court concluded that the federal defendants did not adequately represent that interest, explaining that "Shoalwater present[ed] actual,

not hypothetical or unknown conflicts with the United States" because of the "documented history of the federal government acting as an advers[ary] … to Shoalwater" in the gaming context. Pet. App. 61a. The district court also found that the federal defendants' "interests in defending their approval of the sports betting compact amendments 'clearly diverge' from [Shoalwater's] sovereign interest in the continued operation of [C]lass III gaming." Pet. App. 18a.

Because sovereign immunity prevented Shoalwater's joinder, the district court turned to the Rule 19(b) factors and, exercising its discretion, determined that equity and good conscience favored dismissal. Pet. App. 18a–19a. Taking each factor in turn, the district court concluded that three of the four factors favored Shoalwater, and that their balance weighed against Maverick. Pet. App. 63a–66a. Finally, the district court concluded that Maverick's suit did not fall within Rule 19's "public rights" exception, because Maverick's suit sought to "invalidate tribal gaming compacts, an acknowledged legal entitlement." Pet. App. 67a.

3. The Ninth Circuit affirmed. Emphasizing the "practical and fact-specific nature of the [Rule 19] inquiry," Pet. App. 21a (internal quotation marks omitted), the Ninth Circuit determined that "Maverick's suit implicates [Shoalwater's] legally protected economic and sovereign interests." *Id.* In fact, Maverick had expressly "concede[d] that the Tribe has a legitimate interest in the legality of its gaming compact and sports betting amendment." *Id.* The Ninth Circuit noted that, for the first time on appeal, "Maverick now contend[ed] that [Shoalwater] ha[d] no legally protected interest" in

Count III, *i.e.*, the non-APA challenge to Washington's gaming laws. Pet. App. 22a. But the Ninth Circuit concluded that "[t]his issue [was] not preserved for appellate review because it was not 'raised sufficiently for the trial court to rule on it.'" *Id.* (internal quotation omitted).

The Ninth Circuit also held that the federal defendants did not adequately represent Shoalwater's interests. Pet. App. 22a–32a. The Ninth Circuit "agree[d] with the district court that this case present[ed] 'actual, not hypothetical or unknown conflicts' between the federal government and [Shoalwater]." Pet. App. 32a. That was clear from "the federal government's documented history of adverse action toward [Shoalwater] in litigation over [Shoalwater's] gaming operations." *Id.* Moreover, the Ninth Circuit explained that Federal Respondents' interest in this litigation was "meaningfully distinct from [Shoalwater's]." Pet. App. 26a. While Shoalwater's interest was in "ensur[ing] the continued operation of sports betting and other [C]lass III gaming on its land," *id.*, the federal defendants' interest was in complying with IGRA, which "requires the federal government to … possibly prioritize[] the federal law over the Tribe's interest." Pet. App. 27a–28a.

The Ninth Circuit then turned to the equity-and-good-conscience analysis. Pet. App. 37a. Balancing each 19(b) factor, the Ninth Circuit concluded that the district court did not abuse its discretion in concluding that dismissal was appropriate under the circumstances of the case. Pet. App. 40a–41a. The Ninth Circuit likewise concluded that the district court correctly rejected application of the public rights exception because Maverick's

suit sought to invalidate Shoalwater's "legal entitlements" conferred by the tribal-state compacts. Pet. App. 43a.

Judge Miller concurred. Joining the majority opinion in full, he agreed that dismissal was proper under Ninth Circuit precedent. He wrote separately because he believed that the Ninth Circuit should "revisit" the interaction between Rule 19 and the APA. Consistent with the unusual posture of this case, however, he did not call for review *in this case*, noting instead that such review might be provided "[i]n an appropriate case." Pet. App. 48a. Judge Miller also maintained that Maverick's Count III did not implicate Shoalwater's legally protected interests. *Id.* He concluded, however, that "Maverick did not preserve this issue below." Pet. App. 49a. Judge Miller therefore agreed that the Ninth Circuit was required to "affirm the dismissal of count three along with the rest of the complaint." *Id.* Maverick did not seek en banc review.

The instant petition followed. After filing its petition, Maverick on July 14, 2025 filed a petition under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas. *See In re RunItOneTime LLC*, No. 25-bk-90191 (Bankr. S.D. Tex. filed July 14, 2025). As of the date of this filing, those proceedings are ongoing.

REASONS FOR DENYING THE PETITION

I. This Case Does Not Present Maverick's Question Presented.

1. The Court should decline certiorari for the threshold reason that this case does not raise Maverick's

question presented. Maverick's framing presumes that in the Ninth Circuit, "Rule 19 requires dismissal of APA suits challenging federal agency action whenever a non-party who benefited from that action asserts sovereign immunity." Pet. i. But that is not the law in the Ninth Circuit, and not the rule applied below.

As the Ninth Circuit has long underscored, its application of Rule 19 is "practical and fact-specific." Pet. App. 21a (quotation marks omitted); *see, e.g.*, *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990) ("The [Rule 19] inquiry is a practical one and fact specific."). In keeping with this Court's instruction to use a "case-specific approach," *Pimentel*, 553 U.S. at 863, the Ninth Circuit rejects any "precise formula" for Rule 19 cases. Pet. App. 21a (alteration omitted) (quoting *Bakia v. Los Angeles Cnty.*, 687 F.2d 299, 301 (9th Cir. 1982) (per curiam)). And it certainly does not mandate dismissal "whenever" a non-party that benefitted from an agency action asserts sovereign immunity. Pet. i. Just the opposite: The Ninth Circuit has *permitted* many APA challenges to proceed over tribal Rule 19 objections. *See, e.g.*, *Alto v. Black*, 738 F.3d 1111, 1127–29 (9th Cir. 2013) (allowing challenge to Bureau of Indian Affairs order approving tribal disenrollment); *Sw. Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152, 1153–55 (9th Cir. 1998) (per curiam) (allowing challenge to Interior plan to use newly constructed dam water-storage facility); *see also Makah*, 910 F.2d at 559 (dismissing APA claims retroactively impacting tribal rights, but allowing APA claims that challenged procedures followed to promulgate regulations).

The Ninth Circuit applied its fact-specific inquiry here. At each step, the analysis turned on the unusual circumstances of this dispute. The Ninth Circuit emphasized that Maverick sought to invalidate not just the Compact Amendments that authorize sports betting, but also the Tribes' underlying gaming compacts; that Shoalwater presented actual, not hypothetical or unknown, conflicts with the United States; and that Shoalwater identified arguments the federal defendants would not make on its behalf. Pet. App. 7a, 21a–22a, 30a–32a, 38a, 42a-43a. And the court of appeals underscored that Maverick waived arguments and conceded points that might have otherwise allowed its suit to proceed. Pet. App. 21a–22a, 39a; *see also* Pet. App. 49a (Miller, J., concurring). Given these and other case-specific facts, the Ninth Circuit concluded the district court did not abuse its discretion in ordering dismissal. That is careful analysis of case-specific considerations – not rote application of a *per se* rule.

2. Maverick fails to show otherwise. Disregarding cases like *Alto* and *Southwest Center*, Maverick claims that the Ninth Circuit adopted a *per se* rule in 2019 when it decided *Diné Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), *cert denied*, 141 S. Ct. 161 (2020). *See* Pet. 20. But *Diné Citizens* effected no sea change in Ninth Circuit law. Even before *Diné Citizens*, the Ninth Circuit on occasion dismissed under Rule 19 cases like this one that sought to terminate tribal gaming compacts in the absence of the Tribes. *See Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1023-25 (9th Cir. 2002); *Friends of*

Amador Cnty. v. Salazar, 554 F. App'x 562, 564–66 (9th Cir. 2014).

Nor does *Diné Citizens* itself suggest that it adopted a new rule. To the contrary, *Diné Citizens* carefully examined and applied Ninth Circuit precedent to the specific facts before it. 932 F.3d at 854–55 (distinguishing *Alto* and *Southwest Center*). The same goes for the other Ninth Circuit case *Maverick* cites: *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022), *cert. denied*, 144 S. Ct. 342 (2023). *See* Pet. 21–22. *Klamath* upheld dismissal based on the specific facts at issue there – including that, "outside of [*Klamath* itself], the Tribes [were] in active litigation over the degree to which Reclamation [was] willing to protect the Tribes' interests in several species of fish [relevant to the *Klamath* challenge]." 48 F.4th at 945. *Klamath*'s case-specific analysis refutes any notion of blind adherence to a *per se* rule.

Petitioner's purported rule has also failed to play out in practice. Even after *Diné Citizens*, courts within the Ninth Circuit have allowed APA challenges in the face of tribal Rule 19 motions when the underlying facts compelled this conclusion. *E.g.*, *Federated Indians of Graton Rancheria v. U.S. Dep't of the Interior*, No. 24-cv-08582, 2025 WL 2096171, at *1 (N.D. Cal. July 18, 2025) (acquisition of land into trust for a Tribe), *appeal docketed*, No. 25-4604 (9th Cir. 2025); *Protect the Peninsula's Future v. Haaland*, No. 23-cv-5737, 2025 WL 1413734, at *6–7 (W.D. Wash. May 15, 2025) (permitting for tribal oyster farm), *appeal docketed*, No. 25-4692 (9th Cir. July 28, 2025); *Tribes v. United States*, No. 22-cv-680, 2023 WL 7182281, at *19 (D. Or. Sept. 11, 2023) (allocation of

irrigation water), *report and recommendation adopted sub nom.*, *Klamath Tribes v. United States Bureau of Reclamation*, 2024 WL 472047 (D. Or. Feb. 7, 2024). They have done so outside of the APA context too (where any supposed bright-line rule about tribal immunity and Rule 19 would be equally applicable). *E.g.*, *Ariz. State Legislature v. Biden*, No. 24-cv-8026, 2024 WL 5264605, at *5 (D. Ariz. Sept. 9, 2024) (challenge to national monument); *Pliant v. Caesars Enter. Servs., LLC*, No. 20-cv-2043, 2020 WL 7043607, at *3–6 (S.D. Cal. Dec. 1, 2020) (wrongful termination suit by former tribal casino employee). None of these courts understood *Diné Citizens* to adopt a *per se* rule of dismissal – because it did not. The Rule 19 inquiry in the Ninth Circuit is – and always has been – fact specific.

II. There Is No Circuit Split.

1. Maverick also fails to identify a Circuit split. The Rule 19 test is the same in all the Circuits (or differs only at the margins). It is "complex, and determinations are case specific." *Pimentel*, 553 U.S. at 863.

To argue otherwise, Maverick characterizes the Circuits as plagued by bright-line rules going opposite directions: a bright-line rule in the Ninth Circuit requiring dismissal "whenever" a Tribe raises Rule 19, and a bright-line rule in other Circuits *prohibiting* such dismissal (at least when a claim arises under the APA). *See* Pet. 17–23. As just discussed, the first claim withers under scrutiny. *Supra* 15–16. And the second claim fares no better. All Circuits to have addressed the question directly agree that "review otherwise available under the Administrative Procedure Act may be unavailable due to the impossibility of joining an indispensable

party." *Wichita & Affiliated Tribes of Okla. v. Hodel* ("*Wichita*"), 788 F.2d 765, 778 n.14 (D.C. Cir. 1986). That has been the settled rule for decades.

Wichita is illustrative. There, the D.C. Circuit, in a decision joined by then-Judge Scalia, held that two Tribes were indispensable to an APA challenge to an agency's distribution of funds derived from tribal lands. Directly addressing the interplay between the APA and Rule 19, the D.C. Circuit determined that the APA claim there should not proceed in the Tribes' absence. *See id.* at 777–78. It explained that when an "[APA] suit directly implicates a third-party tribe, and … the government's involvement in the case cannot be said to fully protect the absent tribe's interests," Rule 19 can compel dismissal. *Id.* at 778 n.14. Other cases have reached the same conclusion. *E.g.*, *Enter. Mgmt. Consultants, Inc. v. United States ex rel. Hodel*, 883 F.2d 890, 892–94 (10th Cir. 1989).

2. Maverick's citations are not to the contrary. Each one is just an example of a Circuit rejecting a specific Rule 19 challenge to a specific APA suit based on specific facts. No Circuit has rejected *all* Rule 19 challenges to *all* APA suits regardless of the circumstances.

Start with the Tenth Circuit, which according to Maverick "has held that a [T]ribe is not a required party in an APA action." Pet. 17 (quotation mark omitted) (citing *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250 (10th Cir. 2001)). It is true that the Tenth Circuit has held that Tribes are not required in *some* APA actions. *E.g.*, *Sac & Fox Nation*, 240 F.3d at 1258–60. But it applies a fact-specific analysis to make that determination, just like the Ninth Circuit. *See id.* (closely

examining the circumstances of the case); *supra* 15 (summarizing Ninth Circuit law). And, just like the Ninth Circuit, the Tenth Circuit allows *dismissal* of administrative-law challenges under Rule 19 for failure to join Tribes – when the facts call for that result. *See Enter. Mgmt.*, 883 F.2d at 892–94 (challenge to Interior disapproval of bingo management contract); *cf. also Davis ex rel. Davis v. United States*, 343 F.3d 1282, 1288–91 (10th Cir. 2003) (suit against the United States and various federal agencies and officials alleging equal protection violation in distribution of benefits); *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 997–1001 (10th Cir. 2001) (mandamus action challenging Interior funding allocation decisions). Indeed, *Diné Citizens* relied on Tenth Circuit law to support dismissal there. 932 F.3d at 855 (following *Manygoats v. Kleppe*, 558 F.2d 556 (10th Cir. 1977)). The Tenth Circuit has thus adopted no bright-line rule exempting all APA challenges from Rule 19.

The same goes for the D.C. Circuit. As noted, it has expressly addressed this question and upheld dismissal of an APA action for failure to join Tribes. 788 F.2d at 774–78 & n.14. It has also applied the same rule in favor of States (in a tribal gaming compact case like this one, no less). *See Kickapoo Tribe of Indians of Kickapoo Rsrv. in Kan. v. Babbitt*, 43 F.3d 1491, 1493 (D.C. Cir. 1995). For its part, *Ramah Navajo School Board, Inc. v. Babbitt* (*see* Pet. 19) is just a case where the facts called for a different result. *See* 87 F.3d 1338 (D.C. Cir. 1996). The Tribes there had only "negligible" benefits on the line, and there was no conflict of interest between them and the United States. *Id.* at 1350–52.

The story is similar in the Seventh and Eighth Circuits, which Maverick also points to. In *Thomas v. United States* (Pet. 19), the Seventh Circuit never purported to prohibit Rule 19 dismissal in APA cases. 189 F.3d 662 (7th Cir. 1999). Instead, it reasoned that the particular statutory provision at issue concerned a "federal – not tribal – election[]," and that Congress had deliberately "refused to reflect the tribal interest in the legal structure" of the election. *Id.* at 667–68. And in *South Dakota ex rel. Barnett v. United States Department of the Interior* (Pet. 20) – which was a Rule 24 decision, not a Rule 19 decision – the Eighth Circuit recognized that tribal intervention as a defendant is proper in an APA case when a Tribe can show that "its interests actually differ from … the government's interests." 317 F.3d 783, 786 (8th Cir. 2003). The Eighth Circuit simply concluded that the Tribe had not made the requisite showing. *Id.*

3. If anything, the cases suggest that other Circuits would agree with the Ninth Circuit's determination here, for two reasons.

First, the district court found and the Ninth Circuit affirmed an actual conflict of interest. As the Ninth Circuit put it, "In light of the federal government's documented history of adverse action toward the Tribe in litigation over the Tribe's gaming operations, we agree with the district court that this case presents actual, not hypothetical or unknown conflicts between the federal government and the Tribe." Pet. App. 32a (internal quotation marks omitted). Every Circuit agrees that the United States is not an adequate representative when there is an actual conflict. *E.g.*, *Makah*, 910 F.2d at 558;

Wichita, 788 F.2d at 775; *Manygoats v. Kleppe*, 558 F.2d 556, 558 (10th Cir. 1977). Indeed, Maverick itself conceded the point, and did not argue for an exception to the rule for APA cases. *See* Maverick Op. Br. at 27–28 (9th Cir. July 3, 2023), ECF No. 11. Hence, the finding of an actual conflict would have required dismissal in any Circuit.

Second, this is, at bottom, a challenge to a contract. And "[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a … contract, all parties who may be affected by the determination of the action are indispensable." *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975); *see also, e.g.*, *Kulawy v. United States*, 917 F.2d 729, 736 (2d Cir. 1990) (same); *United States ex rel. Hall v. Tribal Dev. Corp.* ("*Hall II*"), 100 F.3d 476, 479 (7th Cir. 1996) (same); *Enter. Mgmt. Consultants*, 883 F.2d at 894 (same). Here, Maverick chose to seek invalidation of Shoalwater's compact. Pet. 21a–22a. So the result would have likely been the same no matter where it was decided.

The Court need not take that on faith. Cases involving challenges to absent Tribes' contracts outside of the Ninth Circuit have ended in Rule 19 dismissal. That was so in the Tenth Circuit in *Enterprise Management Consultants*. *See* 833 F.2d at 892–94. And that was the case in the 1990s when forty-two separate *qui tam* actions were brought against "merchants who supplied Indian tribes with goods and services for the tribes' gaming operations" – one of which ended up in front of the Seventh Circuit, and another, the Eighth. *See Hall II*, 100 F.3d at 477; *see also United States ex rel. Hall v. Tribal Dev.*

Corp. ("*Hall I*"), 27 F.3d 572, 1994 WL 320296 (8th Cir. 1994) (unpublished table decision). As here, the plaintiffs in those cases argued that gaming-related contracts with Tribes violated IGRA (and other federal law). And, as here, both the Seventh and Eighth Circuits dismissed the suits under Rule 19. Because the suits concerned the "validity of [the Tribes'] contract[s]," it was "beyond dispute" that the Tribes were required. *Hall II*, 100 F.3d at 479; *see also Hall I*, 1994 WL 320296, at *1 ("It is simply inconceivable to us that a suit claiming that a contract is invalid should be allowed to proceed in the absence of all parties to the contract.").

III. This Case Does Not Otherwise Warrant Review.

A. This Case Is A Poor Vehicle.

The Court should also deny review because this case suffers from substantial vehicle problems – many of which stem from Maverick's strategic litigation decisions.

First, as all three judges below recognized, Maverick conceded – without distinguishing among the counts in the Complaint – that the Tribe "has a legally protected interest in the lawsuit that may be impaired or impeded in the Tribe's absence." Pet. App. 20a; *see also* Pet. App. 49a (Miller, J., concurring). That concession substantially limits the arguments available to the Court. The United States, for example, has historically taken the position that it is ordinarily the only required party to an APA case in part because the interest of the absent party is normally "contingent" until the time for an APA challenge expires. U.S. Br. in Opp. ("U.S. *Klamath Br.*") at 23, *Klamath Irrigation Dist. v. U.S. Bureau of*

Reclamation, 144 S. Ct. 342 (2023) (No. 22-1116), 2023 WL 6367584. Yet that argument is unavailable here, given that Maverick agreed that Shoalwater and other Tribes in Washington have current (not contingent) legally protected interests in their compacts. Similarly, Maverick now maintains that qualifying interests under Rule 19 cannot include the "downstream effects" that would result from vacating the Secretary's approval of the sports betting amendments. Pet. 25–26 (emphasis omitted). But as the Ninth Circuit explained, "this analysis is besides the point [in this case] because Maverick's concessions below require [the] assum[ption] that if Maverick prevails on any one of its claims for relief [tribal] economic and sovereign interests may be impaired." Pet. App. 23a–24a n.15. These limitations would substantially frustrate this Court's review.

Second, and relatedly, two of Maverick's strategic choices – not Rule 19 law in the Ninth Circuit – guaranteed that Maverick could not pursue its claims. The first was its decision to lump all of its claims together. Maverick's core thesis is that Washington violated the Fourteenth Amendment by exempting Tribes from its prohibition on gaming. *See* FAC ¶¶ 164–206. The most natural way to mount that challenge is to sue state officials under Section 1983 – which Maverick did in Count III of its complaint. FAC ¶¶ 192–206. And as Judge Miller underscored, that claim might not have implicated any legally protected tribal interest – in fact, Judge Miller would have ruled that Shoalwater was not a required party to Count III. Pet. App. 48a–49a (Miller, J., concurring). But all three judges below concluded that they could not reach that argument because "Maverick did

not preserve this issue below," choosing instead to not "distinguish[] among the different counts of the complaint." Pet. App. 49a (Miller, J., concurring); *see* Pet. App. 22a (majority opinion). Thus, *Maverick's* strategic decision to de-emphasize its third count required the Ninth Circuit to "affirm the dismissal of count three along with the rest of the complaint," even under Judge Miller's view. Pet. App. 49a (Miller, J., concurring). Maverick has doubled down on that strategy here, asking the Court to reverse the Ninth Circuit only with respect to its APA claim. *See* Pet. i, 4–5. Ultimately, the Ninth Circuit's approach to Rule 19 did not deprive Maverick of a forum for its most straightforward claim – Maverick did that to itself.

The APA claim that Maverick does raise in its petition is the subject of another of Maverick's key concessions. The district court found, and the Ninth Circuit affirmed, that there was an actual conflict of interest between the Tribe and the United States. Pet. App. 31a–32a. Below, Maverick conceded that where there is an actual conflict between a Tribe and the United States, federal defendants do not adequately represent tribal interests, even in APA cases (indeed, that is settled law across the Circuits, *see supra* 19–21). *See* Maverick Ninth Cir. Br. at 27–28. And Maverick has again stuck to that strategy by not asking this Court to review either the legal question whether an actual conflict precludes an adequacy finding under Rule 19 or the factual question whether such a conflict exists here. The actual conflict between the United States and the Tribe is thus unchallenged. That alone is sufficient to justify denial of review; at the very least, the lower court findings

complicate the analysis, making this a poor vehicle to consider the relationship between Rule 19, tribal sovereign immunity, and the APA.

Third, Maverick opted to seek expansive relief running directly against Shoalwater and other Tribes in Washington. The United States has previously argued that it is generally the only indispensable party to APA claims "because judicial relief under an APA suit … properly runs only against the federal government." U.S. *Klamath* Br. at 17–18. In its APA claim in this litigation, however, Maverick demanded more than just vacatur of Interior's approval of the sports-betting amendments. It asked for a judgment (among other things) "[v]acating and setting aside the Secretary of Interior's approval of the Compacts and Compact Amendments"; "[d]eclaring that the Compact Amendments violate IGRA, the Constitution's guarantee of equal protection, and the Tenth Amendment, and therefore were not validly entered into and are not in effect"; and "[d]eclaring that the Tribes' sports-betting activities violate IGRA." FAC ¶¶ 176, 207(5). The Ninth Circuit in turn noted that Maverick's relief was specifically targeted at the absent Tribes, explaining that "[a]lthough Maverick [sought] relief that would invalidate the gaming compacts of all tribes in Washington, Maverick did not include any of these tribes as parties to the suit." Pet. App. 7a. Maverick, in short, sought to upend decades-old contracts that had engendered long-settled expectations and hundreds of millions of dollars (or more) in aggregate tribal investments, without the Tribes being present to defend their interests.

The Ninth Circuit acknowledged that, at oral argument, Maverick expressed willingness to limit the relief it sought for the APA claim. But, again, Maverick did not advance this argument in the district court and, instead, conceded that all of its claims would impair the absent Tribes' interests. *See* Pet. App. 21a–22a. Because Maverick sought relief beyond what the APA would permit, Maverick cannot now rely on the limited relief the APA provides to argue that the Tribes have no interest in this litigation.

Fourth, and finally, contrary to Maverick's assertions, this case is not a typical APA dispute. One of the arguments against Rule 19 dismissal in APA actions is that, in the typical APA case, "the agency is the best party to defend [its action]" "[b]ecause the agency's action is judged on the rationale articulated by the agency itself." Pet. App. 46a (Miller, J., concurring). Here, however, the agency action concerned contracts that the agency had no role in negotiating, and Interior never addressed Maverick's constitutional and statutory arguments. The agency never articulated its reasoning on these issues, never developed any record, and never heard from the Tribes, who had no reason to anticipate this challenge. Moreover, the absence of any discussion is at least in part due to the actions of Maverick, which elected to make no submissions to the agency, despite being aware that the compact amendments had been submitted for approval. *See, e.g.*, Pet. App. 6a, 12a–13a, 86a–89a; *cf. Cherokee Nation v. U.S. Dep't of Interior*, 643 F. Supp. 3d 90, 101 (D.D.C. 2022) (noting that plaintiffs had "submitted comments [to Interior] … setting forth their positions on why [the challenged] compacts

were invalid under IGRA"). So this case would give the Court no opportunity to opine on whether, in general, APA actions should be allowed to proceed over Rule 19 objections because the agency's defense of its own rationale is sufficient. Rather, and for this reason too, any decision the Court issued here would be narrow and fact specific.

B. Maverick's Bankruptcy Further Counsels Against Review.

Another, more recent development also counsels in favor of denial: After Maverick filed its petition here, Maverick filed for Chapter 11 bankruptcy. *See supra* 14.

As Maverick's bankruptcy filings make clear, it faces substantial financial obstacles and significant operational and competitive challenges. *See* Decl. of Jeff Seery ("Seery Decl.") at 15–23, *In re RunItOneTime LLC*, No. 25-bk-90191 (Bankr. S.D. Tex. July 14, 2025), ECF. No. 18. Its bankruptcy thus casts doubt on the future of this case. Even if Maverick says it intends to litigate this case to its end, its current operators cannot be certain they will remain in their positions. And any future operators may well decide that this case is not a sound investment, given that it seeks ultimately to upend settled Ninth Circuit law regarding the constitutionality of IGRA and is in any event years away from resolution even if Maverick prevailed on the Rule 19 issues here. *See Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 720–42 (9th Cir. 2003) (rejecting the same equal protection and IGRA arguments that Maverick asserts); *see also* Maverick Summ. J. Br. at 13 (W.D. Wash.

Aug. 12, 2022), ECF No. 75 (conceding that these arguments are foreclosed under binding precedent).

Nor is it clear that Maverick itself will persist. "The possible failure of the Chapter 11 debtor is an inherent risk in such proceedings." *In re Holiday Towers, Inc.*, 18 B.R. 183, 189 (Bankr. S.D. Ohio 1982). Here, Maverick's bankruptcy proceeding is premised on a transaction support agreement that "contemplate[s] the sale or other disposition of substantially all of the Company's core assets in three separate business segments through either a section 363 sale process or a plan of reorganization." Seery Decl. at 4–5. Those core assets include a number of Maverick's Washington cardrooms. *Id.* Whether Maverick will be a serious, ongoing entity by the time the Court would resolve the issues presented in the petition is anybody's guess.

C. This Case Has No National Importance.

For many of the reasons identified above, Maverick is wrong that the Ninth Circuit's decision has national importance. "[Rule 19] determinations are case specific," *Pimentel*, 553 U.S. at 863, and the facts underlying this particular case are especially unusual: They involve a direct attack on the contract rights of absent third parties, strategic waivers and concessions that removed paths that might have otherwise permitted Maverick's claims to proceed, and a finding of an actual conflict of interest on the part of the United States that is not disputed here. Pet. App. 21a–22a, 31a. Any ruling here would thus lack far-ranging practical implications.

Maverick nonetheless insists that the stakes are high because the Ninth Circuit has "grant[ed] tribes … a veto

over APA suits brought by others." Pet. 20. But again, that is not the rule in the Ninth Circuit. *Supra* 15. Indeed, contrary to Maverick's suggestion, it is quite easy "to imagine … APA case[s] that can [proceed]" in the Ninth Circuit. Pet. 31. They include cases where a Tribe's asserted interest is only "a financial stake." *Diné Citizens*, 932 F.3d at 852 (quoting *Makah*, 910 F.2d at 558). Cases where a Tribe is adequately represented by the United States because, among other things, it shares the Tribe's interests and does not have a conflict with the Tribe. *See, e.g.*, *Alto*, 738 F.3d at 1127–28. And cases seeking to vindicate a public right that could "adversely *affect* the absent parties' interests," but not "*destroy* the legal entitlements of the absent parties," to name a few. *Diné Citizens*, 932 F.3d at 858 (quoting *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996) (internal quotation marks omitted)). One need not speculate about the cases that can continue: The Ninth Circuit and its district courts have already provided numerous examples. *Supra* 15, 17–18.

Maverick's specter of dismissals based on state sovereign immunity is equally groundless. On this score, Maverick can conjure up only a single post-*Diné Citizens* example. *See* Pet. 33 (citing Arizona Amicus Br. at 2–3, *Center for Biological Diversity v. U.S. Forest Service*, No. 12-cv-08176 (D. Ariz. Nov. 12, 2019), ECF No. 159). And that example *disproves* Maverick's thesis. The case was resolved on the merits – not dismissed under Rule 19. *See Ctr. for Biological Diversity v. U.S. Forest Serv.*, 80 F.4th 943 (9th Cir. 2023).

Finally, nothing about the underlying claim increases the importance of Maverick's Rule 19 challenge. The

constitutionality of allowing Indian Tribes alone to conduct gaming on their reservation lands has been settled in the Ninth Circuit for decades. *See Artichoke*, 353 F.3d at 712. And, as Judge Miller noted, other plaintiffs might still be able to challenge the constitutionality of Washington's gaming framework, at least if they avoid the strategic concessions that Maverick made here.

IV. The Decision Below is Correct.

The courts below correctly applied Rule 19 to the unique facts of this case. Maverick's litigation choices made this an easy case.

A. Shoalwater Is A Necessary Party That Cannot Be Joined.

The courts below correctly determined that Shoalwater is a necessary party to this suit under Rule 19(a). Shoalwater's interest in this suit is obvious: "Maverick seeks nothing less than a wholesale revocation of the tribes' ability to operate casino gaming facilities through the invalidation of its tribal-gaming compact." Pet. App. 38a–39a (internal quotation marks omitted). In fact, this tribal interest is so plain that Maverick itself concedes that Shoalwater has economic and sovereign interests in this suit that satisfy Rule 19(a). *Id.* And the federal defendants are no substitute for Shoalwater. The Ninth Circuit and the district court found an actual conflict of interest between the United States and the Tribe based on the "documented history of the federal government acting as an adverse party to Shoalwater." Pet. App. 61a. Moreover, the interest of the United States in defending the agency action under review is different from Shoalwater's undisputed economic and

sovereign interests in this suit that seeks to invalidate the Tribe's gaming compact. Pet. App. 26a, 29a. Shoalwater is thus a necessary party, and because Shoalwater possesses sovereign immunity, it cannot be joined to this suit. Pet. App. 32a–33a.

Maverick's responses miss the mark. It primarily contends that the United States is the only indispensable party in APA cases. Pet. 23. Maverick, however, builds that argument on reasoning that has no application here. For example, Maverick maintains that the agency is best positioned to defend its own articulated rationales. Pet. 24. But the agency decision here involved no consideration of the questions at issue in this suit (in part because Maverick never raised them to the agency). *Supra* 27. Likewise, Maverick claims that the government's defense of its action is "ordinarily" sufficient to protect third-party interests because any benefits to third parties are "derivative of th[e] agency action." Pet. 25 (quoting U.S. *Klamath* Br. 18). But this argument has no purchase here given the finding (unchallenged here) of an actual conflict of interest between Shoalwater and the United States. Pet. App. 31a–32a.

Maverick also insists the United States is an adequate representative because IGRA required the Secretary to determine that the sports-betting amendments were "consistent with … 'the trust obligations of the United States to Indians'" and because the United States "presumably desires the amendments it approved … to be effectuated." Pet. 25–26 (quoting 25 U.S.C. § 2710(d)(8)(B)(iii)). But as the Ninth Circuit recognized, "the analysis [is not] so simple." Pet. App. 27a. "The Secretary of the Interior does not consider the

tribes' interests exclusively when tasked with approving or disapproving a compact that has been reached between a state and a tribe." *Id.* Instead, "IGRA requires the Secretary to disapprove any compact that violates 'any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands.'" *Id.* (quoting 25 U.S.C. § 2710(d)(8)(B)(ii)). Hence, "in the event of a conflict between the Tribe's interest in [C]lass III gaming and any other provision of federal law, IGRA requires the federal government to consider, and possibly prioritize, the federal law over the Tribe's interest." Pet. App. 27a–28a. Maverick accuses this reasoning of being "conjecture." Pet. 27. But it is in fact well grounded, given the history of adversity between Shoalwater and the United States over gaming and the finding of an actual conflict of interest here. Pet. App. 31a–32a.

Lastly, it is too late for Maverick to argue that the Ninth Circuit was wrong to look at the "downstream effects" of Interior's approvals when assessing Shoalwater's interests. Pet. 25. As explained above, Maverick's concessions have foreclosed that argument. *Supra* 12. Regardless, Maverick's argument is at bottom that an existing party adequately represents an absent party so long as the two parties desire the same outcome in a suit, regardless of other circumstances. That argument conflicts with settled law. *E.g.*, *Mich. State AFL–CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997).

B. Equity And Good Conscience Compel Dismissal In Shoalwater's Absence.

The district court also properly exercised its discretion in concluding that the balance of the Rule 19(b)

factors favored dismissal. It carefully evaluated each factor and, on balance, decided that the threat to Shoalwater's interests outweighed other considerations. Pet. App. 63a–66a. That conclusion aligns with the well-established principle, noted above, that "in an action to set aside … a contract, all parties who may be affected by the determination of the action are indispensable." *Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 540 (10th Cir. 1987) (quoting *Lomayaktewa*, 520 F.2d at 1325). It also accords from this Court's instruction that "where sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign." *Pimentel*, 553 U.S. at 867.

Maverick complains that balancing in the Ninth Circuit is rigged and always favors absent sovereigns. Pet. 28–29. But actual practice in the Ninth Circuit belies Maverick's claim. *See, e.g.*, *Tribes*, 2023 WL 7182281, at *19; *see also supra* 15, 17–18. And here, given that the balancing of factors is delegated to the discretion of the district court, the district court did not err when it concluded that the weight of conflicting factors favored Shoalwater. *See* Pet. App. 40a.

Maverick's invocation of the public rights exception likewise fails. Pet. 29–30. That exception has no application here because Maverick's suit threatens to eviscerate Shoalwater's legal entitlements. Pet. App. 43a. *National Licorice Co. v. NLRB*, 309 U.S. 350 (1940), does not hold otherwise. *See* Pet. 31. The Court applied the public-rights exception there only because the legal action would *not* "foreclose [the absent parties to the

contracts] from taking any action to" enforce their contract rights, "nor prejudge" the scope of the absent parties' rights. 309 U.S. at 365. It is also no answer for Maverick to distinguish Shoalwater's compact from a "run-of-the-mill private contract" because it "set[s] the balance of regulatory authority" between Shoalwater and Washington. Pet. 31. If anything, that increases the threat to Shoalwater's legal entitlements. Shoalwater's interest in its sovereign authority over its reservation and its gaming operations is at least as great as its interest in the revenue generated by those operations.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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