

1 CHAIRPERSON JAMES: Mr. Tucker.

2 MR. TUCKER: Madam Chair, also Mr. George Foreman, my
3 attorney, was invited to sit next to me. Is that appropriate?

4 CHAIRPERSON JAMES: He is certainly welcome to sit
5 with you.

6 MR. TUCKER: Good afternoon. I am Daniel Tucker,
7 Chairman of the California Nations Indian Gaming Association,
8 CALNIGA.

9 Let me start with the most basic fact. The Indian
10 Gaming Regulatory Act provides that a Tribe having jurisdiction
11 over the Indian lands upon which a Class III gaming activity is
12 being or is to be conducted shall request the State to enter into
13 negotiations for the purpose of entering into a Tribal-State
14 compact, and upon receiving such a request the State shall
15 negotiate with the Tribe in good faith to enter into such a
16 compact. To date the State has violated this law by refusing to
17 negotiate with gaming Tribes. California Tribes, both gaming and
18 nongaming, have been seeking for their fair good faith
19 negotiations for the past eight years. Today we will address the
20 legal battle that has mired the good faith efforts in a costly,
21 needless struggle.

22 Let me start with the most recent California Superior
23 Court Decision that invalidated Governor Wilson's compact with
24 the Pala Tribe. After 18 months of secret negotiations, Governor
25 Wilson announced in this past March an agreement between the
26 State and the Pala Tribe regarding gaming. The majority of
27 gaming and nongaming Tribes throughout the State immediately
28 condemned this proposed compact as a back-room deal in the manner

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1 in which it was negotiated. In April more than 50 California
2 Indian Tribes packed the Department of the Interior's hearing in
3 Sacramento to testify on the opposition to the Wilson Agreement.
4 The Wilson-Pala Compact which seeks to impose its terms on
5 California Tribes, violates the Federal Indian Gaming Regulatory
6 Act which states the Tribal-State Compact concerning gaming shall
7 be specific to the Tribe so making the election, and shall not be
8 construed to extend to other Tribes.

9 In a major legal victory last month, the California
10 Tribe and State Legislators, a State Court has ruled that
11 Governor Wilson acted illegally in signing a gaming compact with
12 the Pala Band of Mission Indians. That decision concurs with the
13 California Legislative Counsel 1998 finding that the Governor has
14 no authority to sign Tribal-State agreements. This court
15 decision is clear. The Governor's actions were wrong. In his
16 comments from the Bench, Judge Lloyd Connelly stated in no
17 uncertain terms that the Pala agreement was a back-room deal and
18 this agreement, which excluded every other Tribe in the State,
19 was void.

20 The Governor has been attempting to use his power to
21 shut down the gaming of Tribes that have been here for many years
22 and always claimed that they were legal, but this Court stood up
23 for justice, and this ruling underscores that what Governor
24 Wilson is trying to do to the Indians is legally, morally, flat
25 out wrong. The Court issued a Writ of Mandate instructing
26 enforcement actions against the Tribes as inappropriate, when the
27 Governor does not have the authority to execute any Tribal-State
28 Compacts. State lawmakers spoke clearly through last year's

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1 Senate Joint Resolution 20, that no enforcement action should be
2 taken until all legal questions have been answered.

3 The Court supported that what we have felt all along,
4 that the Governor was wrong to have executed his back-room deal
5 and has violated the law. He cannot dictate his destructive
6 policy towards Tribal governments, to the Legislature or to the
7 people of California. The Governor would impose upon all
8 California Tribes the terms of a compact that all but a few
9 California Tribes have rejected as over-reaching, unlawful and
10 simply unworkable.

11 Judge Connelly has declared that as a matter of State
12 law there is no Pala Compact. Therefore, we hope that this
13 decision will serve as a catalyst for the fair, good faith
14 negotiations California Tribes have been seeking for the past
15 eight years.

16 Let me now address your question on the legal status
17 of gaming activities already offered by California Tribes who do
18 not have a compact with the State. The video-lottery corrals
19 operated by many California Indian Tribes have never been found
20 illegal by a court of law. That question is now pending before
21 several different California courts. Proposition 5 will put an
22 end to this debate by allowing Tribes to continue limited, legal
23 gaming operations that are already making Tribes self-reliant and
24 helping to provide housing, health care, and education to Tribal
25 members.

26 Governor Wilson takes the position that the Tribes'
27 activities are unlawful, and also are prohibited by state law,
28 and thus cannot be included in a compact. Governor Wilson

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1 refuses to enter into compact negotiations with gaming Tribes
2 that do not first stop their activities. One California court
3 has already held that the State has no right to impose such
4 preconditions.

5 Our position is that the Tribes' current activities
6 are lawful at the present time, and will remain so unless and
7 until there are new developments in pending court cases.

8 You have asked why the overwhelming majority of
9 California Tribes oppose the Wilson-Pala Compact. Let me set the
10 record straight. First, the negotiation process that produced
11 the Pala Compact was fundamentally flawed, and the conflict that
12 emerged from that process was the result of duress, coercion and
13 broken promises to the rest of the CNIGA Tribes.

14 Second, The Pala Compact is void as a matter of State
15 law.

16 Third, the Pala Compact violates provisions of IGRA,
17 other provisions of federal law unrelated to jurisdiction over
18 gaming on Indian lands, and the trust obligations of the United
19 States to the Pala Band and the rest of California's Tribes.

20 Additionally, the Pala Compact unlawfully binds other
21 California Tribes.

22 It unduly intrudes the State's jurisdiction into
23 areas not directly related to or necessary for the regulation of
24 Class III gaming.

25 It contains many provisions that are so burdensome
26 and cumbersome as to be unworkable.

27 Lastly, the Pala Compact ignores and fails to respect
28 the Tribes' years of operating and regulatory experience.

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1 The State has attempted to force Tribes to accept an
2 agreement and terms they had no role in negotiating. This
3 compact would impose its terms on all California Tribes, as
4 stated earlier. This is in violation of the Federal Indian
5 Gaming Regulatory Act which states: Compacts shall be specific
6 to Tribes who make the election and shall not be construed to
7 extend to other Tribes. There was no representation of other
8 Tribes in this agreement. This is a set echo of past tactics
9 when federal agents were finding a few Indians to sign deplorable
10 terms and then coerce other Tribes to follow. American
11 government is founded on the principal that all people have a
12 voice in a government, yet more than 100 Tribes did not have a
13 voice in these negotiations. This agreement by the State and the
14 U.S. Attorney is government by duress and intimidation. It does
15 not support the spirit of the Federal Indian Gaming Regulatory
16 Act.

17 The Wilson-Pala Agreement would put the economic
18 process of gaming Tribes and make false promises to nongaming
19 Tribes. In business when a deal is good everyone fights to get
20 the contract. If this deal is so good by are the overwhelming
21 majority of the Tribes fighting so hard not to sign it?

22 The Pala deal only benefits Las Vegas. The compact
23 would impose an artificial cap on the baseline allocation of 199
24 machines per Tribe and a ceiling of 975. Would you set a cap on
25 your business that limited your ability to make money and that
26 benefited your competitors. There is no cap on the State
27 Lottery, and you can bet that Las Vegas is very pleased that the
28 California Governor could effectively snuff out the only nearby

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1 competition. The Las Vegas news media promote the Pala Compact a
2 win for Nevada.

3 The fact is that the existing gaming Tribes who have
4 invested the most will lose the most. A machine cap hurts the
5 Tribes who have invested the most. Existing gaming operations
6 face massive lay-offs and a bleaker future.

7 Lastly, let me address your question are the Tribes
8 who are already offering gaming without a compact free to
9 negotiate a compact? In short, no. Not without shutting down
10 their existing activities for an indefinite period of time or
11 accepting a clone of the Pala Compact.

12 In short, the State would negotiate with all Tribes
13 without imposing conditions by forcing the Tribes to commit
14 economic suicide before they can ever be permitted to get to the
15 negotiating table.

16 We stand ready to work in good faith with the State
17 for solutions that will meet the needs of California Tribes.
18 There are several solutions.

19 One, the Governor can drop his unlawful preconditions
20 and engage in good faith negotiations with gaming Tribes. The
21 Department of Justice should stop trying to punish Tribes for
22 seeking to negotiate their own compact and stay their forfeiture
23 action until the Tribes suits against the State are resolved.

24 The State Legislature can enact and the Governor
25 could sign a bill that authorizes Tribes to conduct Class III
26 gaming in California. The people of California should vote yes
27 on Proposition 5 on November's ballot, which would end the

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1 dispute and allow Tribes to continue to offer regulated gaming on
2 their Tribal lands.

3 I'd like to also say that under the Pala Compact,
4 CALNIGA has always taken the position, because of Pala's
5 sovereignty, Pala can get a compact any way they want to. But as
6 long as that compact affects any other Tribe in this state, it's
7 not just a Pala compact. What the Secretary of the Interior has
8 decided he specified that in his other -- in his comments that
9 this compact is for Pala only, and not for other Tribes. But
10 this compact does involve other Tribes. As long as that caps in
11 the compact, it does contain language that does concern other
12 Tribes. If the language that concerned all the other Tribes was
13 taken out of Pala's compact, the Tribes in this State would apply
14 Pala's activities and negotiate with the Governor. But as long
15 as there's language in that compact that reflects my Tribe or any
16 other Tribe in this state, it's not a good deal for us.

17 Thank you.

18 CHAIRPERSON JAMES: Thank you, Mr. Tucker.

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