

# ***Stand Up For California!***

**“Citizens making a difference”**

standupca.org

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December 12, 2007

Honorable Debra Bowen  
California Secretary of State  
1500 11th Street  
Sacramento, California 95814  
FX: 916-653-9675

## **RE: Secretary’s Responsibility to Ensure the Integrity of California Elections**

Dear Secretary Ms. Bowen:

The recent actions of your office, directed by 12012.25 (f)<sup>1</sup> have resulted in confusion in the Department of the Interior, with the press, and the public generally as regards the status of the tribal state compacts and the effect of the upcoming election on the referenda measures. We believe your office can provide a remedy to the situation and dispel the resulting confusion by providing a written explanation of the true status of the ratification bills to the Secretary of Interior and noticing rescission of your prior submission of the compacts to the Secretary.

As the constitutional officer charged with administration of elections in California, the Secretary of State has a special responsibility to protect voting rights of Californians and ensure that there is no confusion as to purpose or outcome of elections. *Stand Up For California!* writes today to request that your office clarify, for the benefit of the Secretary of the Interior, your prior transmission to him of the un-ratified amendments to the tribal-State gaming compacts of the Agua Caliente, Morongo, Pechanga, and Sycuan tribes. As you know, the Legislature chose to ratify these compact amendments by non-urgency bills that could not under the California Constitution become effective until January 1, 2008. California law requires the Secretary of State to forward to the Secretary of the Interior “*ratified*” tribal state compacts. It would appear that your office prematurely sent to the Department of the Interior on Sept. 5, 2007 the “*ratification legislation*” and compacts for the Agua Caliente, Morongo, Sycuan and Pechanga Tribes without explanation that the compact ratification legislation had not yet become “*effective*”, 25 U.S.C. sec. 2710 (d)(1)(C) & (3)(B).

At the time your office transmitted these proposed compact amendments to the Secretary of the Interior, referendum petitions were circulating. It was anticipated the referendum would be timely filed with sufficient signatures and would vitiate the Legislature’s legislation. Sufficient signatures (3 million in a valid referendum filing on October 5, 2007) were, in fact, certified by your office on November 19, 2007, thus the legislation in question will not become effective unless approved by the voters (Props. 94-97).

The citizens of California depend on the Secretary of State to ensure the integrity of the election process. The above-noted prior actions of your office have unintentionally compromised the upcoming referenda elections to such an extent that your intervention is now necessary to ensure that the Secretary of the Interior, the press and the public do not misapprehend the purpose and consequences of that electoral process. Moreover, that post-election litigation does not unnecessarily ensue due to the actions of your office.

We believe this can be accomplished by an explanatory letter to the Secretary of Interior from your office stating that the operation of the ratifying statutes for the Agua Caliente, Morongo, Pechanga and Sycuan Tribal State compacts have never become effective and are made contingent upon approval by the voters at a statewide election to be held on Feb 5, 2008. A letter stating the status of the ratifying statutes is a timely action and well within the authority and obligation of your office to ensure the integrity of the election.

We respectfully request a timely response to this request.

Sincerely,

Cheryl A. Schmit – Director  
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**<sup>1</sup> There is the perennial problem of any non urgency compact ratification statute ratified any time before 45 days before Jan. 1 of the following year. In such cases, the statute is presumptively not operative until January, and yet, the California Secretary of State must send it on, and the Federal Secretary of the Interior has 45 days to act.**

Non-urgency statutes, under the California Constitution go into effect January 1 of the year following enactment. This raises the question: how is it that a compact ratification done mid-year, submitted, as it must be under the government code 12012.25, to the Secretary of the Interior and signed or deemed effective becomes “*in effect*” 25 *U.S.C. sec. 2710 (d)(1)(C) & (3)(B)*, before the January 1 effective date of the ratification?

Put another way, if the ratification is not effective when the Secretary of the Interior receives the ratifying statutes and accompanying compacts or the operation of the ratifying statute(s) is stayed by a valid referendum filing what is the Secretary of the Interior to do? Send it back? Refuse/fail to act on it? Federal law does not specify what the Secretary of the Interior is supposed to do if the ratification is not yet effective. Nevertheless, numerous courts have ruled on this “*in effect*” as a matter of state law.

Clearly, non urgency ratification statutes that approve of compacts mid-year should have some separate status given them, or a legislative fix devised to conform state to federal law. The Secretary of the State may wish to consider sponsoring legislation to fix this problem. For example:

Legislation could state that any compact ratified in a non-urgency statute any time before 44 days before January 1 of the following year be held by the Secretary of State until the 44<sup>th</sup> day before

A solution to ensure the integrity of the election

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January 1 of the following year, and on that date, the Secretary of State shall submit the compacts and the ratification statute to the Federal Secretary of Interior.

An alternative would be a constitutional amendment to the State Constitution Art. IV Sec 19 to provide that a ratification statute is effective immediately in order to conform state to federal law.