



**Testimony of the
Mashantucket Pequot Tribe
Before the Public Health Committee
February 29, 2008
Regarding SB S. B. No. 419 (RAISED) AN ACT PROHIBITING SMOKING IN
REGULATED AREAS OF CASINOS.**

The Mashantucket Pequot Tribal Nation is well aware of the nationwide trend toward the elimination of smoking in public places. Society as a whole is moving in that direction and this movement is reflected in the laws of the three sovereigns under our form of American government; that is federal, state, and tribal.

It was just a few years ago that the casinos stopped distributing complimentary cigarettes and over these past years we have established and expanded non-smoking areas within the Resorts. It is probably only a matter of time before smoking is severely limited or entirely prohibited in public areas on the reservations as well as facilities competing with the tribal casinos in Rhode Island, New York, and New Jersey.

The appropriate way to address this issue from a governmental standpoint is through the enactment of laws by the appropriate governmental authority with jurisdiction. In the case of the tribal casinos, the appropriate authority is Tribal Government acting through its legislative bodies.

It is respectfully submitted that the current bill being considered by this committee is beyond the jurisdiction of the state of Connecticut to impose upon the tribal

We have reviewed the memorandum from the Yale Legal Service Organization. The conclusions are wrong and demonstrate an obvious lack of appreciation for the Compact language.

It is not true that all of the liquor laws of the state of Connecticut are applicable at the casino. The Compact was very carefully written to provide that those laws relating to the sale and distribution of alcoholic beverages are applicable at the gaming facility. This does not include laws unrelated to sale and distribution such as prohibitions as to smoking. It would have been very easy for the Compact to have provided that all of the liquor laws of the state of Connecticut would be applicable to the gaming operation. However, that might have opened the possibility of the state enacting some unrelated on tangential law, designating it as a liquor law, and then attempting to impose it on the tribes. Thus, the more restrictive language was used as sale or distribution to avoid such a result. No one disputes the fact that the imposition of laws relating to the sale and distribution of alcoholic beverages is an exception from the well recognized principle that the state would have no jurisdiction to enforce other laws on the reservation.

If there is any doubt as to this conclusion it is put to rest by the very next sentence in Section 14(b) of the Compact which specifically provides that the tribal gaming operations "shall be entitled" to a permit for the sale of liquor. Unlike any other permittee in the state of Connecticut the tribal gaming operations are entitled to a permit. The refusal to issue or maintain a permit would be a clear violation of the Compact by the State.

It might be noted that Section 14(b) goes on to provide that, among other things, the Tribe must pay a tax to the state of Connecticut based on the distribution of those alcoholic beverages including beverages which are furnished as complimentarys. Absent this language no tax would be owed. The tribes have always honored that obligation as they must under these Compact provisions.

Thus, we are dealing with the clever argument that the State can attempt to impose its laws or regulations on the tribes not directly but by putting them in the form of a liquor law and then threaten to revoke the tribe's liquor licenses if those laws are not obeyed. As explained above the Compact does not allow such a contrived approach and any revocation of a permit would be a violation of the Compact.

The State and the Tribes should look with some pride to the fact that they have maintained a fifteen year relationship which has never been marred by either party violating their obligations to the other as reflected in the Compact. It is obvious that the State would not be considering such potential action but for a labor union's attempt to exercise its influence. The unfortunate thing is that this exercise drives a very inappropriate wedge between the two sovereigns and one which could have serious ramifications for all concerned.

We urge the legislature to consider the effect of the state's breach of its obligation under the Compact. Would such a breach excuse the Tribe from honoring its obligations under the Compact. Such would be the normal result of a contract breach. The appropriate arena to resolve such disputes is federal court. Since the onset of the Compact neither the Tribes nor the State have had to resort to third parties to address their issues and it would be truly regretful if this action would precipitate such a result. We note the sensible comments of Attorney General Blumenthal. Negotiation and dialogue is the safer, quicker, and most economical way to approach the subject.

Let us reiterate the fact that the Tribe is not blind to the issues of smoking in public places. In fact we would suggest that a legislative hearing addressing such issues is appropriate but it is the tribal legislature that should be conducting such a hearing. The Mashantucket Pequot Tribal Nation has addressed the smoking issue in the past. We have created what we believe to be the first non-smoking casino in the country and we

have designated other smoke free areas as well. If a tribal public hearing were held, we would invite testimony from all interested parties including employees, patrons, vendors, state officials, public health officials and other experts.

The issue presented by this proposed bill has not been properly explored. To my knowledge there has been no dialogue with the Department of Revenue Services, with State Health Officials, the Department of Consumer Protection or other state agencies or officials who might be interested in the subject. We believe that there should be an appropriate opportunity for all interested parties to address this subject.

We would ask this Committee and the Legislature to set aside this bill and avoid a confrontation we may all come to regret. At the same time we invite a discussion of these issues on an appropriate government to government basis. Such an approach may or may not achieve the goals of the labor organization which has precipitated this hearing but it would best serve the state of Connecticut, the tribal nations, and their employees and patrons.