Stand Up For California!

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standupca.org

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Honorable Josh Howard
Counsel to the Asst. Attorney General
U. S. Department of Justice
Office of Legal Policy
950 Pennsylvania Ave. NW Room 4513
Washington, D. C. 20530 FAX: 202-514-8639

RE: Draft Amendments to the Johnson Act

Dear Attorney Howard:

Stand Up For California has been involved with issues associated with Indian gaming for many years in California and frequently serves as a resource to policymakers and elected officials at the local, state and national level. We wish to submit comments for the record on the draft amendments to the Johnson Act. The draft amendments attempt to address the proliferation of Class II tribal gaming expansion significantly affecting states rights to protect states interests and the welfare of the public.

We commend the U.S. Department of Justice for its hard work in researching this issue and attempting to develop language vital to California and other affected states. Developing sound policy over 'casino game classification' is important if individual states are to retain their rights in determining the intensity, form and scope of gaming that their states will permit.

Certainly it was the intent of Congress in the development of the Indian Gaming Regulatory Act (IGRA) to strike a careful balance between states rights and the reserved rights of the tribes. Stated simply, the tribes were permitted to have bingo halls, while Las Vegas-style casinos and slot-machines required state approval. However, with the growth of gaming technology and the introduction of Class II machines there no longer is a bright line distinction between Class II and Class III. This essentially robs states of regulatory control over the extent of Indian gaming through the tribal state compact process. Class II machines create a disincentive to tribes to embrace the compact process, even when Class III machines are available.

California is in dynamic need of re-negotiating its 1999 compacts with tribes in order to address the unfair treatment of State Agencies, Commissions, treatment of patrons and employs, next door neighbors and local governments struggling to share natural resources with the sovereign nature of tribal governments and their commercial casino operations. Our Governor is not opposed to expanding the number of Class III machines for tribes in exchange for certain benefits to the state. Yet California's most recalcitrant tribes are refusing to re-negotiate

compacts and installing questionable Class II machines, and unlicensed multi-terminal games. Our Governor has a number of tribes involved in "meet and confer" discussions in compliance with the California compact to resolve these difficult and complex issues which truly need a federal remedy.

California has great hopes and needs for the Johnson Act amendments. The newly proposed amendments to the Johnson Act tighten, and clearly and cleanly define a gambling device. Section 1171 (b) (i-iii). However, the amendments then provide ***exceptions*** to the prohibition on the use, possession or transportation of those devices in federal areas, including Indian Country, found in 15 U.S.C. 1175. This exception in the language makes a circular argument highly susceptible to litigation when layered with the proposed features and criteria designed to clarify the difference between Class II and Class III gaming devices.

The amendments found in the exceptions section 1175(d) provide a list of features which the NIGC must consider as criteria in determining the Class of the machine. These features are based on how someone plays the game, who or how many play the game at the same time, the appearance of the game and how fast it plays. These criteria are all subjective and vague further opening the door to potential litigation. The very reason, the U.S. Department of Justice has set down to amend the Johnson Act was to avoid going before the U.S. Supreme Court. Moreover, the development of sound policy requires a uniform federal approach.

An example of the failings of the proposed exceptions amendments can be found in the State of Alabama. Already the gaming manufacturer Multi Media is preparing to promote a new game attacking state statutes related to Sweepstakes. The State of Alabama chosen for its weak vague lottery laws finds itself in litigation with Multi Media Inc. The manufacturer is selling internet time on computers with a plastic card. The card is ostensibly used as a key to start the computer for a period of time. But instead the computers are being used as a 'reader' to see if the purchaser of the internet time has won the Sweepstakes. The computers are not being used to 'expand computer literacy' as the CEO of Multi Media alludes, but rather to enhance the pari-mutuel racing experience at the Birmingham Race Course.

This new game makes clear how subjective and vague the exceptions amendment criteria are. The plastic cards are sold at the rate of $1.00 for four minutes of internet time that provide one hundred entries or chances in the Sweepstake. Winning and losing is already predetermined. Is this an internet service or a gambling scheme? Is this an illegal Class III lottery as determined by the State of Alabama or a Class II game as described in the draft amendment criteria? *The Jefferson County Racing Association v. Mike Hale and Innovative Sweepstakes Systems, Inc.* CV200507684

Gaming manufacturers and suppliers spend significant sums of money each year in campaign contributions to lawmakers to affect state gaming statutes and assist in enhancing the marketability of their machines. Manufacturers like Multi Media obviously see the lucrative loop-holes in this language that equals truck loads of gaming dollars.

Pinnacle	Suppliers	$3,515,470.38
IGT	Suppliers	$47,500.00

(Spent from Jan. 2000 to Dec. 2005 in contributions to California State Legislators)

Game Classification is an area ripe for lawsuits and/or policy direction. A sound policy that retains the rights of the states to determine the intensity, form and scope of gaming their states permit, protects the welfare of the public through tribal state compact process for gambling devices. A slot machine is a slot machine is a slot machine, they are all electronic games of chance, gaming devices as clearly defined in section 1171 (b) of the draft amendments.

Recent federal court decisions continue to clarify that Native American tribes are not going to be allowed to engage in businesses indistinguishable from those operated by non-Indians free of any of the regulatory laws to which their non-Indian competitors are subject. Native American tribes would be wise to accept this and adapt their business to work within a uniform federal regulatory framework as it exists and was intended. The outcome is inevitable and resisting it only wastes resources and creates disappointment, bitterness, and additional unintended consequences.

Section 1175 (b) (4) (i-ii) provides a timeline for tribes to change out machines that do not meet the Johnson Act standard. That is a fair time line and allows tribes to engage in statewide elections attempting to amend state gaming laws, change out machines or re-negotiate tribal state compacts for Class III games.

Stand Up for California supports the new definition Section 1171 (b) (i-iii) that provides a uniform federal approach but opposes the exceptions for Class II machines and the subjective and vague criteria. We support the timeline allowing tribes an opportunity to amend gaming laws, to purchase and trade for new equipment and most importantly to California, re-negotiate the 1999 tribal state compacts.

Sincerely,

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CC: Honorable Andrea Hoch, Secretary of Legal Affairs
Honorable Asst. AG Robert Mukia, Indian Law and Gaming Unit CA DOJ