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Mashpee tribe not a special interest group

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The debate over a bill introduced in the Massachusetts Legislature that legalizes casino gambling and effectively gives the Mashpee Wampanoag tribe first dibs on one of the authorized casino licenses is fraught with a fundamental misconception: that the Mashpee is either a merely special interest group or a racial group. Neither is politically or legally accurate, and neither helps the people of Massachusetts make an informed decision about gambling in their state.

Here's what is accurate: the Mashpee Wampanoag is a federally recognized American Indian tribe. In short, the Mashpee tribe is a government, not a group.

The governmental status of federally recognized tribes is settled law in the U.S., and has been for more than a century. Yet the ongoing national controversy over legalized gambling and, in particular, the spread of Indian gaming, invites inaccurate information and unfounded arguments. The idea that tribes are special interest or racial groups should have been laid to rest long ago, and the people and policymakers of Massachusetts would make a mistake in buying those claims today.

A key to informed debate and decision making on the current casino bill is understanding what a federally recognized tribe is — and is not.

First, American Indian tribes are governments, not special interest groups. Tribes have a unique status in the American political system, one long acknowledged — if at times undercut — by federal and state governments. Since colonial times, tribes have been understood to have inherent governmental powers. Though tribes exist within state boundaries — as do the Mashpee within Massachusetts — they generally are not subject to state law. They have their own systems of government, and can make their own laws and exercise authority over their own members. Tribes' singular role as sovereign governments within the U.S. is reflected in the U.S. Constitution.

None of this is true for special interest groups, which neither wield governmental authority nor have inherent sovereignty under constitutional law. While the Mashpee or any tribe may at times lobby the state or otherwise act like a special interest group, that does not diminish the tribe's status to an interest group. Similarly, if Massachusetts lobbied Congress for a particular bill, its

actions would not strip the state of its sovereign status; indeed, it would be acting consistent with state authority.

Second, tribes' status is political, not racial. A group of people who claim American Indian heritage does not make a federally recognized tribe. Instead, federally acknowledged tribes have demonstrated their entitlement to sovereign governmental status — no easy feat under current federal law. The Mashpee achieved federal recognition in 2007 not as a racial or ethnic group, but as a tribal government. The U.S. Supreme Court has held that tribes and tribal members can be treated differently because of this political status — wholly separate from racial classifications. The argument that the current Massachusetts bill, with its license "set-aside" for the Mashpee, is a race-based "special preference" that violates equal protection law, is simply inaccurate. The set-aside is for the tribe, not for any person or group claiming to be American Indian.

While Massachusetts may not be obligated to treat the Mashpee tribe differently than commercial gaming operators under the proposed bill, we think it is wise for the state to acknowledge the Mashpee's unique status and to consider affording the tribe unique treatment under the bill. This approach is not about special treatment for a special interest group, or race-based affirmative action. Instead, it reflects a legitimate political judgment by state officials based on tribe's governmental status, and recognition of the future likelihood that the state will be required, under the federal Indian Gaming Regulatory Act of 1988, to negotiate with the tribe over casino-style gaming.

The gaming debate in Massachusetts should not get bogged down by fundamental misperceptions or bad information. Instead, a well-informed debate over legalized casino gambling should include accurate assessments of the pros and cons, whether arising from partnerships between the state and commercial operators, or between the state and the Mashpee tribe.

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