



Proposition 26

Expands Tribal Casino Gambling and Sports Betting

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Purpose

Prop. 26 would allow in-person sports gambling at tribal casinos and horse racetracks, as well as additional gambling games such as craps and roulette at tribal casinos. A Native American tribe's authority to offer such games would need to be negotiated with the state.

Background

In the past 100 years, U.S. gambling laws have changed greatly. In 1931, Nevada became the first state to legalize gambling in an effort to recover from the Great Depression.¹ More than 30 years later, Maryland and New Jersey became the next two states to legalize gambling statewide.² In 1979, the Seminole tribe of the southeastern U.S. authorized the first reservation gambling site of high stakes bingo.³ Almost a decade later, in 1988, Congress passed the Indian Gaming Regulatory Act (IGRA) which provided a national framework for tribal gaming in the US.⁴

After IGRA, additional states began legalizing gambling on tribal lands, but many still limited what type of gambling was permitted, including not allowing dice games or roulette. The first California state tribal compacts, which are agreements between the state government and a tribe authorizing the tribe to engage in gambling, were approved in 1998. Later that year, the voters approved Prop. 5, which was titled the "California Indian Self-Reliance Act," and required the state to enter into a compact with California tribes to offer certain types of gambling. However, the California Supreme Court struck down Prop. 5 as unconstitutional, which created

¹ "History of Gaming in Nevada," Nevada Resort Association, accessed August 28, 2022, <https://www.nevadaresorts.org/about/history/>.

² "State-By-State Legal US Gambling Guide for 2022," Legal Betting Online, accessed September 10th, 2022, <https://www.legalbettingonline.com/states/>.

³ "Timeline of Seminole Tribe," *Cape Cod Times*, July 24, 2007, accessed August 20th, 2022, <https://www.capecodtimes.com/story/news/2007/07/24/timeline-seminole-tribe/63085318007/>.

⁴ Randall K. Q. Akee, Katherine A. Spilde, Jonathan B. Taylor, "The Indian Gaming Regulatory Act and Its Effects on American Indian Economic Development," *American Economic Association*, Summer 2015, accessed August 15th, 2022, <https://www.aeaweb.org/articles?id=10.1257/jep.29.3.185>.

uncertainty over the legality of existing and future state compacts authorizing tribal gambling.⁵ In 2000, the Legislature placed Prop. 1A on the November 2000 ballot, which amended the state constitution to expressly permit Indian tribes to operate slot machines, lottery games, and certain card games on tribal lands, if a state compact were approved.⁶ Since 2000, tribal gambling has grown in California: 66 tribal casinos in 28 counties currently operate in California and generate \$8.5 billion of funding per year.⁷

Although many tribes across the US are able to offer gambling games such as roulette or craps, Proposition 1A only authorized a limited number of gambling games on tribal lands. As of now, California tribal casinos can offer games like slot machines and various card games like blackjack and poker. State law prohibits other common types of casino gambling, like dice games and roulette.⁸ Until recently, federal law prohibited sports betting. A 2018 Supreme Court decision, however, overturned that law, effectively allowing states to decide whether to legalize the practice of sports betting.⁹ Since then, a majority of states have legalized regulated sports betting markets.¹⁰ However, in California, sports betting remains illegal under state law.¹¹

Proposal

Prop. 26 would do four primary things.¹² First, it would authorize additional gaming activities at tribal casinos, making them more comparable to the range of games offered in Las Vegas casinos. Specifically, Prop. 26 would amend the California Constitution to authorize roulette and games played with dice at tribal casinos. A tribe could only offer these additional games after it negotiates a new tribal compact with the state. (However, if the state and a tribe cannot agree on a compact, the federal government has the right to issue a compact instead.)

Second, Prop. 26 would authorize in-person sports wagering at tribal casinos and horse racetracks, but the measure would still prohibit wagering on high school and college sports. Tribes would need to negotiate a new tribal compact to offer sports wagering.

Third, Prop. 26 would impose a sport wagering tax of 10% on sports wagers made at racetracks, minus the prize payouts. Collected tax revenues would be deposited in the California Sports

⁵ California Legislative Analyst's Office, "Proposition 26: Analysis of Measure (November 7, 2022 Election)," accessed August 22, 2022, https://lao.ca.gov/ballot/2000/1A_03_2000.html.

⁶ "History of Tribal Gaming Government in California," Viejas Band of Kumeyaay Indians, <https://viejasbandofkumeyaay.org/modern-government/tribal-gaming-2/tribal-gaming-history/>.

⁷ Martin Harris, "Tribal Casinos in the US," *playusa.com*, accessed September 15, 2022, <https://www.playusa.com/us/tribal-casinos/>.

⁸ California Legislative Analyst's Office, "Proposition 26: Analysis of Measure (November 8, 2022 Election)," accessed August 22, 2022, <https://voterguide.sos.ca.gov/>.

⁹ *Murphy v. National Collegiate Athletic*, 138 S. Ct. 1461 (2018).

¹⁰ Ryan Rodenberg, "United States of Sports Betting: An Updated Map of Where Every State Stands," *ESPN News*, April 7, 2021, accessed August 28th, 2022, https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization.

¹¹ Legislative Analyst's Office, "Proposition 26: Analysis."

¹² Text of Proposition 29 (November 8, 2022 Election), accessed September 15, 2022, <https://voterguide.sos.ca.gov/>.

Wagering Fund (CSWF), of which, after subtracting regulatory costs, 15% would go to the California Department of Public Health to fund gambling addiction and mental health programs, 15% to the Department of Justice for enforcement of gambling laws, and 70% to California's general fund. The 10% tax would not apply to sports wagering at tribal casinos; however, tribal compacts for gambling may require payments to state and local governments, potentially including payments into the CSWF.

Finally, Prop. 26 authorizes new civil enforcement tools and penalties against people breaking gambling laws, including injunctions to stop violators from engaging in illegal activity and fines up to \$10,000 per violation. A civil enforcement action may be brought by the California Attorney General (AG). For certain gambling laws, like laws banning certain types of card games, Prop. 26 also provides a private right of action allowing people or entities to directly sue violators if they first request that the AG file a court case and he or she either declines or fails to do so within 90 days.

Possible Conflict

Prop. 26 is not the only measure on this year's ballot to expand the forms of legal gambling in California. A competing measure, Prop. 27, would legalize online (rather than in-person) sports gambling throughout the state. Many of the tribes supporting Prop. 26 are opposing Prop. 27.¹³

Under the California Constitution, if voters approve two or more ballot measures at the same election that conflict, the one that receives the most "yes" votes goes into effect. Prop. 27 includes a finding that Prop. 27 complements and does not conflict with Prop. 26; however, it is up to a court to determine whether two measures conflict.¹⁴

Fiscal Impact

The fiscal impact of Prop. 26 could vary significantly depending on the exact agreements made between tribes and the state of California. According to the Legislative Analyst's Office (LAO), in general, the bill would have two main fiscal impacts.¹⁵ First, taxes imposed on various types of gambling activity would increase state revenue, which the LAO estimates in the tens of millions of dollars annually. Second, Prop. 26 would increase state regulatory and enforcement costs. State agencies' costs would go up to administer and enforce the new gambling rules, which the LAO estimates could reach in the low tens of millions of dollars annually. According to the LAO, some or all of these costs could be offset by the revenues from the new taxes that Prop. 26 would impose.

¹³ California Fair Political Practices Commission, "November 2022 General Election: Top Contributors," accessed September 15, 2022, <https://www.fppc.ca.gov/transparency/top-contributors/nov-22-gen.html>.

¹⁴ Brittany Johnson, "CA's Two Sports Betting Propositions Could Face-Off In Court if Both Pass. Here's why," *KCRA 3 News*, July 21, 2022, accessed August 25th, 2022, <https://www.kcra.com/article/cas-sports-betting-propositions-could-face-off-court-both-pass/40683974#>.

¹⁵ Legislative Analyst's Office, "Proposition 26: Analysis."

Supporters

Supporters include:¹⁶

- Native American tribes, such as: the Pechanga Band of Luiseno Indians, the Agua Caliente Band of Cahuilla Indians, the Dry Creek Rancheria Band of Pomo Indians, the Rincon Band of Luiseño Indians, and the Yocha Dehe Wintun Nation
- Public safety unions, including the Deputy Sheriff's Association of San Diego County and the San Diego Police Officers Association
- Organizations such as the Baptist Ministers Conference of Los Angeles and Southern California, the California branch of the NAACP, California Nations Indian Gaming Association, and the Los Angeles Urban League

A longer list of supporters for Prop. 26 can be found at the official campaign website, <https://yeson26.com/our-coalition/>.

As of September 15, 2022, proponents raised approximately \$109.5 million.¹⁷ The Federated Indians of Graton Rancheria was the largest donor, contributing \$31.9 million.¹⁸

Arguments of Supporters

Supporters argue that Prop. 26 would:

- Allow Californians to enjoy a highly regulated, safe, and positive sports wagering environment. Prop. 26 takes an already existing black market of sports gambling and legalizes it in a controlled manner at tribal casinos and horse racetracks, minimizing the risk of underage gambling, while generating substantial tax revenue for the state.¹⁹
- Bring revenue, economic development, and jobs to tribal communities, supporting tribal self-sufficiency and enabling tribes to continue their legacy as responsible providers of legal gaming in California.²⁰
- Help gaming tribes maintain and increase their aid to non-gaming California tribes, as they have already done with over \$1 billion in previous gaming revenue.²¹

Opponents

¹⁶ Fair Political Practices Commission, "November 2022 General Election: Top Contributors."

¹⁷ California Secretary of State, "Quick Search: Amount Raised for Ballot Measures," accessed September 15, 2022, <https://powersearch.sos.ca.gov/quick-search.php>.

¹⁸ Fair Political Practices Commission, "November 2022 General Election: Top Contributors."

¹⁹ Patrick McGreevy, "Native American Tribes Propose Initiative to Legalize Sports Betting in California," *Los Angeles Times*, November 13, 2019, accessed August 12, 2022, <https://www.latimes.com/california/story/2019-11-13/native-american-tribes-initiative-legalize-sports-betting-california>.

²⁰ "Why Californians Should Vote Yes on Prop 26, In-Person, Tribal Sports Wagering Act," *Yeson26.com*, accessed September 15, 2022, <https://yeson26.com/get-the-facts/>.

²¹ "Funding for Non-Gaming Tribes and Local Governments," *TASIN*, accessed August 21st, 2022, <https://www.tasin.org/policy-issues/funding-for-non-gaming-tribes-and-local-governments>.

Opponents include:²²

- Casino companies, including the Bicycle Casino, Hollywood Park Casino, and the Parkwest Casinos
- California Republican Party²³
- Local governments, including San Jose, Citrus Heights, and Compton
- Public sector labor unions, including AFSCME California
- Business Associations, including the California Black Chamber of Commerce, California Hispanic Chamber of Commerce, and Los Angeles County Business Federation

A longer list of opponents for Prop. 26 can be found at the official campaign website, <https://tasimcoalition.org/coalition-members/>.

As of September 15, 2022, opponents raised approximately \$41.9 million.²⁴ California Commerce Club, Inc., a poker casino company, was the largest donor, contributing \$10.1 million.²⁵

Arguments of Opponents

Opponents argue that Prop. 26 would:

- Massively expand gambling in California, increasing the risk of underage gambling and addiction. The wealthiest tribal casinos would increase their monopoly over gambling in the state while paying almost nothing in state taxes.²⁶
- Harm private card rooms by incentivizing unnecessary and frivolous private lawsuits against them.²⁷
- Jeopardize hundreds of millions of dollars of local revenue from local card rooms that go to fund city infrastructure and vital services. If tribal casinos are able to offer a more diverse array of gambling options, nontribal gambling entities won't be able to compete.²⁸

²² "Coalition Members," Vote No To Prop 26, accessed July 31, 2022, <https://votenooprop26.org/coalition-members/>.

²³ "Meet the CAGOP Endorsed Candidates," California Republican Party, accessed September 25, 2022, <https://www.cagop.org/s/endorsements>.

²⁴ California Secretary of State, "Quick Search: Amount Raised for Ballot Measures."

²⁵ Fair Political Practices Commission, "November 2022 General Election: Top Contributors."

²⁶ Madeleine Bernstein, Jay King, Floyd Meshad, "Argument Against Proposition 26 (November 8, 2022)," California Official Voter Information Guide, accessed September 15, 2022, <https://voterguide.sos.ca.gov/>.

²⁷ "California's officials and cities coalition opposes tribal sports betting initiative," *Yogonet Gaming News*, March 31st, 2022, <https://www.yogonet.com/international/news/2022/03/31/62026-california-39s-officials-and-cities-coalition-oppose-s-tribal-sports-betting-initiative>.

²⁸ "The Facts About Prop 26 - The Expanded Gaming Measure," *No on 26*, accessed August 10th, 2022, <https://votenooprop26.org/>.

Conclusion

A YES vote on Prop. 26 would authorize in-person sports betting at horse racetracks and tribal casinos, if their tribal compact allows it; impose a 10% tax on sports betting at racetracks; and legalize roulette and dice game gambling at tribal casinos.

A NO vote on Prop. 26 would retain the prohibitions on sports betting and roulette and dice gambling games in California.

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