

# *Stand Up For California!*

## “Citizens making a difference”

[www.standupca.org](http://www.standupca.org)

P. O. Box 355  
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October 23, 2015

Honorable Adam Gray, Chairman  
Assembly Governmental Organization  
State Capitol Room 4117  
Sacramento, CA. 95814  
FAX: (916) 319-2121

**RE: Oppose AB 1437 – Protection of Fantasy Sports - Significant Constitutional Issues**

Dear Chairman Gray,

*Stand Up For California!* (“Stand Up”)<sup>1</sup> appreciates the fact that AB 1437 recognizes the need for Daily Fantasy Sports (DFS) to be subject to comprehensive regulations. However, there are additional legal questions that complicate the legalization of DFS in the State of California.

Without great legal analysis, it is easily determined that DFS is a *sports pool or percentage game*. The California State Legislature long ago determined that *sports pools* and percentage games are illegal gambling activities in California. (See California Penal Code 337(a) (1-6)<sup>2</sup>. In addition, because online DFS operators charge bettors a rake that is a percentage of the wager, DFS is an illegal percentage game. (See California Penal Code 330.)

Of great importance, in 1999, the California Supreme Court ruled in *HERE v. Davis* case that: Article 4 Section 19 (e) of the California Constitution elevated Penal Code Section 330 et seq. to a constitutional level. Accordingly the Legislature may not authorize any game that would constitute banking, gambling *pools or percentage games*.

DFS authorization in AB 1437 would have a significant impact on ratified compacts and the Governor’s future efforts to negotiate compacts that provide safeguards to state agencies, local governments and communities near tribal gaming facilities.

Proposition 1A approved by 64% of the voters in 2000, made specific promises to California’s tribal governments and to the voters. Those promises are reflected in tribal state compacts that authorize only California federally recognized tribes on California Indian lands to offer *banking and percentage games*. Authorization of DFS would breach this contractual exclusivity, exposing the state to potential adversarial and protracted litigation. For these reasons, Stand Up opposes AB 1437. Please list our organization in opposition.

Sincerely,



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<sup>1</sup> *Stand Up* is a not-for-profit public corporation that focuses on gambling issues.

<sup>2</sup> <http://www.standupca.org/gaming-law/state-laws/CALIFORNIA%20Penal%20Codes%20-Gambling.pdf/view>