Stand Up For California!

"Citizens making a difference"
standupca.org

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California State Assembly
State Capitol Room 2008
Sacramento, CA. 95841
Fax: 319-2152

Honorable Jerome Horton
California State Assembly
State Capitol Room 2006
Sacramento, CA. 95841
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RE: Opposition to AB 2272 and AB 2273

Dear Assembly Members Dymally and Horton:

Stand Up For California writes today to submit strong opposition to AB 2272 and AB 2273. These two pieces of legislation set a serious and far reaching precedent in California. AB 2272 would establish a state recognized Indian reservation for the Gabrielino/Tongva tribal group, a non-federally recognized Indian group, in the City of Compton, in Los Angeles County. AB 2273 would declare the Legislature's intent that the State of California enters into a tribal-state gaming compact with the Gabrielino/ Tongva tribal group a non-federally recognized tribe. Today, the effort is for one tribal group in Los Angeles. It must be noted, California has 54 petitioning tribal groups all believing they are as unique as the Gabrielino/Tongva in their quest for recognition, land and gaming.

Recognizing the principles of federalism, there is nothing to stop a state from allowing gaming within its borders for purposes it deems legitimate, nor anything to prevent the recognition of a state-recognized tribe. However, since 1789 the U. S. Constitution included a grant by states to give exclusive power to Congress to regulate Indians and Indian tribal governments. (Article 1, section 8 clause 3 of the US Constitution) The Indian Gaming Regulatory Act (IGRA) both regulates and prohibits gaming on Indian lands for federally-recognized tribes, but does not address Indian groups that are not federally-recognized.

California's Constitution [Art. 1 Sec. 7 (b)] guarantees that "a citizen or class of citizens may not be granted privileges and immunities not granted on the same terms to all citizens." This legislation is contrary to the equal protection clause of the California Constitution as state recognition of and benefits for an Indian group arguably are a classification based on race and not the inherent sovereignty of a tribal government. State recognition is not the subject of *Morton v. Mancari* nor does it provide the political treatment afforded federally-recognized tribes.

Section 8577 (c) of AB 2272 makes reference to the tribal group Constitution detailing the tribal group membership criteria. Tribal groups often identify their membership with blood quantum, shared

ancestry and ethnicity. These are **"suspect classifications"** and certainly meet the threshold of a challenge to the equal protection clause both at the state and federal level.

- "Racial preference is contrary to our tradition and is scrutinized with particular care" *Korematsu v. U.S.* 323 US 214.

- "Forbids discrimination based on race" *Gibson vs. Mississippi* 162 US 565

The listed states in the press release by Attorney Stein which have state reservations do not allow for gaming on those lands. The closest to gaming on non-Indian land is in the State of Michigan, The Ste. Sault Marie of Chippewa Indians which is a federally recognized tribe who has the majority ownership of a commercial license for a non-Indian company operating a casino in the City of Detroit. The tribe has five casinos operating on Indian lands, besides the Detroit non-Indian lands commercial facility. Without a doubt the press release and these two legislative bills intent is to mislead and misinform.

Recognition of a tribal group to the status of federal recognition as a government requires a serious process, of historical, genealogical and ethnological research. This research is performed at the federal level by the Bureau of Acknowledgement and Research (BAR) by specialist in these fields. The State of California has no such specialist on staff at the State Legislature. This legislation while outlining many purported historical facts about the Gabrielino/Tongva group does not validate nor meet the stringent criteria of the federal regulatory process for federal tribal government recognition.

- The treaties of 1851 were never ratified; they provide no legal validation to recognition.
- The Fort Tejon Treaty was for one of seven California forts where Indians were provided shelter and protection, not for the recognition of a tribal government.
- The Indians Land Claim Act settled all Indian land claims in California it is unrelated to tribal government recognition
- Individual Indians recognized by the BIA are that, individual Indians, this is unrelated to tribal recognition

United States Senate Report No. 74, 50th Congress, 1st. Session, a letter is reproduced, dated January 16, 1888, by Indian Commissioner J. D. C. Atkins which inventories and identifies for Congress the Mission Indians living in California. The letter reported that the Mission Indians are members of four distinct tribes: Serrano, Dieguence (doe gain yos), Coahuilas (co we ha) and San Luis Rey (or San Luisenos). The Commissioner went onto identify 42 specific villages of Mission Indians and their tribal names today are products of those places, (such as Agua Caliente, Cabazon, Temecula, Rincon, etc. The investigative work, which led to this report for the Congressional inquiry, was "detailed and specific". Yet there is no mention of "Gabrielino Indians" or a place named Gabrielino occupied by Indians at that time.

The Gabrielino identify themselves in the legislation (Section 1 (2)) as the group which spawned the younger independent Cahuilla. This in many ways indicates that the Gabrieleno are a splinter group of the federally recognized Cahullia tribal governments and therefore not eligible as a splinter group for federal recognition. This does not mean that there were no native people living near a mission with that name, but Congress had no knowledge of such a group living as "an independent community" and did not include them in the Indians identified for the purposes of the Mission Indians Relief Act,

which established reservations for Missions Indians. Nevertheless, this report does raise serious questions for the need of skilled professionals to investigate the claims of this tribal group.

Indisputably the statements made in the legislation do not meet the stringent criteria of the federal recognition process. (25 USC part 83) This tribal splinter group only began the process in 1994. It would appear that gaming profiteers are attempting to circumvent the scrutiny of the federal process through state recognition hoping it adds to the legitimacy of federal recognition.

Allowing the Gabrielino/Tongva group to circumvent the standard acknowledgment process weakens the existing process established with the support of Congress. Serious decisions must be made in the creation of a federally recognized sovereign entity, which carries a series of tribal rights and immunities that have a substantial impact on the states and communities in which they exist. The reserved rights of federally recognized sovereigns authorize the ability to pursue aboriginal land claims, seek land in trust (free from local and state taxes, zoning and environmental laws), immunity from civil jurisdiction, and more recently, the ability to develop casinos.

Attorney Stein also states in the press release that "The Assembly bills put into effect what the California Constitution permits." He is simply wrong, first by forgetting the equal protection clause but also about what the California Constitution permits for gaming.

Section 19 of Article IV of the California Constitution (f) states:

> Notwithstanding subdivisions (a) and (e) and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the legislature, for the operation of slot machines, and for the conduct of lottery games and **banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law**. Accordingly slot machines, lottery games and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

What the California Constitution permits is only that which is in accordance with federal law. This tribal "group" like other gaming interests wishing to establish a full service casino must attempt to enact a Constitutional amendment to permit banking games.

In June of 1999, the California Supreme Court ruled on the *HERE v. Davis* case. This was the successful challenge to the Proposition 5, a statutory ballot measure that included banked or house banked games. The Supreme Court held that:

> A banking game is one in which any person or entity takes on all comers, paying all winners and collecting from all losers. Under the Supreme Court's analysis a purposes of Pen. Code Section 330's prohibition against banking games, even though the house does not own the bank.

Further the Supreme Court held that:

> Article 4 Section 19 (e) of the California Constitution elevated the Penal Code Section 330 to a constitutional level. **Accordingly the Legislature may not authorize any game that would constitute casino gambling.**

These bills fly in the face of a constitutional prohibition against California's State Legislators enacting state statutes to promote casinos; it violates the California Supreme Courts decision of 1999. Moreover it attempts to overcome state laws of equal protection in order to circumvent the federal regulatory process of tribal recognition.

We ask that you drop AB 2272 and AB 2273 and immediately urge the Gabrielino/Tongva to pursue the federal regulatory process for recognition. Since their members already receive grants from the Bureau of Indian Affairs and many I have been advised, reside on the Pechanga and Agua Caliente Reservation are receiving benefits. For those that need additional benefits the BIA offers programs for urban Indians. Additionally, the State of California offers assistance to those in need.

Sincerely,

Cheryl Schmit, Director

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