



2001 N STREET, SUITE 100
SACRAMENTO, CALIFORNIA 95811
916.609.5000 FAX 916.609.5001

March 3, 2010

Little Fawn Boland
Rosette & Associates
565 West Chandler Blvd., Suite 212
Chandler, AZ 85225

Re: Guidiville Band threatened litigation against Cheryl Schmit and Stand Up For California!

Dear Ms. Boland:

Kenyon Yeates LLP has been retained to respond to your letter of February 17, 2010 threatening to sue Cheryl Schmit and Stand Up for California! for allegedly "false statements" published in connection with the Tribe's application for restored lands in Contra Costa County at Point Molate and its associated efforts to complete a Land Disposition Agreement with the City of Richmond and to establish a resort including a gaming casino on land currently owned by the United States Navy.

The Tribe has threatened a classic Strategic Lawsuit Against Public Participation with the aim of intimidating and silencing political discourse and debate that is at the core of First Amendment freedoms protected by the United States and California Constitutions. As the United States Supreme Court said in *Buckley v. American Constitutional Law Foundation*, "[I]nteractive communication concerning political change" is "core political speech" for which the First Amendment's protection is "at its zenith."

Under California's anti-SLAPP motion to strike, Code of Civil Procedure section 425.16, the Tribe's threatened suit would be summarily dismissed and the Tribe would be required to pay Schmit's and Stand Up for California!'s attorney's fees for defending against such a suit.

The Legislature had in mind the chilling effects of threats such as the Tribe's, when it enacted the special anti-SLAPP motion to strike. The Legislature's preface in Code of Civil Procedure section 425.16 subd. (a) states:

The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

These findings could have been written to describe the Tribe's threat letter.

The Tribe's threat resonates of the tyrannies from which the drafters of the Bill of Rights sought to protect us. We see the wisdom of their foresight played out in the daily news about modern totalitarian regimes that censor or close newspapers and imprison or silence government critics.

In 1927 Mr. Justice Brandeis, in his concurring opinion in *Whitney v. California*, gave the principle its classic formulation:

Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law -- the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Relying on that formulation, the Court in *New York Times v. Sullivan* also quoted Judge Learned Hand: "The First Amendment presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all."

For its part, the City of Richmond has encouraged debate of the Tribe's proposal. The City presumably would be chagrined to see its would-be partner threatening the likes of Cheryl Schmit or Stand Up for California! in order to shut down the citizens the City has invited to the table.

The Tribe complains of letters and publications (identified in the February 17, 2010 letter) that were directed by Cheryl Schmit to public officials and to the National Indian Gaming Commission. The Stand Up for California! letters analyze various laws and policies that may affect the Tribe's ability to accomplish its goals in Contra Costa County at Point Molate (or the various other sites the Tribe has considered in the past). These publications rely on statutes, regulations, case law, testimony, and reports (to which the letters cite) that support Stand Up for California!'s position. These letters ask various responsible officials to consider the cited authorities as they formulate their positions and make their decisions in response to the Tribe's applications. And Stand Up for California!'s Web site seeks to inform the public and policymakers of these efforts and to encourage debate and participation in the democratic process. Among other things, Stand Up for California! asserts that citizens have a protected right to know about and comment upon the siting of Indian gaming casinos. This truism is hardly debatable.

In *New York Times v. Sullivan*, the United States Supreme Court described the background of the case as "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." The Court recognized, among other things, that "erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they need to survive."

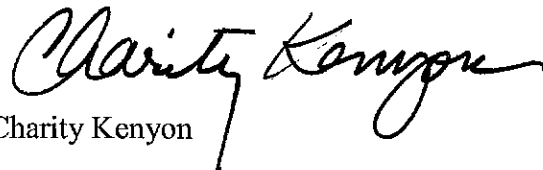
That commitment to uninhibited, robust, and open debate protects the Tribe as well as its critics. The First Amendment protects critics who are armed with the facts and knowledge amassed by Stand Up for California!, as well as the less well informed and less precise. The Tribe clearly has the monetary, public relations, and lobbying resources to respond to its critics. It's a mistake to try to muzzle the Tribe's critics in disregard of their First Amendment rights.

Whether the Tribe can establish the kinds of connections with Contra Costa County that would satisfy any of the potentially applicable statutes and regulations is a matter of intense public interest and debate. The Tribe acknowledges in its letter of February 27 that its proposed new reservation at Point Molate is at least 72 miles from the Tribe's rancheria site in Mendocino County. According to Google maps, the tribal office is approximately 110 miles from the City of Richmond. The difference between 72 miles and 100 or 110 miles is not significant with respect to the claimed defamation--assuming only for the sake of argument that a sovereign domestic dependent nation can even state a claim for defamation. Whether the Tribe can establish a sufficient relationship with any one of the various sites it has pursued in the greater San Francisco Bay Area is a matter of applying the case law, statutes, and regulations upon which Stand Up for California! has relied in making its comments about those applications to various government officials and interested parties. All of this speech is fully protected by the First Amendment.

Each of Stand Up for California!'s letters is a valid exercise of freedom of speech and petition for redress of grievances. The Tribe's demand that Cheryl Schmit "cease and desist" in these publications, timed to coincide with the City of Richmond's consideration of the Land Development Agreement scheduled for mid-March, is a blatant attempt to chill the Tribe's most knowledgeable, fearless, and active critic. The Tribe's heavy-handed tactics have no place in this democracy. Borrowing again from the Supreme Court in *Tornillo v. Chicago*, "[t]he right to speak freely and to promote diversity of ideas and programs is ... one of the chief distinctions that sets us apart from totalitarian regimes."

For all of these reasons and relying on these fundamental principles, we, in turn, suggest that the Tribe cease its threats. They simply invite the conclusion that the Tribe fears its positions cannot withstand scrutiny in the crucible of open, public debate.

Very truly yours,


Charity Kenyon