

Stand Up For California!

“Citizens making a difference”

www.standupca.org

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Jan 8, 2014

Honorable Noreen Evans
California State Senator
Chair of the Judiciary Committee
State Capitol Room
Sacramento, CA. 95814

RE: Oppose as Currently Drafted SB 406

Dear Senator Evans,

The goal of this legislation is laudable. Developing guidelines and standards for tribal courts in order to meet the principles of comity for a money judgment is a mutually beneficial action. Stronger guidelines for comity will help improve the tribal court system. Likewise a tribal court system is beneficial to the state *only if* the protections are strong and like that of a state. Senate Bill 406 has improved greatly from last year’s version; however, there are still serious and far reaching consequences that will affect not only non-tribal citizens and businesses but the State of California and its agencies. ***Therefore, please list Stand Up For California in opposition to SB 406 as it is currently drafted.***

The grounds for objection to the recognition of a tribal court money judgment while improved upon in the new language still fail to provide adequate protections for civil respondents. We resubmit our letter of March 20, 2013, as it provides significant details that help define the nature of tribal court jurisdiction, the overlay of Public Law 280 and ability of tribal courts to have personal jurisdiction over businesses located off the reservation, cities and counties dependent on the number of or comprehensive nature of contracts entered into with the tribal government or reservation resident.

2014: Tribal Civil Money Judgments Act.

The bill provides 4 limited grounds that a respondent may raise to object to a tribal court money judgment that the State Superior Court must set for hearing, and if demonstrated to the court, the tribal court money judgment **shall not be recognized.**

Section 1737 (b):

- (1) The tribal court did not have personal jurisdiction over the respondent
- (2) The tribal court did not have jurisdiction over the subject matter
- (3) The tribal court judge was not impartial (*how do we prove this?*)
- (4) The tribal court did not provide procedures compatible with the requirement of due process of law.

In contrast to the mandatory language in Section 1737(b), the following section, 1737 (c), then provides guidance for the court to use its “*discretion.*” Nine additional grounds for not recognizing the tribal court money judgment are provided where the court “*may or may not*” decline to recognize and enter a tribal court money judgment. The grounds provided for the court’s discretion are just as serious (e.g., fraud, doubt about integrity of judgment, etc.) and should be among those grounds that can be raised and proved up by the respondent, with a mandatory duty on the court to not recognize the tribal court money judgment if any of these grounds are demonstrated.

Therefore, *Stand Up For California* urges this committee to consider deleting section 1737 (c) but retaining and renumbering the 9 criteria in this section as grounds to be included under 1737 (b). Retaining the 9 grounds as *mandatory* criteria by which a respondent may object to the tribal court money judgment ensures at minimum an improved standard of *due process*.

Additionally, the revised bill language provides no opportunity for the respondent to challenge, or for a Superior Court Judge to take into consideration, the underlying merits supporting the money judgment. The Court is simply asked to accept or deny the judgment based on timely notification and the 4 criteria for objection without consideration of the underlying merits of the case. *Stand Up For California* understands that comity does not call for a re-examination of the underlying merits of the claim, but there are unique factors relating to federal Indian law that require the declination of comity in on-going federal-state-tribal disputes. *Stand Up For California* urges the committee to consider the following amendment:

Nothing in this title shall authorize the recognition of a tribal court money judgment if the money judgment is based in whole or in part upon an asserted possessory interest in real property that is the subject of dispute as to whether such real property is tribally-owned land, land held in trust by the United States for the benefit of an individual Indian or Indian tribe, a tribally-held or individually-held Indian allotment subject to a restriction against alienation by the United States, where such dispute is pending in any federal, state or tribal court, whether civil or criminal, or before any officer or administrative agency of federal, state or tribal government. A pending dispute is one where a final determination of the status of the real property has not been determined and pursuant to processes or procedures in place, is the subject of review by the tribunal or officer or agency at issue.

This legislation as written provides for accepting and entering a tribal money judgment based on timely notification and the 4 limited criteria for respondent objection. If a tribe presents to State Superior Court a tribal court money judgment, the respondent should have the right to appeal the judgment. The Tribe in presenting its money judgment to the court must consider and accept presentation of the tribal court money judgment to the court as a waiver of its sovereign immunity to suit.

It is not unreasonable for the State of California to make specific requirements that tribal courts must meet in order to meet state court principles of comity in civil cases. Here again, it is the responsibility of the State Legislature to create law and establish standards. SB 406 provides inadequate standards. There are 567 tribes across the nation. Some are self-government tribes, some are organized under the Indian Reorganization Act and others are Non-Indian Re-organization Act tribes and some are treaty tribes. Each type of tribal government has a constitution that may or may not provide for a tribal court. The language of this bill does not identify an entity or give guidance to the court for this type of verification.

Stand Up For California is not opposed to the concept of comity between tribal courts and state court. However, there must be safeguards. As stated at the beginning of this letter, “...a tribal court system is beneficial to the state **“only if”** the protections are strong and like that of a state”.

Jan 8, 2014 Oppose SB 406 as currently drafted

I hope that you will find these comments and suggestions useful and helpful to improving upon the proposed legislation. Until then please list *Stand Up For California* in opposition to this legislation as it is currently drafted.

Sincerely,



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