

# *Stand Up For California!*

## “Citizens making a difference”

[www.standupca.org](http://www.standupca.org)

P. O. Box 355  
Penryn, CA. 95663

January 12, 2016

Honorable Kamala Harris  
California Attorney General  
Department of Justice  
1300 I Street  
Sacramento, CA. 95814

**RE: Daily Fantasy Sports: Assembly Member Adam Gray’s AB 1437**

Dear Attorney General Harris,

*Stand Up For California!* (Stand Up) is a statewide organization with a focus on gambling issues affecting California. It goes without saying that no industry has a more controversial, and often highly negative, impact on public policy, legislation, regulation and public opinion than gaming. At issue is Assembly Member Adam Gray’s legislation AB 1437, a bill to legalize and regulate Daily Fantasy Sports (DFS) betting in California. While we believe the introduction of well-reasoned regulation is always important, the real question here is the *legality* of this industry under California State law and how it should be authorized, if at all.

In the January 6 hearing, Assembly Members expressed serious concerns about DFS, however they still voted for their Chairman’s bill to move forward. Committee member’s comments presented a general consensus that they would not weigh in on the legality of DFS, as they viewed it as a matter in which they have no influence. However, member statements conflict with the actions of prior legislative bodies who have banned sports betting, sports pools and percentage games as illegal in the California Penal Code section (337 (a) (1-6).

DFS does not require great legal analysis to determine that it is *pool betting* or an unlawful *percentage game*. This is independent of the question of whether skill predominates over chance, or vice versa. Moreover, because online DFS operators charge bettors a rake that is a percentage of the wager, it is an illegal game in California. While the Assembly bill analysis did point this out, it failed to include the most serious impact of legalizing DFS. That impact is the disruption to the state’s established gaming policy and contractual obligations.

In 1999, the California Supreme Court ruled in *HERE v. Davis* that: Article IV, section 19(e) of the California Constitution elevated Penal Code Section 330 et seq. to a constitutional level. Accordingly the Legislature may not authorize any game that would constitute banking, gambling pools or percentage games. The authorization of DFS would have a significant impact on ratified compacts and California’s Governor now and in the future to negotiate compacts that provide safeguards to state agencies, local governments and communities near tribal gaming facilities.

Proposition 1A approved by 64% of the voters in 2000 made specific promises to California tribal governments. Proposition 1A promised the voters of California limited gaming expansion. Those promises are reflected in

tribal state compacts that authorize only California federally recognized tribes on California Indian lands to offer banking and percentage games. Authorization of DFS would breach this contractual exclusivity, exposing the state to potential adversarial and protracted litigation.

Stand Up has repeated many times, the role of state regulators is to protect the consumers, keep government free from corruption and ensure the integrity of the states gaming industry. *Therefore, we ask you to enforce California gaming law and make clear for our State Legislators the unlawfulness of DFS, their lack of authority to authorize this activity and make clear the disruptive consequences to our states established gaming policy.*

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl Schmit". The signature is written in black ink and is positioned above the typed name.

Cheryl Schmit, Director  
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