August 29, 2000

Daniel Pone
Judiciary
1020 N. Street Rm. 104
Sacramento, CA. 95814

RE: Opposition to ACR 185

Dear Mr. Pone,

Stand Up For California is writing to you today concerning Assembly Concurrent Resolution 185 authored by Assembly Member Battin. Assembly Member Battin in introducing this resolution is asking the state to acknowledge the special status of tribes as being "separate and independent" political communities. They are not. In 1831 Chief Justice John Marshall of the United States Supreme Court, in *Cherokee Nation v. Georgia*, described them as "domestic dependent nations." In point of fact, we would be better off if they were actually "separate and independent" sovereigns, because then they would fall under the Foreign Sovereign Immunities Act, which makes specific types of remedies for citizens available against foreign sovereigns. But if tribes were termed foreign nations their political contributions would be deemed illegal.

Assembly Member Battin's reference to enforcement of the Indian Civil Rights Act (ICRA) is a sham. IF the people of California could enforce that Act, we would all be a lot better off. But we cannot. The Supreme Court, in *Santa Clara Pueblo v. Martinez*, has held that the only way that any provision of the ICRA can be enforced is by petition for a writ of habeas corpus. Habeas corpus is not available to anyone who is not in custody. Thus, there are all kinds of purported rights set forth in the ICRA that cannot possibly be enforced because there is no way that the habeas corpus procedure can apply to them. It is simply a lie to say that the ICRA "ensures the civil rights of Indian people".

Further, on the third page starting at line 10, "*Whereas, the Legislature further recognizes that tribal governments have been generous benefactors helping their neighbors in making California communities as good as they can be,*" IS not a completely true statement. On August 9th on the North Steps of the Capitol Stand Up For California, and a coalition of twenty community bases citizens groups and County Supervisors presented a resolution asking the Governor to enter into the arbitration process outlined in the Tribal State Compact because tribes were acting with disregard to the concerns of their neighbors and the greater communities. These concerns were also addressed to the Attorney General's office in a two-hour meeting with Asst. Attorney General Bob Mukia and Director of the Division of Gambling Control Harlan Goodson. New policies will be developed.

And finally, the very last "*whereas*", suggesting that the people of California voted for either Proposition 5 or 1A because they supported the empowerment of a new government that is out of the regulatory authority of the State of California is absurd.

Citizens voted for gambling, for slot machines on "Indian Lands". Citizens voted for individual Indians to get off of welfare by offering casino style gambling. Citizens voted for equality of Indian people. Tribal governments want rights, privileges and exemptions above and beyond all others that few citizens currently understand or understood.

Stand Up For California stands opposed to this resolution as it is **currently drafted**. It must be remembered that federal law supersedes state law in Indian matters. Clearly California needs to establish a policy of interacting with Indian tribes in California, but not by creating a status for tribal governments that is inconsistent with federal law.

The Native American Democratic Caucus has responded to the sovereignty issue that was raised in Washington State by the Republican Party recommending that tribes and the public obtain educational information on this complex issue. Certainly the issue of tribal sovereignty deserves more than the last three days of the legislative session for discussion to educate lawmakers and the public. Stand Up For California acknowledges and respects the sovereignty of tribes, while similarly tribes must respect the right of California Citizens. Sovereignty is a serious commission of responsibility.

The best explanation of tribal sovereignty is contained within a recent Supreme Court Case, *Kiowa Tribe of Oklahoma, and Petitioner v. Manufacturing Technologies, Inc*. No 96-1037, argued Jan. 12, 1998, decided May 26, 1998. In this case the United States Supreme court explains the development of the doctrine of Sovereign Immunity and the problems that exist due to sovereign immunity, and recommends that Congress address special problems to balance the rights of non Indian citizens with the special rights of tribes. This year President Clinton signed legislation that limited tribal immunity from some lawsuits and permitted due process for parties involved in contracts with tribes. (S 613, authored by U. S. Senator Ben Nighthorse Campbell).

Tribal Sovereignty is defined as "domestic dependent sovereignty." Tribes are simultaneously tribes and nations. Thus, they are entitled to the right of economic self-determination that sovereignty entails. They are domestic, demonstrating a unique level of sovereignty, different from that of a nation. Practically speaking they are more powerful than a county but less powerful than a state. Tribes are dependent. Because of the unfortunate and abusive history of Indian tribes in the United States, the federal government has assumed a trust responsibility of providing many services to tribes. For example the daily operation of their governments, medical care and educational opportunities are paid for with federal tax dollars. (638 Contracts with the BIA)

List Stand Up For California opposed to ACR 185 as it is currently written.

Sincerely,

Cheryl Schmit
Co Director
Attachment: United States Office of Attorney General Letter, June 1, 1995, Indian Policy