

Stand Up For California!

"Citizens making a difference"

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Cheryl Schmit, Director
P. O. 355
Penryn, CA. 95663

September 29, 2003

Honorable Mayor Nowicki
City of Hesperia
15776 Main Street
Hesperia, CA. 92345-3404

RE: Reconsideration of the Filing of the Referendum for a Legislative Action

Dear Mayor Nowicki and Honorable Council Members:

Stand Up For California is the preeminent organization in California giving voice to community groups, elected officials, members of law enforcement and individual supporters who are affected by tribal gaming proposals or impacts of tribal sovereignty. We have been involved in this issue for a number of years and often serve as a resource of information to local, state and federal policy makers.

Stand Up For California and the Concerned Citizens against the Casino who are responsible for the collection of 4,344 signatures of your constituents request that you place the referendum petition on your next regular meeting in order to perform your mandatory duty under Elections Code Sections 9237 and 9241 to repeal the agreement between the City of Hesperia with the Timbisha Shoshone Tribe adopted on August 25, 2003, or submit it to the voters of the City of Hesperia so that they may exercise their rights under Section 9 of Article II of the California Constitution to vote to adopt or reject that agreement.

We have heard several rumors attributed to some officials of the City of Hesperia. For example, Scott Konapasek of the County's Registrar of Voters has been quoted as stating that the official position of the City of Hesperia is that it will not process the referendum petition as required by law. We also have heard that Kim Summers, of the City of Hesperia, has stated that the right of referendum cannot be used for an agreement based on the use of the word "ordinance" in Sections 9235 to 9247 of the California Election Code.

We do not know if city officials have been so directed by City Manager Robb Quincey or advised by City Attorney Sam Crow. We hope not. If they have, then we request you to retain special counsel to advise the City.

We have been advised that the right of referendum retained by the voter of the City of Hesperia under Section 8 and 9 of Article II of the California Constitution applies to all legislative acts, which includes agreements as well as ordinances. The use of the word "ordinance" in the Elections Code is not a restriction on this fundamental right retained by the voters of the City of Hesperia.

We are told that this issue has been established by the following cases: Empire Waste Management vs. Town of Windsor (1998) 67 Cal.App. 4th 714, 790 Cal.Rptr.2d 262 and Midway Orchards vs. County of Butte (1990) 220 Cal.App. 765, 269 Cal.Rptr. 796. The court in the Empire case stated as follows:

"The referendum is the means by which the electorate is entitled, as a power reserved by it under our state Constitution, to approve or reject measures passed by a legislative body. The scope of the referendum power is generally treated as co-extensive with the scope of the legislative authority – any legislative decision made by a representative body is subject to referendum. Because initiatives and referendums are vehicles for exercising that power reserved to the citizens, courts have traditionally been reluctant to find a limitation upon the availability of such electoral powers."

In *Midway Orchard* the California Supreme Court Justices held that:

"...the 'form' in which the 'legislative action' approves cannot impair the referendum right."

The court in the *Lindelli v. Town of San Anselmo* moreover stated:

"That contracts which set public policy are legislative actions and subject to referendum."

In 1998 the California State Legislature enacted and the Governor signed into law the California Gambling Control Act. This act requires Cities or Counties to establish a gaming ordinance before that gaming is approved by the State of California. Without doubt the contract between the City of Hesperia and the Timbisha Tribe affects local public policy on gaming and State policy for off reservation casinos.

The rumored position of the City of Hesperia, if true, is simply not responsive to the will of the voters and gives the appearance of another example of financial pressure by gaming interests outside of the City of Hesperia. This rumored position, if true, would demonstrate disregard for the rights of the voters of the City of Hesperia under the California Constitution.

Your constituents clearly are aware of the issues surrounding the proposed tribal casino including the immense adverse impact on the quality of their life in this glorious city. These voters elected you to protect that quality of life and represent their interests above all others.

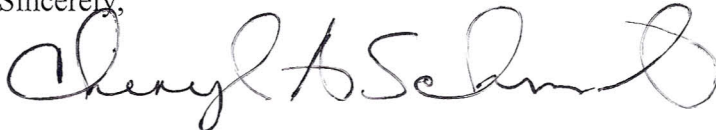
Therefore, we respectfully request that you place the referendum petition on your next regular meeting in order to perform your mandatory duty under Elections Code Sections 9237 and 9241 to repeal the agreement between the City of Hesperia with the Timbisha Shoshone Tribe adopted on August 25, 2003, or submit it to the voters of the City of Hesperia so that they may exercise their rights under Section 9 of Article II of the California Constitution to vote to adopt or reject that agreement.

In the alternative, we request that you retain special counsel to advise you if, in fact, City Manager Rob Quincey or City Attorney Sam Crow have directed or advised that the right of referendum does not apply to an agreement.

On behalf of the 4,344 citizens of Hesperia inclusive of the dedicate volunteers who have given freely of their time to collect these signatures, Stand Up For California and Concerned Citizens Against the Casino ask that you let the people of the City of Hesperia to decide what is best for them. These are the citizens who have elected you to office. These are the citizens who have supported your political careers. Let them decided what is best for the community.

Please act on our simple but fundamental request at your next regular council meeting.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Schmit". The signature is written in black ink and is positioned below the word "Sincerely,".

Cheryl A. Schmit- Director
916-663-3207

CC: Mayor Pro Tem Tad Honeycutt
Council Member Jim Lindley
Council Member Rita Vogler
Council Member Ed Pack
Robb Quincey, City Manager