No. S217896
(Court of Appeal No. F065450, consolidated with F065451 and F065689
(Kern County Superior Court Nos. CV-276959 and CV-276961)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff/Respondent

v.

KIRNPAL GREWAL, *et al.*,
Defendant and Appellant

REPLY BRIEF ON THE MERITS OF APPELLANTS GREWAL AND WALKER

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INTRODUCTION

The primary thrust of Appellants'[1] earlier briefing was that regardless of whether the Court of Appeal's construction of the slot machine definition below would have been reasonable had it been the *first* appellate court to construe the statutes, its ruling rejecting *Trinkle v. California State Lottery (Trinkle II),* 105 Cal.App.4th 1401 (3d Dt. 2003), violated due process, stare decisis, the rule of lenity and the doctrine of implied legislative adoption by not giving precedential effect to *Trinkle II's* prior authoritative construction of the statute.

Surprisingly, Respondent did not discuss many of these important points and gave only cursory treatment to those few points which it did. Equally surprisingly, notwithstanding over a century of jurisprudence in this state, the extremely important, if not fundamental, issue of the weight one court of appeal must give to the opinion of another court of appeal appears to be unresolved. This Court is urged to clarify such obligations in resolving this case.

Even if *Grewal* were the first court to construe California's slot machine statutes, its construction would still violate the principle that even facially clear statutory language may not be construed in a manner causing absurd consequences which the Legislature could not have intended.

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[1] Unless otherwise indicated, all references to "Appellants" will be to Appellants Grewal and Walker.

Manifestly, *Grewal's* construction would render every computer and device with an Internet connection an illegal slot machine and, if adopted *en toto*, would criminalize the California State Lottery's Scratchers Vending Machines (SVMs). Respondent's Answer to Appellants' Opening Briefs (hereafter either "Answer Brief" or "RAB") contains no significant discussion of these issues.

Most importantly, if this Court were to conclude that the *Grewal* court was free to render its own construction of the slot machine statutes, due process and the rule of lenity require that such construction may be applied only *prospectively*.

Finally, Appellants will *not* respond to two points which Respondent belabored, but which are irrelevant to Appellants' arguments: (1) that Appellants' business of selling Internet and computer time is not "legitimate" but, as asserted by Respondent, is simply an illegal "sweepstakes" and (2) that the facial statutory language of Penal Code § 330b's definition of "slot machine" *prior* to its authoritative construction by *Trinkle II* supports the ruling of the court below.

As to (1), nothing in the record supports Respondent's claim that Appellants Grewal and Walker's businesses do not provide a legitimate business product, nor did Respondent adduce any evidence at the preliminary injunction hearing supporting such claim against these Appellants. Also, even if the Court were to so conclude, that would be

germane only as to whether their businesses operated "lotteries" (not "slot machines"), an issue not present in this appeal.

As to (2), Appellants did not discuss the facial statutory language in their Opening Brief and do not do so here. Once *Trinkle II* rendered its definitive and authoritative construction, its ruling was binding, and applicable to all conduct occurring before the Legislature or any higher court might disapprove it. Second, Respondent's proffered interpretations are barred by the doctrine of avoiding absurd consequences, discussed *supra,* since they would not only make every SVM an illegal slot machine, but leading to even more absurd results, would make a slot machine of every computer, cell phone or other device capable of an Internet connection.

I

CONTRARY TO STATEMENTS IN THE ANSWER BRIEF, THERE ARE SIGNIFICANT FACTUAL DIFFERENCES BETWEEN THE GREWAL AND WALKER APPEALS AND THE STIDMAN APPEAL

The Answer Brief unfairly describes Appellants Grewal and Walker's businesses in ways which are both factually inaccurate and unsupported in the record. The Answer Brief correctly summarizes testimony regarding the Stidman store, but then asserts that "there is no material difference" (RAB 9, n. 4) between the operation of the Stidman store and those of Walker and Grewal. That assertion is not only unsupported in the record, but inaccurate.

One material difference is that the Grewal and Walker machines required no insertion of any *physical object* to activate the machines. In contrast, a card with a magnetic strip had to be inserted into a card-reading device at Stidman's store in order to activate the machines. Given Grewal and Walker's position that *Trinkle II* requires insertion of a *physical object*, this is a significant factual difference.

Another significant difference is that there is no evidence in the record (nor was it the case) that there was *random shuffling* in the operation of Grewal and Walker's machines. In contrast, Respondent asserts that at the Stidman store, sweepstakes entry cards were *shuffled* at an in-store Management Terminal (RAB 4) once a given sweepstakes pool had been exhausted. *See also* RAB 21 where Respondent asserts that "electronic game pieces" were "randomly arranged" by "albeit connected ... computers and servers," and that this was the case at all three stores (including Grewal

and Walker's), even though the only proffered evidence of this asserted shuffling was at the Stidman store. All random arrangement of game pieces into "pools" for the Grewal and Walker stores was done and fixed in advance entirely off-site – well before the software was installed in the machines, in much the same way that Scratchers game cards are arranged in a pre-ordained fixed sequence of "winners and losers" long before they are physically loaded into the SVMs.

Next, while the Answer Brief referenced testimony in the Stidman case regarding loud ringing sounds of the sweepstakes games in Stidman's store (RAB 5) but no observations of anyone using the Internet at that store (RAB 8), no such evidence was introduced regarding the Grewal and Walker stores.

Finally, Respondent goes even further outside the record regarding the operation of Grewal and Walker's businesses by extensively quoting an article from an out-of-state law journal which provided general observations of a number of unidentified "Internet cafes" seemingly all outside of California. Obviously, the article provides no credible (or admissible) evidence of how Grewal and Walker operated *their* businesses.

Respondent's assertion that there was "no material difference" between the operation of Grewal and Walker's stores and the Stidman store was significantly erroneous, potentially prejudicial to Grewal and Walker, and should not be relied upon by this Court.

II

RESPONDENT INCORRECTLY FRAMES THE REQUIRED STATUTORY CONSTRUCTION ANALYSIS

At p. 14 of its Answer Brief, Respondent asserts that "the starting place for statutory construction is a plain reading of the statutes based upon the "ordinary import of the language employed." Then, focusing almost *exclusively* on this "starting point," it devotes nearly the entirety of its Brief to its facial construction arguments. However, where a statute has previously been authoritatively construed in a published court of appeal or Supreme Court opinion, the appropriate approach is significantly different. Appellants submit that the guiding principle instead, is: "statutory construction should be based on a plain reading of the statute and *any authoritative construction of that statute*."

Appellants cited a relatively recent case providing guidance on this issue, *Wooten v. Superior Court*, 93 Cal.App.4th 422 (4th Dt. 2002).[2] In construing the term "lewd" from Penal Code § 647(b)'s definition of "prostitution," the court examined not only the statute's facial language, but also a number of published opinions, both of this Court and the courts of appeal, which had authoritatively construed "lewd." The court did not suggest that it would be free to ignore any of them, nor did it focus solely on the facial statutory language. Rather, it treated all of the opinions as having precedential value, except those court of appeal opinions which had been expressly disapproved by this Court.[3]

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[2] Appellants' Opening Brief ("AOB") at 31-32.

[3] Of course, *this* Court is free to disapprove statutory constructions provided in prior final published opinions of the courts of appeal, as it did

Moreover, since a judgment of a state court of appeal "stands . . . as a decision of a court of last resort in this state, until and unless disapproved by this Court" (*Cole v. Rush,* 45 Cal.2d 345, 351 (1945)), there is no question that the holding of the court of appeal in *Trinkle II* on at least the "chance operation" element of Penal Code § 330b was an authoritative construction of that element of the statute.[4] Consequently, *Grewal* was not free to disregard *Trinkle II's* authoritative construction.

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in *People v. Freeman*, 46 Cal.3d 419 (1988) (cited by *Wooten*), where it disapproved two prior court of appeal decisions it found to have misconstrued the statutory term "lewd."

[4] The other significant statutory element construed in *Trinkle II* was that insertion of some type of *physical object* is a statutory prerequisite under § 330b. Because *Trinkle II's* construction of the insertion element of § 330b was *dictum* (given that the machines before it all required physical insertion), principles of *statutory construction* did not compel *Grewal* to follow *Trinkle II's* insertion ruling. However, as noted *infra* and in Appellants' Opening Brief, *Grewal was constitutionally* obliged to follow *Trinkle II's* construction of the statutory "insertion" element, at least for retroactive application purposes, because of due process requirements.

III

CONTROLLING DUE PROCESS PRECEDENT (UNADRESSED BY RESPONDENT) COMPELS MODIFICATION OR REVERSAL OF *GREWAL*

While it is unclear under California law whether one court of appeal may *prospectively* reject a construction of a statute rendered in a final published opinion of another court of appeal (and hopefully, this Court will resolve that issue in this case), applicable principles of due process discussed in Appellants' Opening Brief clearly prohibit application of a statute to conduct which was lawful under a prior authoritative construction of the statute then in effect.[5]

Appellants cited *Marks v. United States*, 430 U.S. 188 (1977), for *exactly* this principle in their Opening Brief,[6] explaining how the Government violated due process by applying the more expansive construction of the federal obscenity statute rendered in *Miller v. California*, 413 U.S 15 (1973), when the charged conduct took place years earlier when the narrower (and more favorable to defendants) definition of

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[5] The court of appeal clearly applied the statute in question retroactively; it affirmed the Superior Court's preliminary injunction, even though when the Superior Court issued it, *Trinkle II* still articulated the authoritative and controlling statewide definition of "slot machine." At most, the court of appeal could have issued *its own* injunction (*but see* discussion at AOB 23, n.21), but should have reversed the Superior Court as having abused its discretion. That would have kept Appellants from facing unfair crippling multi-million-dollar penalties on remand for their prior conduct.

[6] Appellants also cited *Bouie v. City of Columbia*, 378 U.S. 347 (1964) for the applicable principle.

obscenity established by *Memoirs v. Massachusetts*, 383 U.S. 413 (1966), was in effect. However, although *Marks* would seem to be controlling here, Respondent neither distinguished, nor even *mentioned* it.

Trinkle II construed § 330b such that: (1) its "chance" element required proof that the machine in question, *itself*, *operated* in a random or chance manner; and (2) the statutory "insertion" element required insertion of some type of physical object. Although only part of this construction was holding (i.e., the "chance operation" construction), the other being dictum (i.e., the "insertion" construction), the opinion purported to rationalize the statutory elements and prior confusing precedent and provide clear guidance throughout the state as to the statutory elements. As a matter of due process under *Marks*, Appellants were entitled to rely on those two constructions until they were legislatively changed or overruled.

Trinkle II was the only published court of appeal opinion to render a *holding* authoritatively construing the statute's "chance operation" element, and was the only court of appeal opinion, in dictum or holding, to discuss whether the statutory insertion element required *insertion* of a *physical* object, concluding that it did. Consequently, as a matter of due process, Appellants were entitled to the benefit of it (as the law) until such time, if ever, as it was disapproved or overruled – and its constructions should have been accorded precedential and controlling significance by both of the courts below at least regarding Appellant's *prior* conduct.

By affirming the Superior Court's preliminary injunction (issued when *Trinkle II's* was *the* authoritative construction of these two key statutory elements), *Grewal* violated due process by applying *its* construction of § 330b to Appellants' *antecedent* conduct, rather than what was in effect when Appellants engaged in that conduct. In so doing, it

opened the door to multimillion dollar fines against Appellants on remand for their conduct which gave rise to the Superior Court injunction – all of which occurred when *Trinkle II's* constructions of § 330b were the definitive and controlling law.

Consequently, as a matter of due process, *Grewal* unquestionably erred in affirming the Superior Court's issuance of its preliminary injunction.[7]

IV

RESPONDENT'S "GUILTY UNTIL PROVEN INNOCENT" APPROACH TURNS THE APPROPRIATE LEGAL STANDARD ON ITS EAR

In its Introduction, Respondent makes the astonishingly inappropriate statement that "Appellants themselves, kn[e]w that the product being purveyed is illegal gambling." Of course, there is nothing in the record which justifies this seriously inappropriate remark. More importantly though, the record is quite to the contrary. Relying on *Trinkle II*, a decision that the Legislature has left untouched for well over a decade, Appellants had every reason to believe that their business operations were

[7] Appellants do not contend that the court of appeal would have been barred *by due process* from issuing only a *prospectively*-operating construction of the statute at variance with *Trinkle II.* However, Appellants believe that such a construction is nonetheless barred by the doctrines of: (1) *stare decisis*; (2) implied legislative adoption; and (3) the principle that statutes, even those clear on their face, should not be construed in a manner which would lead to absurd consequences. *See* the discussion of these points in Appellants' Opening Brief and *infra* herein.

entirely lawful. They were entirely compliant with *Trinkle II's* controlling three-part test for slot machines, and Respondent does not dispute this.

In essence, Respondent condemns Appellants for having cleverly designed a system which would not violate the applicable slot machine laws. Respondent suggests it is cheating and wrongful to strive to conform to the applicable law in order to avoid violating it, and that such efforts should not be tolerated by this Court. The best response to Respondent's position was perhaps provided nearly a century ago by Judge Learned Hand:

> Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again the courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands.

Gregory v. Helvering, 69 F.2d 809, 810 (2d Cir. 1934), *aff'd*, 293 U.S. 465 (1935).[8]

Respondent appears to be suggesting that Appellants should have *known* that *Trinkle II* was "wrong" and would be overruled some day. The law does not require one to comply with what *might* become the law at some unspecified future time.

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[8] This principle remains the law. *See, e.g.,* Apple Computer's recent exploitation of the tax laws to minimize its tax liability http://online.wsj.com/article/SB10001424127887324102604578497263976945032.html While condemned by many (though not all, *see* above), Apple was not indicted; to the contrary, scores of America's corporations have done the same – and legislative attempts to ban such actions have been zealously opposed by pro-business groups and their political representatives.

V

RESPONDENT'S ANALYSIS OF *TRINKLE II* AND ITS SIGNIFICANCE HEREIN IS SUPERFICIAL AND DEFICIENT

Respondent does not discuss *Trinkle II* until p. 37 of its brief, apparently considering it of only minor importance to this case. Even though *Trinkle II* discussed and distinguished the leading cases involving slot machines and summarized the entire history of slot machine regulation in the state, all before articulating its three-part test to authoritatively construe the state's slot machine statutes, and even though Appellants entirely complied with that three-part test, Respondent asserts that Appellants have given *Trinkle II* a "breathtakingly expansive" reading. (RAB 37).

Yet, Respondent supplies absolutely no support for its assertion that Appellants have given *Trinkle II* an expansive reading, much less a "breathtakingly" expansive one. *Trinkle II* was extremely clear in articulating the three critical elements of any slot machine under either Penal Code § 330b or § 330.1:

> "[T]he elements of a slot machine are (1) the *insertion* of money or other *object* which causes the machine to operate, (2) the *operation* of the machine is unpredictable and governed by chance, and (3) by reason of the *chance operation of the machine*, the user may become entitled to receive a thing of value." *Trinkle II,* 105 Cal.App.4th at 1410 (emphases added).

As noted above, Respondent has not suggested that Appellants' machines failed to comply with this test. Also, Appellants have never stretched or exaggerated the meaning of any of the words in the test above. They invoked it exactly as written, and exactly as *Trinkle II* had intended it

to be read. It was key to the *Trinkle II* decision that the chance element of the statute could only be satisfied if the machine *itself* engaged in chance operation:

> By using the words "such operation," the Legislature linked the element of chance to the operation of the machine, requiring that the machine *itself* determine the element of chance and become the object of play (emphasis added).

105 Cal.App.4th at 1410.

In sum, the only "breathtakingly" tortured interpretation of *Trinkle II* is Respondent's.

VI

RESPONDENT'S INTERPRETATION OF THE STATUTORY "INSERTION" ELEMENT IS LIKEWISE UNFAITHFUL TO *TRINKLE II*

Because the SVMs at issue in *Trinkle II* required *physical insertion* of an *object* to activate them (as did the machines analyzed in every prior California published opinion involving slot machines), *Trinkle II's* construction of the "insertion" element to require insertion of an *object* is admittedly dictum. Nonetheless, it purported to be an authoritative construction to synthesize complicated multiple statutes and provide guidance to all throughout the state. Appellants were certainly entitled to rely on it, at least until such time as it might be legislatively jettisoned or overruled by a court of equal or higher authority.

Nonetheless, Respondent labors mightily to suggest that the other slot machine statute which was before the court in *Trinkle II* (*i.e.,* Penal

Code § 330.1) also had language dispensing with the requirement of insertion of a physical object. *See* RAB 17:

> "Penal Code § 330.1[(f)] adds even greater clarity and consistency in the law by including devices that may be operated by the insertion of a physical item ". . . or may be operated or played, mechanically, electrically, automatically, or manually."

That is a clear misreading of the statute.

The *full* text of the relevant portion of § 330.1(f) makes clear that it *requires* insertion of a physical object:

> " (f) A slot machine . . . is one that is, or may be, used or operated in such a way that, *as a result* of the insertion of any piece of money or coin *or other object* the machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically, or manually . . . ." (Emphases added.)

It is clear that after restoring the portions of the statute omitted by Respondent, § 330.1 unquestionably requires insertion of some physical object, i.e., "any piece of money or coin or other object."

Nonetheless, the critical factors, at this point, are not the facial statutory language, but: (a) whether Appellants must be given the benefit of *Trinkle II's* clear authoritative construction of § 330b's insertion element, at least prior to the ruling in *Grewal*; and (b) whether the controlling factors for interpreting these provisions to be applied only *prospectively* include: (1) the principle that constructions of even facially clear language must be avoided if they lead to absurd consequences and (2) the doctrine of implied legislative adoption. Respondent has failed to demonstrate how the *Grewal* ruling complies with *any* of the above principles of construction.

VII

RESPONDENT HAS FAILED TO SHOW THAT *GREWAL'S* CONSTRUCTION WOULD NOT LEAD TO ABSURD AND UNINTENDED CONSEQUENCES

In their Opening Brief, Appellants proffered two distinct and equally absurd consequences of the statutory construction rendered by the court of appeal below: (1) it would make illegal "slot machines" of every computer, cell phone and other device capable of an Internet connection; and (2) it would make SVMs (both those in *Trinkle II and today's*) illegal "slot machines" and it offered no modified and workable definition of the term "slot machine" that would exempt them.

With respect to (1) above, Respondent's only discussion of this appears at pp. 42-43 and erroneously asserts that the only way point (1) would be relevant were if Appellants were asserting a "disparate treatment" claim, which, of course, they *are not*. Respondent presents no analysis of *Grewal's* now-vacated statutory test for "slot machines" which in any way refutes Appellants' assertion that *Grewal* would transform every computer and other device capable of an Internet connection into an illegal "slot machine." *Grewal* construed § 330b to encompass any device accessed by typing in a PIN or password to participate in a sweepstakes or game of chance, the outcome of which is unknown to the user and includes the possibility of winning a prize or anything else of value, including even a free game.

Nothing in *Grewal* would exempt a personal computer, cell phone or other device connected to the Internet and used to play online games of chance, ranging from McDonald's Monopoly sweepstakes to ESPN's

fantasy sports leagues, to lawful state lottery websites allowing online participation. Moreover, as noted in Appellants' Opening Brief, such devices need not even be *used* to play such games. It is enough under the statute that they are *capable* of being used to play such games. In short, nothing provided by Respondent refutes the absurd consequences for owners of computers, smart phones and other Internet-connected devices which would flow from adoption of *Grewal's* construction of § 330b pointed out by Appellants.

Neither does Respondent undermine the similarly absurd consequence advanced by Appellants that *Grewal's* definition of "slot machine" would unquestionably include and prohibit SVMs.

Grewal's primary ruling outright rejected *Trinkle II's* slot machine definition, such that the new definition would include machines offering any game of chance to win something of value. Under *Grewal*, it is immaterial whether the operation of the machine is random; all that matters is that the user does not know the outcome in advance. Under that test, SVMs would *unquestionably* be illegal slot machines.[9] Accordingly,

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[9] At RAB 38, Respondent attempts to distinguish SVMs from slot machines because "a customer using the [CSL's] vending machines paid money and consideration, and in return got exactly what they expected, a legal lottery ticket, and nothing more from the machines." Ironically, that same argument was rejected in *Stroh* and *Lockyer,* two of the primary cases relied on by Respondent, when advanced to exempt as "vending machines" under Penal Code § 330.5 two devices which otherwise met the criteria for being illegal slot machines. *See, e.g., Trinkle v. Stroh*, 60 Cal.App.4th 771, 781 (3d Dt. 1997), where the court of appeal *expressly* rejected plaintiffs' argument that "the Match 5 Jukeboxes fall within this exemption because in every case the customer gets what he or she pays for – songs;" and *People ex rel Lockyer v. Pacific Gaming Technologies*, 82 Cal.App.4th 699, 704 (2d Dt. 2000), which, citing *Stroh*, rejected this identical argument as well. Both courts noted that devices offering a chance to win a prize offer more than just the face value of whatever it is that the machine provides to *every*

Respondent failed to show that under *Grewal*, SVMs would not be illegal slot machines, nor has it shown that the Legislature might have *intended* by that result to eliminate SVMs.

Alternatively, *Grewal* proposed that SVMs might constitute a one-of-a-kind exception to its test for a slot machine, without articulating exactly what its test would then be. However, manifestly, if such statutory re-working were to be made, it should be done by the Legislature, not by a court, so that all could participate in the process and ultimately know, in advance, exactly what the test is. A court cannot simply, by judicial fiat, declare some uses exempt and others not, without articulating the statutory language supporting the differential treatment. For the reasons provided in Appellants Opening Brief (at pp. 40-43), *Grewal's* attempt to distinguish SVMs and *Trinkle II* has no basis in the text of any of the slot machine statutes and is far too imprecise to provide a prospectively usable statutory construction (given the far-reaching scope of such construction).

VIII

RESPONDENT FAILS TO TAKE INTO ACCOUNT THE SIGNIFICANCE OF NEWLY ENACTED AB 1439

Respondent makes at least two points that appear to be oblivious to, and entirely refuted by, the obvious impact of recently enacted AB 1439.

First, in footnote 8 (RAB 16), Respondent asserts that:

> "Appellants would like to force law enforcement to ignore the actual operation of their devices as can be observed by anyone,

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user.

> and require a painstaking review of their sophisticated software to see if they have somehow managed to build outcome predictability into their systems. But such a showing is simply not required by the statute."

Finessing the above issue in late 2014, the Legislature, being fully aware of this Court's grant of review in this case,[10] directly prohibited Appellants' machines and any others with casino gambling-type video imagery by enacting AB 1439, making examination of the inner workings of the machines totally unnecessary. *See* AB 1439, which amended Business and Professions Code § 17539.1,[11] and notably choosing to leave unchanged the statutory definition of illegal slot machines (replete with *Trinkle II's* construction).[12]

Additionally, Respondent's footnote 8 above does not take into account that unless the internal operation of the machine is meaningful, there is no other statutory basis in the existing statutes to exempt SVMs.

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[10] *See pp.* 3-4 of the Staff Analysis of the Senate Committee on Governmental Organization prepared for the hearing before that committee on June 24, 2014, a copy of which is attached as an Exhibit hereto.

[11] Specifically, *see* BPC § 17539.1(a)(12), which makes it an unfair act to:

> offer[] for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value.

[12] Given its awareness that *Grewal* had been depublished by this Court's grant of review, the Legislature's choice *not* to elect to amend the slot machine statutes was unquestionably intentional and significant.

Trinkle II's determination that SVMs were not slot machines rests on its conclusion that *they* did not *operate* in a chance manner. Under the existing statutes, there is no other provision which possibly keeps SVMs from being illegal slot machines. While the Legislature may enact an express exemption for SVMs, there is no such exemption in the statutes presently before this Court.

Finally, Respondent (at RAB 43), asserts that "the harm to the public will be great if the . . . preliminary injunction is not affirmed." This, as well, ignores the intended fatal impact on Appellants' businesses of AB 1439. Assuming, *arguendo*, that businesses like Appellants' cause "great harm," the irreparable injury supporting a preliminary injunction must be such that the injunction is necessary *prospectively*. There is no prospective "harm" that will be caused by Appellants' machines or their long-closed businesses because the machines are so clearly barred by AB 1439. [13]

Finally, if the Legislature considered the harm presumably caused by businesses like Appellants' to be *irreparable*, it would surely have enacted AB 1439 as an *emergency* measure rather than one taking effect, like most other new laws, on the first of the following year.

For each and all of these reasons, Respondent has ignored the unquestioned significance of AB 1439.

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[13] Nonetheless, the enactment of AB 1439 did not render these appeals moot, given the continuing danger of draconian monetary sanctions for past conduct threatening Appellants on remand.

IX

RESPONDENT'S "FLOODGATES" ARGUMENT IS ALSO WITHOUT MERIT

At RAB 23, Respondent asserts that if Appellants prevail, the "floodgates" would open for casino style video slot machines. However, newly enacted AB 1439 expressly bans casino game imagery from "electronic video monitors" which offer prizes of any type, effectively eliminating Respondent's concern.

X

RESPONDENT PROVIDED NO SIGNIFICANT RESPONSE TO APPELLANTS' DISCUSSIONS OF THE RULE OF LENITY, STARE DECISIS AND IMPLIED LEGISLATIVE ADOPTION

A. The Rule of Lenity

Respondent's only discussion of the rule of lenity is at RAB 39-40 and entirely avoids the cornerstone of Appellants' argument, i.e., that the rule of lenity must always be analyzed from the perspective of both the facial language of the relevant statute and any authoritative judicial constructions of the statute. *Wooten v. Superior Court*, 93 Cal.App.4th 422 (4th Dt. 2002). This is because the rule of lenity always entitles one charged under a criminal statute to the benefit of any prior construction of a statute rendered by a court of last resort. As this Court stated in *Cole v. Rush*, 45 Cal.2d 345, 351 (1945), a judgment of a state court of appeal "stands, therefore, as a decision of a court of last resort in this state, until

and unless disapproved by this Court or until change of the law by legislative action."

Since *Trinkle II* is "a decision of a court of last resort," Respondent is unquestionably wrong that Appellants would not be entitled to its authoritative slot machine definition under the rule of lenity even if this Court were to construe the slot machine statutes to apply to their future conduct.

B. Stare Decisis.

Respondent devotes but a half page to stare decisis, even though it is *potentially* dispositive of this appeal, and *certainly* important. To Appellants' knowledge, this Court has never squarely addressed whether a published final decision of a court of appeal (and particularly one construing a state criminal statute) has controlling stare decisis effect on another court of appeal. As noted, *supra*, this Court observed in *Cole v. Rush* that final judgments of the courts of appeal shall be treated as decisions of "a court of last resort in this state." Given that, no other court of appeal is free to expressly reject a prior *holding* of another court of appeal rendered in a final published opinion. This is an important issue which this Court should now definitively resolve.

Respondent countered (at p. 41) merely by saying that both *Grewal* and one unpublished federal district court opinion opted to follow the contrary language regarding the statute's "chance" element in *People ex rel. Lockyer v. Pacific Gaming Technologies*, 82 Cal.App.4th 699 (2d Dt. 2000), which defined it as being met whenever the outcome is unknown to the user.

Anticipating this argument, Appellants explained[14] that this statement in *Pacific Gaming Technologies* was dictum, because the machines at issue there *all had chance operation*, as the court in *Trinkle II* expressly found. *See* 105 Cal.App.4th at 1410:

> "Thus, in both *Trinkle* [*v. Stroh*] and *Pacific Gaming Technologies,* the machines in question were found to be slot machines under Penal Code section 330b because the outcome was dependent upon the element of chance that was *generated* by the *machines themselves*." (Emphases added.)

Stare decisis, of course, is not triggered by mere dictum, but only by a *holding*. Significantly, Respondent has not disputed that the "contrary" language in *Pacific Gaming Technologies* was dictum, nor that the machines in *Pacific Gaming Technologies* had chance operation.

Accordingly, Respondent essentially concedes that *Trinkle II* is the *only* court of appeal opinion to have ruled on the chance operation element of a slot machine as a matter of its essential *holding*. Respondent has thus failed to demonstrate any cognizable conflict between the *holdings* in *Trinkle II* and *Pacific Gaming Technologies*. Consequently, it has not justified *Grewal's* rejection of stare decisis. *A fortiori*, it has not explained the *Superior Court's* more egregious departure from *Trinkle II's* controlling authority nor how *Grewal's* affirmance of the *Superior Court's* preliminary injunction could have been correct under *any* understanding of stare decisis.[15]

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[14] AOB 24, n.23 and accompanying text.

[15] Again, affirmance of the preliminary injunction would be a de facto determination that the Superior Court was correct in determining that Appellants' conduct was illegal in 2012 – two years before the ruling of the court of appeal announcing its new test. Consequently, it is important that this Court clarify, regardless of whether *Grewal itself* violated stare decisis,

C. Implied Legislative Adoption.

Respondent similarly devotes only a half page to the doctrine of implied legislative adoption. (RAB 41.) It primarily asserts that Appellants waived this point by not raising it previously. While it may not have been articulated as a distinct point below, this argument is purely legal and stems from Appellants' briefing in the court of appeal. For example, Appellants argued:

> "The Legislature could amend existing laws to specifically prohibit the type of sweepstakes program offered at Mr. Walker's business; that is its prerogative. However, until such time as the Legislature may do so (if ever) this Court has made clear that neither the People nor the courts may expand the scope of existing criminal statutes[, [16]]"

and emphasized that:

> "*Trinkle* is the most recent appellate decision to construe the California slot machine statutes. It is not in conflict with any prior decisions, and is therefore controlling." [17]

Respectfully, Appellants never imagined that the court of appeal would merely assert that *Trinkle II* was wrongly decided. Faced for the first time with such a ruling, it was appropriate for Appellants to raise the doctrine of implied legislative adoption by name in this Court, even if for the first time, as an additional ground addressing the incorrectness of the unexpected and seemingly impermissible court of appeal ruling.

This Court has discretion to address any matters raised before it even

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that, at the very least, the *Superior Court* violated stare decisis.

[16] Appellants' Court of Appeal Opening Brief at 14.

[17] *Ibid.* at 26, n. 60.

for the first time. *See, e.g., Cedars-Sinai Medical Center v. Superior Court*, 18 Cal.4th 1, 5-7 (1998), recognizing and exercising this Court's discretion to address issues not raised below, where the issue "is an issue of law that does not turn on the facts of this case, ... is a significant issue of widespread importance, and it is in the public interest to decide the issue." *Id.* at 6. Clearly, application of the doctrine of implied legislative adoption in this case is entirely an issue of law, an important issue, and it would be in the public interest to decide the issue.[18]

As to the merits, Respondent offered little in response to Appellants' wealth of authority regarding the statutory construction principle of implied legislative adoption.

First, Respondent merely posits that the Legislature, assertedly believing that *Pacific Gaming Technologies* involved "an almost identical sweepstakes gambling scheme [to Appellants']",[19] saw no reason to change the existing legislation. However, by *expressly* distinguishing the randomly operating machines in *Pacific Gaming Technologies* from the *non*-randomly operating SVMs before it (which function exactly like Appellants' machines for purposes of the "chance operation" elements), *Trinkle II* clarified that these differences were controlling. 105 Cal.App.4th

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[18] *Accord, Fisher v. City of Berkeley*, 37 Cal.3d 644, 654, n.3. (1984), stating: "parties may advance new theories on appeal when the issue posed is purely a question of law based on undisputed facts, and involves important questions of public policy."

[19] They were decidedly *not* "almost identical" systems. *Pacific Gaming Technologies* involved a phone card sweepstakes system, Appellants' businesses sold computer and Internet time. Most significantly though, *Pacific Gaming Technologies'* machines operated randomly to assign winners; Appellants' machines, like the SVMs in *Trinkle II*, merely dispensed previously arranged outcomes.

at 1410. Consequently, the Legislature would not have been lulled into misreading *Trinkle II* as Respondent suggests.

Second, Respondent attempted to trivialize *Trinkle II* by erroneously characterizing it as a vending machine decision. As noted *supra,* Respondent's own cases refute that possibility. See RAB at 16, noting that *Trinkle v Stroh*, 60 Cal.App.4th 771 (3d Dt. 1997) and *Pacific Gaming Technologies* (both of which involved the "vending machine" exemption of § 330.5) found that devices offering a product or service *plus a chance at more* were not exempted vending machines.

The Legislature had over a decade to consider the significance of the chance operation concept articulated in two of the three statutory elements identified by *Trinkle II* and chose not to disturb those definitional elements. The Legislature just a few months ago declined to modify that holding when it passed AB 1439 without in any way modifying *Trinkle II's* existing slot machine definition (again, knowing that *Grewal* became unpublished when this Court granted review). There could hardly be a more eloquent legislative affirmation of *Trinkle II* than the Legislature's 2014 choice not to modify its *slot machine definition* while otherwise effectively dealing with Appellants' business operations by enacting AB 1439.

XI

RESPONDENT'S RELIANCE ON OUT-OF-STATE DECISIONS AND AN UNPUBLISHED FEDERAL DISTRICT COURT DECISION IS ENTIRELY MISPLACED

In support of its interpretation of the *California* criminal statutes here at issue, Respondent begins by devoting 6 1/2 pages to decisions from other jurisdictions, all but one of which are outside California. The out-of-state cases are, of course, entirely irrelevant to the issues before this Court since each one is *sui generis* and depends upon the exact wording of the statute in each of those states. None has any relevance to the present appeal and, peculiarly, are all cited before Respondent's *first mention* of *Trinkle II.*

The only other decision cited by Respondent is an unpublished federal district court opinion from the Southern District of California, *Lucky Bob's Internet Café, LLC v. California Department Of Justice*, 2013 U.S.Dist. Lexis 62470 (*Lucky Bob's*). However, federal courts have no power to authoritatively construe state statutes but must follow the interpretations of those statutes provided by a state's court of last resort. *Trinkle II* is the only California published decision to have interpreted the meaning of the "insertion" element of the slot machine definition, and is the only California published decision to have addressed the "chance operation" element of the definition as part of its holding.

Consequently, it is telling that Respondent discusses *Lucky Bob's* long before first mentioning *Trinkle II's controlling* decision.

Lastly, in n. 11 at RAB 34, Respondent asserts that Appellants Grewal and Walker mischaracterized *Lucky Bob's* "because there was no

statement that there was a 'random number generator' in *Lucky Bob's."* However, Respondent's comment does not change what was actually found by the federal district court. As Appellants correctly noted in n. 37 of their Opening Brief at p. 43, the *Lucky Bob's* court stated that the software system there at issue "randomly generated numbers" and that "the operation of [defendant's] machine was . . . unpredictable and governed by chance." The *Lucky Bob's* court additionally found that the "mathematical algorithms necessary to determine winning entries" in the software system there at issue "were computed at the time Internet time was purchased." *Lucky Bob's Internet Café, LLC v. Cal. Department of Justice*, S.D.Cal. No. 11-CV-148 BEN, Order of March 25, 2013, Doc. No. 79, Order Granting Defendant Key's Motion For Summary Judgment, at p. 3, lines 12-14. That was not the case with Appellants Grewal and Walker's machines which had *no chance operation* whatsoever (nor has Respondent ever contended otherwise).

XII

WERE THIS COURT TO ACCEPT APPELLANT STIDMAN'S CONSIDERATION ARGUMENT, APPELLANTS GREWAL AND WALKER WOULD BE ENTITLED TO THE BENEFIT OF ANY SUCH RULING

Appellants Grewal and Walker have not previously asserted the argument that consideration is an element of a slot machine under Penal Code § 330b and do not assert it now. However, consolidated appellant Stidman has preserved and pressed this point on appeal. Should appellant Stidman prevail on this point, Appellants Grewal and Walker, on remand, should be entitled to the benefit of any such ruling because their facts are at least as strong, and arguably stronger, on this point than those in Stidman. Depending on how this Court resolves this issue, the preliminary injunction record here on appeal may or may not be adequate for a final resolution of such claim.[20]

CONCLUSION

Appellants' Opening Brief identified a large number of problems with the ruling of the court of appeal below, several of which were uniquely created by its disregarding of *Trinkle II* (e.g., it violated the principles of due process, implied legislative adoption, stare decisis and the rule of

[20] If this Court finds consideration to be a required statutory element of a slot machine, and if the presence of a free play option is found sufficient, alone, to establish the absence of required consideration, then the preliminary injunction record *would* be adequate for a final resolution, since the record is clear that Appellants Grewal and Walker provided a variety of free play options.

lenity). Other problems are that, if the *Grewal* construction were allowed to become law, it would create absurd consequences obviously unintended by the Legislature, including not only creating a test which would make SVMs illegal, but, more significantly, would make slot machines of every computer, cell phone or other device with Internet access.

Respondent has hardly addressed *any* of these problems, and none with persuasive reasoning.

For each and all of the reasons above, the judgment of the Court of Appeal should be reversed and the trial court should be ordered to strike all allegations in the Complaint alleging operation of illegal slot machines.

Respectfully submitted,

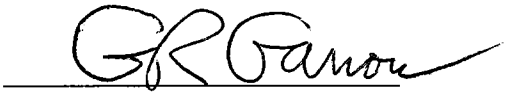
Dated: February 18, 2015

John H. Weston
G. Randall Garrou
Jerome H. Mooney
Weston, Garrou & Mooney

by _____
John H. Weston
Attorneys for Appellants

CERTIFICATE OF WORD COUNT BY APPELLATE COUNSEL

I am one of the attorneys who participated in preparation of this Reply Brief on the Merits and hereby certify, per the requirements of CRC 8.504(d), that it consists of 6,950 words, exclusive of the cover, tables, signature blocks, proof of service and appendices.



G. Randall Garrou

EXHIBIT

Staff Analysis of Senate Committee on Governmental Organization prepared for the hearing before that committee on June 24, 2014

Bill No: AB 1439

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
Senator Lou Correa, Chair
2013-2014 Regular Session
Staff Analysis

AB 1439 Author: Salas
As Amended: June 16, 2014
Hearing Date: June 24, 2014
Consultant: Paul Donahue

SUBJECT

Unfair business practices: Contests and sweepstakes

DESCRIPTION

Prohibits any person, when conducting a contest or sweepstakes, from using an electronic video monitor to simulate gambling or play gambling-themed games that offers the opportunity to win sweepstakes cash, cash equivalent prizes, or other prizes of value. Specifically, this bill:

1) Designates as prohibited unfair business practices the following acts undertaken by a person in the operation of a contest or sweepstakes:

    a) Using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that:

        i) Directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or

        ii) Otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value.

2) Defines "sweepstakes" as a procedure, activity, or event, for the distribution, donation, or sale of anything of value by lot, chance, predetermined selection, or random selection that is not unlawful under other provisions of law, including laws governing lotteries and slot machines.

3) Declares that the above prohibitions shall not legalize any activity that is currently illegal pursuant to laws prohibiting slot machines, lotteries, or unlicensed gambling.

4) Declares that the prohibitions in the bill shall not render unlawful otherwise lawful games and methods used by a licensed gambling enterprise, and shall not restrict operations of the California State Lottery.

EXISTING LAW

1) Prohibits false advertising, unfair competition and unlawful business practices, specifically prohibiting certain acts or practices undertaken by a person in the operation of a *contest*, including misrepresenting the odds of winning a prize or failing to award and distribute all prizes, providing for civil penalties and other remedies.[1]

2) Outlaws use of a "slot machine or device," which "may be operated, and by reason of ... hazard or chance or of other outcome of operation unpredictable by [the user], the user may receive or become entitled to receive ... [an] additional chance or right to use the slot machine or device" or a "token, or memorandum ... which may be exchanged for any money, credit, allowance, or thing of value." [2]

3) Prohibits lotteries,[3] with exceptions for the California State Lottery, bingo for charitable purposes, and charitable raffles conducted by a non-profit, tax-exempt organizations.

BACKGROUND

Purpose of the bill: According to the author, a loophole in the law has permitted internet gambling sweepstakes to operate in a "gray area" and evade law enforcement. The author states that these Internet sweepstakes are thinly veiled gambling operations, and the law must be updated to prohibit these activities and provide authorities with necessary enforcement tools to regain local control of the public safety issues that arise because of illegal Internet gambling sweepstakes.

The author further states that local business owners have voiced concerns about the negative consequences of these business activities, which have been proliferating in the state, including many reports of increased crime. As a result, nearby businesses are hurting as their customers seek to avoid the crowd and crime that these illegal gaming cafes attract. The author states that AB 1439 will close the loophole that has allowed these illegal cafes to operate.

What is an Internet sweepstakes café? Before the days of ubiquitous broadband Internet access via mobile cellular networks, an Internet café provided Internet access to the public, usually for a fee. These businesses usually provided snacks and drinks, hence the

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[1] See Bus. & Prof. Code §§ 17200, et seq., 17500, et seq.

[2] Penal Code § 330b (d)

[3] A lottery is defined as any scheme for the disposal or distribution of property *by chance* among people who have paid any valuable *consideration* for the chance of obtaining such property, with the understanding or agreement that it is distributed by chance, whether it is called a lottery, raffle or gift enterprise. (Penal Code § 319)

café in the name. Nowadays, many such businesses often promote the sale of their products (e.g., computer time, Internet access or telephone cards) by offering a sweepstakes giveaway that allows customers to ascertain their winnings, if any, by playing specialized game programs on the businesses' own computer terminals. Often these programs simulate casino slot machines or other gambling games.

Are these Internet sweepstakes operating illegal lotteries? As noted above, lotteries are illegal in California, except for the State Lottery.[4] Sweepstakes or business promotions, on the other hand, are legal and are regularly utilized by companies to increase sales. Typical examples include McDonald's Monopoly, Burger King's "Be the King" sweepstakes, and the My Coke Rewards sweepstakes. Under California law, these sweepstakes and promotions are legal as long as there is a legitimate free method for customers and non-customers to enter the contest or sweepstakes.[5] The differences between a contest or sweepstakes and an illegal lottery are that, in a lottery, there is a disposition of money or other property on a contingency determined *by chance* to a person who has paid money for the chance of winning a prize.[6] As long as there is a legitimate free method of entry into the sweepstakes or promotion, the consideration element is absent, and the "sweepstakes" is not an illegal lottery. Thus, it would appear that most Internet cafes are not operating illegal lotteries under California law.

Are these Internet sweepstakes cafes operating illegal slot machines? Proponents of AB 1439 note that under the sweepstakes software systems used by Internet café operators on their computer networks and terminals, upon the payment of money (such as the purchase of Internet time or a phone card), patrons can activate computer sweepstakes games on the terminals and, based on "chance" or "other outcome of operation unpredictable by" the patron, win cash prizes – which appears to describe an illegal slot machine.[7]

Recent law enforcement actions and corresponding litigation: In December 2012 the Attorney General's Bureau of Gambling Control issued a law enforcement advisory stating that Internet cafés that offer the type of sweepstakes described above are illegal gambling operations. Among other things, the Bureau said that it "will assist California law enforcement agencies working toward prosecution or pursuing civil or administrative actions in connection with Internet Café gambling operations. Assistance may encompass advice, Bureau personnel and equipment, search and arrest warrants examples, and other experienced assistance with enforcement operations."[8]

Some jurisdictions in the state have filed civil actions under the Unfair Competition law seeking to enjoin several Internet café businesses from continuing to engage in practices that allegedly violated the gambling prohibitions on unlawful lotteries and/or slot

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[4] Penal Code § 319; Cal. Const. art. IV, § 19 (a)

[5] *Regal Petroleum California Gasoline Retailers v. Regal Petroleum Corp.* (1958) 50 Cal.2d 844

[6] *Regal Petroleum*, 50 Cal.2d 844, 853-854 ["one who has hazarded something of value upon the chance"]

[7] "A device operated, and by reason of ... hazard or chance or of other outcome of operation unpredictable by [the user], the user may receive ...[a prize or another chance to play]. See Penal Code § 330b.

[8] Bureau of Gambling Control Law Enforcement Advisory, Number 11, December 5, 2012

machines or devices. Defendants in consolidated Kern County cases recently appealed from trial court orders granting the preliminary injunctions against their businesses.

The reviewing appellate court upheld the injunctions, holding that an unlawful slot machine was involved in each of the defendants' businesses. Among other things the court in the *Grewal*[9] case said that the customers in the Internet cafés may become entitled to win prizes under the software systems implementing defendants' computer sweepstakes games based on "hazard or chance or of other outcome of operation unpredictable" to the user... Thus, the court agreed that the "chance" [10] element of illegal slot machine law is satisfied. Since customers playing the computer sweepstakes games can exert no influence over the outcome of their sweepstakes entries by means of skill, judgment or how well they play the game, it follows that we are dealing with systems that are based on chance or luck.[11]

The defendants in the *Grewal* case have petitioned the California Supreme Court for review (or de-publication of the opinion) because it reached a result that is in conflict with an earlier slot machine case involving the State Lottery.[12] The differences between the cases involve the description of the manner in which the chance element must be realized in order to constitute a slot machine or device under Penal Code § 330b. Among other things, *Grewal* held that the element of chance is to be determined from the *user's perspective*, and it is immaterial that the machine itself did not determine the element of chance. Thus, an illegal slot machine is found whenever "upon the payment of money (i.e., the purchase of phone cards or Internet time), patrons can activate computer sweepstakes games on the terminals, and based on 'chance' or 'other outcome of operation unpredictable by' the ***patron***, win cash prizes." [13]

Opponents take issue with this line of reasoning, alleging that it will even make lottery vending machines illegal again because, upon the payment of money (for the ticket), the machine dispenses the ticket, and based on chance or other outcome of operation unpredictable to the patron, the patron reveals the secret contents and wins cash prizes. Opponents suggest that the State Lottery's "Hot Spot" game is clearly illegal under this interpretation, because the results are revealed on a computer terminal, the patron wins cash prizes, and the result is unpredictable to the patron. They contend that these California State Lottery-operated computer terminals are now illegal slot machines under *Grewal.*

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[9] *People v. Grewal* (2014) 224 Cal.App.4th 527

[10] Under California gambling law, "chance" means that "winning and losing depend on luck and fortune rather than, or at least more than, judgment and skill." (*Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585)

[11] Furthermore, the court stated that, by describing their promotional giveaways as sweepstakes, the Internet café defendants effectively admitted to the chance element because a sweepstakes is, by definition, "any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law...." [See Bus. & Prof. Code, § 17539.5(a)(12)]

[12] *Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401

[13] 224 Cal.App.4th at pp. 540-541. The California Supreme Court has the *Grewal* case under submission, and on June 12, 2014, it extended the time until July 17, 2014 to decide whether to grant or deny review, or grant or deny the de-publication request. It can act on the request any time prior to July 17.

Amending sweepstakes law: The author and supporters believe that Internet sweepstakes cafés are by their very nature an abuse of sweepstakes as a legitimate means to promote the sale of goods and services. Thus, AB 1439 adds provisions to false advertising, unfair competition and unlawful business practices laws that prohibit a person from operating a gambling-themed or simulated gambling electronic video monitor in a business that gives cash or other prizes of value. In so doing, the Attorney General, district attorneys and city attorneys have an additional predicate act to form a basis on which they can commence civil lawsuits to seek penalties and other relief against Internet café operators. The author and supporters contend that AB 1439 will enhance the ability of law enforcement to curb illegal gambling activities and associated crimes by explicitly prohibiting a business from offering electronic video monitor gambling simulations or gambling themed games that utilize a sweepstakes prize experience – without regard to whether or not the operations are using illegal slot machines.

Opponents to AB 1439 object to this approach, and believe that this bill criminalizes sweepstakes unfairly. They contend that the bill would prevent legitimate businesses from utilizing lawful method of sweepstakes marketing to promote the sale of products and services. As noted above, opponents contend that *Grewal* case has already transformed their legitimate business promotional activity from a legal sweepstakes, where a standard desktop computer revealed a pre-determined prize, to a legal sweepstakes that would be lawful if not delivered on a computer, but is now illegal because it is delivered on a computer, as that computer now constitutes an illegal slot machine.

PRIOR/RELATED LEGISLATION

AB 1691 (Jones-Sawyer), 2013-2014 Session. Would have allowed professional sports franchises to operate game-day charitable raffles in which 50% of the proceeds go to the ticket holder and 50% of the proceeds go to the local charities designated by the professional sports team for that particular event or to the professional sports team's own charitable foundation. (Held in Assembly Appropriations Committee)

SUPPORT:

Agua Caliente Band of Cahuilla Indians
Association for Los Angeles Deputy Sheriffs
Association of California Cities Allied with Public Safety
Attorney General's Office, Kamala D. Harris
Bakersfield Downtown Business Association
Barona Band of Mission Indians
Bicycle Casino
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Contract Cities Association
California District Attorneys Association
California Narcotic Officers Association
California Police Chiefs Association
California State Sheriff's Association

California Statewide Law Enforcement Association
California Tribal Business Alliance
City of Avenal
City of Bakersfield
City of Barstow
City of Concord
City of Delano
City of Fairfield
City of Hayward
City of Hesperia
City of McFarland
City of Oakland
City of Sacramento
City of Southgate
City of Tulare
City of Vacaville
City of Wasco
Commerce Casino
Communities of California Cardrooms
Habematolel Pomo of Upper Lake
Hawaiian Gardens
Hispanic Chamber of Commerce, Alameda County
Inaja-Cosmit Band of Mission Indians
Kern County Board of Supervisors
Kern County District Attorney
League of California Cities
Los Angeles Police Protective League
Oakland Metropolitan Chamber of Commerce
Oakland Police Department
Pala Band of Mission Indians
Paskenta Band of Nomlaki Indians
Ramona Band of Cahuilla
Riverside Sheriff's Association
San Diego District Attorney
San Mateo County Police Chiefs and Sheriff Association
Solano County District Attorney
Southern California Tribal Chairmen's Association, Inc.
Viejas Band of Kumeyaay Indians
Yocha Dehe Wintun Nation

OPPOSE:

Prepaid Telconnect, Inc.
Wild Poker Tour

FISCAL COMMITTEE: Senate Appropriations Committee

****

PROOF OF SERVICE AND MANNER OF FILING

[Pursuant to C.C.P. Section 1013(a) and Rule 8.212(c)(2)]

I am a resident of and also employed in the County of Los Angeles, State of California. I am over the age of eighteen years and am not a party to the within entitled action. I work at the law firm of Weston, Garrou & Mooney located at 12121Wilshire Boulevard, Suite 525, Los Angeles, CA 90025.

I am readily familiar with this law firm's practice for the collecting and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, any correspondence delivered to our firm's mail room employee(s) is routinely stamped with postage and then deposited for mailing on the same day with the United States Postal Service.

REPLY BRIEF ON THE MERITS OF APPELLANTS GREWAL AND WALKER

☒ **SERVICE BY U.S. MAIL.** On the date shown below, I served the foregoing document on the interested parties in this action by delivering to our firm's mail room employee a true copy thereof in a sealed envelope for delivery by U.S. Mail, addressed as follows:

See attached service list.

☒ **ELECTRONIC FILING.** On the date shown below, in satisfaction of the requirements for service of Appellate Briefs in the State of California, a true copy of the foregoing document has been served on the Supreme Court of California via its California government website, in an area specifically designated for Electronic Service of Civil Appellate Briefs. Per CRC 8.212(c)(2), such service also constitutes full service on the Court of Appeal.

☒ **FILING PARTIALLY BY FEDERAL EXPRESS.** On the date shown below, in satisfaction of the requirements for service of Appellate Briefs in the State of California, an original of the foregoing document and eight copies have been sent to the Supreme Court of California for filing via Priority Federal Express.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: February 18, 2015

Judy Kushner

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