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No Dice: Sports Betting in California

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No Dice: Sports Betting in California

Tristan Hanna *

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I. INTRODUCTION

In 2021, Americans spent over fifty-seven billion dollars legally placing wagers on sporting events.¹ Americans bet on sports by using sportsbooks that take wagers on the outcome of a sporting event and pay out the winnings.² While sportsbook companies generated over four billion dollars in combined revenue during 2021, they also positioned themselves for the “holy grail” of sports betting: California.³ Sports betting is illegal in California, but many public and private organizations want a piece of the potential sports wagers placed in America’s most populous state.⁴ However, each organization has separate interests that make legalizing sports betting in California a challenging feat.⁵ Private sportsbook companies want to generate more revenue for their shareholders.⁶ Tribal nations and private cardrooms want to ensure they can continue generating revenue through existing gambling operations.⁷ The California government wants to collect more tax revenue to fix statewide issues.⁸ Finally, the federal government desires regulatory oversight over gambling activities in the United States.⁹

Gambling combines consideration, chance, and the opportunity to win a prize—it is an illegal activity unless a state regulates that specific gaming

¹ 2021 *Commercial Gaming Revenue Shatters Industry Record, Reaches \$53B*, AM. GAMING ASS’N (Feb. 15, 2022), <https://www.americangaming.org/new/2021-commercial-gaming-revenue-shatters-industry-record-reaches-53b/> (on file with the *University of the Pacific Law Review*); see Devon Platana, *How Does Sports Betting Work?*, FORBES (Aug. 2, 2022), <https://www.forbes.com/betting/sports-betting/how-does-sports-betting-work/> (on file with the *University of the Pacific Law Review*) (“Anytime two or more individuals wager money on the outcome of a sporting event, they are engaging in sports betting.”).

² Matt Ryan Webber, *Sportsbook Definition*, INVESTOPEDIA (May 25, 2022), <https://www.investopedia.com/sportsbook-5217715> (on file with the *University of the Pacific Law Review*). See generally Michael Sciangula, *Best Sports Betting Sites for 2023*, SPORTSHANDLE (Feb. 17, 2023), <https://sportshandle.com/best-sports-betting-sites/> (on file with the *University of the Pacific Law Review*) (discussing top sportsbooks such as BetMGM, FanDuel, Caesars, and DraftKings).

³ 2021 *Commercial Gaming Revenue Shatters Industry Record, Reaches \$53B*, *supra* note 1; Don Thompson, *Lawmakers End Bid to Legalize Sports Betting in California*, NBC BAY AREA (June 23, 2020), <https://www.nbcbayarea.com/news/california/lawmakers-end-bid-to-legalize-sports-betting-in-california/2314267/> (on file with the *University of the Pacific Law Review*); Webber, *supra* note 2 (defining a sportsbook as “a company or individual who accepts bets from individual sports bettors” through online platforms or in buildings like casinos).

⁴ Grace Gedy, *What’s Next for Sports Betting in California?*, CALMATTERS (Nov. 10, 2022), <https://calmatters.org/politics/election-2022/2022/11/california-sports-betting-what-next/> (on file with the *University of the Pacific Law Review*).

⁵ See *id.* (discussing two failed CA initiative measures to legalize sports betting).

⁶ *Id.*

⁷ Matthew Kredell, *How New California Sports Betting Amendments Shoot for Compromise*, LEGAL SPORTS REP. (June 16, 2020), <https://www.legalsportsreport.com/41971/california-sports-betting-bill-amendments/> (on file with the *University of the Pacific Law Review*).

⁸ See Gedy, *supra* note 4 (“Dozens of states and countless local governments are benefitting from the significant tax revenue that online sports betting provides, and as California faces tax revenue declines and uncertain economic headwinds, online sports betting can provide substantial solutions to fill future budget gaps.”).

⁹ See, e.g., 18 U.S.C. § 1084 (prohibiting the transfer of payments “in interstate or foreign commerce” for “placing of bets or wagers on any sporting event or contest”).

activity.¹⁰ Because California does not regulate sports betting, it is still illegal.¹¹ However, California regulates other gambling such as the lottery, poker, horse racing, and tribal gaming.¹² California's tribal nations can conduct gaming through compacts.¹³ Compacts are contracts in which a state agrees to allow a tribe to conduct gaming in exchange for regulatory fees from that gaming activity.¹⁴

Under California law and tribal-state gaming compacts, tribal nations have the exclusive right to conduct games where players bet “against the house”—i.e., the casino.¹⁵ Sports betting represents this type of gaming because bettors place wagers on sporting events against a sportsbook.¹⁶ California should grant tribes the exclusive right to conduct sports betting in California to ensure California's indigenous people benefit from the profits.¹⁷ Allowing private companies to have the right to sports betting would terminate exclusivity rights within the tribal nations and reduce revenue provided to California tribes.¹⁸ In addition, limiting sports betting to tribal lands would help curb addiction concerns related to online sports betting so long as proper regulations are in place.¹⁹

Part II explains the hierarchy of tribal gaming law from the federal level to the state and tribal levels.²⁰ Part III discusses recent proposals to legalize sports betting in California.²¹ Part IV proposes that California should give tribal nations

¹⁰ ANTHONY N. CABOT & KEITH C. MILLER, *THE LAW OF GAMBLING AND REGULATED GAMING* 7 (3d ed. 2021); see also, e.g., CAL. PENAL CODE § 330 (West 2022) (prohibiting gambling in CA); CAL. CONST. art. IV, § 19 (regulating and permitting specific gaming activities).

¹¹ See CAL. CONST. art. IV, § 19 (excluding sports betting from the type of gaming activities California permits).

¹² *Id.*

¹³ *Id.*

¹⁴ I B.E. WITKIN, *SUMMARY OF CALIFORNIA LAW, CONTRACTS* § 649 (11th ed. 2022); see Tribal-State Compact, Agua Caliente Band of Cahuilla Indians-Cal., §§ 4.3.1, 4.8, Aug. 4, 2016, https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/Final_Agua_Caliente_Band_of_Cahuilla_Indians_Compact.pdf (on file with the *University of the Pacific Law Review*) (giving the Cahuilla Indians the exclusive right to conduct gaming on their tribal lands in exchange for regulatory fees—these fees fund gambling addiction programs, support “local government agencies impacted by tribal government gaming,” compensate the state for federal regulatory costs, and compensate local governments for “law enforcement, fire, public safety, and other emergency response services”).

¹⁵ CAL. CONST. art. IV, § 19; see Tribal-State Compact, *supra* note 14, § 4.8 (providing Cahuilla tribe the exclusive right to conduct Class III gaming on its Indian lands); 25 C.F.R. § 502.4 (defining Class III gaming).

¹⁶ *What Is a Sportsbook and How Do I Get Started in Betting?*, EUR. BUS. REV. (Sept. 19, 2022), <https://www.europeanbusinessreview.com/what-is-a-sportsbook-and-how-do-i-get-started-in-betting/> (on file with the *University of the Pacific Law Review*) (“A sportsbook is a place that takes bets on sporting events.”); 25 C.F.R. § 502.4 (defining sports betting as Class III gaming, the type of gaming California's tribes have the exclusive right to conduct).

¹⁷ See NO ON PROP 27, <https://www.noprop27.org> (last visited Oct. 30, 2022) (on file with the *University of the Pacific Law Review*) (noting that outright legalization of sports betting “will send 90% of profits out of state without creating any real jobs”).

¹⁸ See Tribal-State Compact, *supra* note 14, § 4.8 (terminating exclusivity rights provided California enacts statutory or Constitutional provisions giving Class III gaming rights on Indian lands to other organizations).

¹⁹ See Philip Drost, *Sports Betting Is Easier Than Ever and Gambling Addiction Experts Are Worried*, CBC RADIO (Oct. 29, 2022), <https://www.cbc.ca/radio/whitecoat/sports-betting-addiction-ads-1.6630686> (on file with the *University of the Pacific Law Review*) (suggesting the ubiquitous nature of online sports betting exacerbates gambling addictions).

²⁰ *Infra* Part II.

²¹ *Infra* Part III.

the exclusive right to conduct sports betting.²² Part V considers regulations that could help deter gambling addictions associated with sports betting.²³

II. GAMING LAW AT THE FEDERAL, STATE, AND TRIBAL LEVEL

The law governing tribal gaming is a combination of federal, state, and tribal nation oversight.²⁴ Tribal gaming law has an extra-governmental dimension because tribal nations are sovereign states within the United States.²⁵ Section A describes how federal law, specifically the Indian Gaming Regulatory Act (IGRA), applies to tribal gaming.²⁶ Section B examines the landmark case, *Murphy v. NCAA* (*Murphy*), that opened the door for sports betting legalization in California.²⁷ Section C explains California's existing law regulating tribal gaming.²⁸ Section D discusses tribal law and how the state of California and tribal nations form gaming compacts.²⁹

A. The Indian Gaming Regulatory Act Regulates Tribal Gaming

Federal law is one of three authorities regulating tribal gaming.³⁰ The IGRA is a federal law that regulates all tribal gaming in the United States.³¹ Congress passed the IGRA because several states had difficulty regulating tribal gaming activity after the United States Supreme Court decided *California v. Cabazon Band of Mission Indians* (*Cabazon*).³² In *Cabazon*, the Court held California could not prohibit a specific gaming activity on tribal lands unless California prohibited all gaming.³³ In response, Congress passed the IGRA in 1988, which enables states to regulate the types of gaming that tribes offer.³⁴ The IGRA gives tribal nations “the exclusive right to regulate gaming activity on Indian lands” if the state does not prohibit that specific gaming activity.³⁵ For example, if a state's law prohibits bingo, the Indian nations in that state cannot offer bingo

²² *Infra* Part IV.

²³ *Infra* Part V.

²⁴ CAL. CONST. art. IV, § 19; 25 U.S.C. § 2701.

²⁵ U.S. CONST. art. I, § 8 (“The Congress shall have the power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”); see also *Tribal Governance*, NAT’L CONG. OF AM. INDIANS <https://www.ncai.org/policy-issues/tribal-governance> (last visited Jan. 14, 2023) (on file with the *University of the Pacific Law Review*) (“Sovereignty is a legal word for an ordinary concept—the ability to self-govern. Hundreds of treaties, along with the Supreme Court, the President, and Congress, have repeatedly affirmed that tribal nations retain their inherent powers of self-government.”).

²⁶ *Infra* Part II.A.

²⁷ *Infra* Part II.B.

²⁸ *Infra* Part II.C.

²⁹ *Infra* Part II.D.

³⁰ See, e.g., 25 U.S.C. § 2701 (creating the Indian Gaming Regulatory Act (IGRA)).

³¹ *Id.*

³² See Joshua L. Sohn, *The Double-Edged Sword of Indian Gaming*, 42 TULSA L. REV. 139, 142 (2006) (“Given *Cabazon*’s disallowance of state regulation over Indian gaming, Congress remained the only non-Indian actor that could effectively place limits on the Indian gaming industry.”).

³³ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 210–11 (1987).

³⁴ Sohn, *supra* note 33, at 142.

³⁵ 25 U.S.C. § 2701.

within their borders even if state law permits other types of gaming.³⁶ However, if state law permits bingo, the tribes have the exclusive right to conduct bingo within their nations' borders.³⁷

The IGRA defines three different classes of gaming that each require a differing state authorization for a tribal nation to lawfully conduct a specific gaming activity.³⁸ Class I gaming includes traditional Indian social games with minimal prize value such as stickball.³⁹ Tribal nations may conduct Class I gaming without any federal or state permission.⁴⁰ Class II governs bingo and "non-banked" card games—like poker—in which players bet against each other.⁴¹ Tribes can authorize Class II gaming so long as state law permits that gaming activity.⁴² The IGRA defines Class III gaming as all other types of gaming, such as where the player bets "against the house."⁴³ For example, Class III gaming includes roulette, craps, slot machines, and blackjack.⁴⁴ Sports betting falls under Class III gaming because players bet "against the house."⁴⁵ Tribes can practice Class III gaming if the tribe enters into a compact with the state, and state law permits that gaming activity.⁴⁶

When tribes are negotiating compacts for Class III gaming, the IGRA limits tribes only to negotiate for games already permitted by state law.⁴⁷ In *Rumsey Indian Rancheria v. Wilson*, a California tribe attempted to negotiate a compact to conduct a gaming activity—operating slot machines—that California did not expressly permit.⁴⁸ The Ninth Circuit Court of Appeals held a tribe can negotiate for a compact only if a state expressly permits that gaming activity.⁴⁹ Because the tribe was negotiating to use games that California law was silent on, the IGRA did not require the state to negotiate compacts.⁵⁰ Therefore, California's

³⁶ Compare *id.* (giving tribes the right to conduct a specific gaming activity if it "is conducted within a State which does not . . . prohibit such gaming activity"), with *Cabazon*, 480 U.S. at 210–11 (holding that [before the IGRA passed] a California tribe could conduct bingo even though California state law prohibited bingo).

³⁷ See 25 U.S.C. § 2701 (allowing tribes to conduct a specific gaming activity if the state it is located does not prohibit that gaming activity).

³⁸ *Id.*

³⁹ 25 U.S.C. § 2703; see *Stickball*, CHOCTAW NATION OF OKLA., <https://www.choctawnation.com/about/culture/traditions/stickball/> (last visited Jan. 14, 2023) (on file with the *University of the Pacific Law Review*) (stating stickball is a traditional Indian game—similar to lacrosse—that was historically used to settle disputes between other tribes before resorting to war); see also Judy Trejo, *Stick Game Songs of the Paiute*, CANYON RECS., <https://web.archive.org/web/20100201194404/http://store.canyonrecords.com/index.php?app=ccp0&ns=prodshow&ref=CR-6284> (last visited Apr. 23, 2023) (on file with the *University of the Pacific Law Review*) ("[S]tick game (also called hand game) is an ancient gambling game . . . [wherein] [p]layers try to guess in which hand their opponent is hiding a marked bone or stick . . .").

⁴⁰ 25 U.S.C. § 2710.

⁴¹ *Id.* § 2703.

⁴² *Id.* § 2710.

⁴³ *Id.* § 2703.

⁴⁴ See *id.* (defining Class III gaming as all other types of gaming).

⁴⁵ *Id.*

⁴⁶ 25 U.S.C. § 2710; see WITKIN, *supra* note 14 (defining a compact as a contract between a tribal nation and a state in which the state permits the tribe to conduct gaming in exchange for regulatory fees).

⁴⁷ *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250, 1259 (9th Cir. 1994).

⁴⁸ *Id.* at 1255.

⁴⁹ *Id.* at 1259.

⁵⁰ *Id.*

silence on the legal status of sports betting prohibits tribal nations from negotiating a compact allowing them to conduct sports betting.⁵¹

Other litigation about the IGRA centers on the meaning of the “exclusive right to regulate gaming activity on Indian lands.”⁵² In November 2021, the United States District Court for the District of Columbia struck down a Florida Seminole Tribe compact.⁵³ The court rescinded the compact because the Seminole Tribe wanted to conduct online sports betting through servers located within the borders of the Seminole Tribe.⁵⁴ Although the Seminoles placed the servers on tribal land, online sportsbook users would place bets outside of Seminole land.⁵⁵ The court narrowly interpreted the IGRA, holding the online sportsbook violated the IGRA because the “IGRA authorizes sports betting only on Indian lands.”⁵⁶ As a result of this holding, a person placing a bet must be physically present in the respective tribal nation.⁵⁷

B. Federal Law Regulating Sports Betting

While the IGRA broadly regulates tribal gaming, Congress passed the Professional and Amateur Sports Protection Act (PASPA) in 1992 to regulate sports betting at the federal level.⁵⁸ The purpose of PASPA was to protect the integrity of professional and collegiate sports.⁵⁹ Congress was concerned that sports betting was negatively impacting professional and collegiate sports because people engaged in sports betting were attempting to bribe officials and players.⁶⁰ As such, PASPA outlawed sports betting in every state in the United States, except Nevada.⁶¹ However, PASPA failed to eliminate the practice of sports betting because participants used underground or offshore sportsbooks to continue betting.⁶² Even with PASPA regulations, rough estimates of the illicit sportsbook market were as high as \$400 billion in 2014.⁶³

⁵¹ *Id.*

⁵² 25 U.S.C. § 2701.

⁵³ *W. Flagler Assocs. v. Haaland*, 573 F. Supp. 3d 260 (D. D.C. 2021).

⁵⁴ *Id.* at 276.

⁵⁵ Ray Halbritter, *Federal Court Ruling Against Seminole Tribe Shows Why IGRA Must Evolve*, NATIVE NEWS ONLINE (Dec. 14, 2021), <https://nativenewsonline.net/opinion/federal-court-ruling-against-seminole-tribe-shows-why-igra-must-evolve> (on file with the *University of the Pacific Law Review*).

⁵⁶ *W. Flagler Assocs.*, 573 F. Supp. 3d at 272.

⁵⁷ Halbritter, *supra* note 56 (“Today, as mobile platforms take off at a rapid pace, interpretations of the 30-year-old IGRA are restricting Native Americans from participating in this new form of gaming . . .”).

⁵⁸ 28 U.S.C. § 3701 (1992).

⁵⁹ Jill R. Dorson, *What Is PASPA, the Federal Ban on Sports Betting?*, SPORTSHANDLE (July 1, 2020), <https://sportshandle.com/what-is-paspa-sports-betting-ban-professional-amateur-sports/> (on file with the *University of the Pacific Law Review*).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*; *Definition of Offshore Book*, SPORTS KING <https://www.sports-king.com/dictionary.php?q=offshore-book> (last visited Jan. 14, 2022) (on file with the *University of the Pacific Law Review*) (defining an offshore sportsbook as “a sports book that caters to US customers and operates in a place free from the reach of the US government, such as Antigua”).

⁶³ Dorson, *supra* note 60.

In 2018, the United States Supreme Court addressed the constitutionality of PASPA's federal ban on sports betting.⁶⁴ In *Murphy*, the Court held PASPA unconstitutional because the law restricted states' ability to regulate sports betting under the Tenth Amendment of the United States Constitution.⁶⁵ The Court's holding opened the door for states to legislate the legalization of sports betting.⁶⁶ As a result, over thirty states have legalized sports betting since the *Murphy* decision.⁶⁷

In addition to PASPA, the Federal Wire Act is another federal statute that regulates sports betting.⁶⁸ However—unlike PASPA—the Wire Act is still in effect.⁶⁹ The Act prohibits the transmission of wagers on sporting events in interstate or foreign commerce.⁷⁰ Additionally, it bans Americans from betting on sports using offshore sportsbooks.⁷¹

C. California Law on Sports Gambling

Since the IGRA defers the permissibility of most tribal gaming to a state, the California Constitution governs the types of gaming that the State permits tribes to conduct.⁷² Specifically, the Constitution lays out the types of gaming tribes can negotiate to conduct in a compact.⁷³ Tribes may negotiate and enter into compacts for “slot machines, lottery games, and banking and percentage card games.”⁷⁴ The Constitution permits those types of games only on tribal lands.⁷⁵ Therefore, the California Constitution enshrines tribes' exclusive right to conduct those games that the IGRA considers Class III gaming.⁷⁶ This gives tribes a unique position in the California gaming industry because private gaming companies cannot operate slot machines or conduct banked games like blackjack.⁷⁷

Both California's Constitution and Penal Code demonstrate a ban on sports betting.⁷⁸ First, the California Constitution prohibits legislation authorizing “casinos of the type currently operating in Nevada and New Jersey.”⁷⁹ However, this provision does not apply to tribes that have entered into a compact with the

⁶⁴ *Murphy v. Nat' Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1485 (2018).

⁶⁵ *Id.*; see U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

⁶⁶ Dan Preciado & Brian Pempus, *States Where Sports Betting Is Legal*, FORBES (July 5, 2022), <https://www.forbes.com/betting/sports-betting/legal-states/> (on file with the *University of the Pacific Law Review*).

⁶⁷ *Id.*

⁶⁸ 18 U.S.C. § 1084.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See *Id.* (prohibiting transmission of sports bets through foreign commerce).

⁷² CAL. CONST. art. IV, § 19.

⁷³ CAL. CONST. art. IV, § 19.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See *Id.* (“Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.”).

⁷⁷ *Id.*

⁷⁸ *Id.*; CAL. PENAL CODE § 337(a).

⁷⁹ CAL. CONST. art. IV, § 19.

state giving them authorization for Class III gaming.⁸⁰ Second, the California Penal Code prohibits “bookmaking” and “pool selling.”⁸¹ Specifically, the Penal Code punishes anyone who “lays, makes, offers or accepts any bet or bets.”⁸²

The California Constitution only allows tribal nations to conduct banked, “against the house” gaming, given an existing compact.⁸³ However, private organizations may conduct non-banked card games.⁸⁴ Thus, games like poker are available in private California cardrooms with no tribal affiliation.⁸⁵ Moreover, pari-mutuel horse racing—gaming in which the bettors of winning horses divide the stakes of the losing horses—is legal in California.⁸⁶

D. Compacts Give Tribes the Ability to Conduct Gaming California Law Prohibits

While the IGRA gives tribes the ability to conduct Class I and—in some circumstances—Class II gaming, Class III gaming requires a valid compact between the tribal nation and state.⁸⁷ In essence, a compact is a contract, or agreement, between a tribe and the state.⁸⁸ Compacts give California the ability to “approve a form of proposed gambling before it is allowed on Indian land.”⁸⁹ Additionally, compacts allow California to collect regulatory fees in exchange for permitting gaming.⁹⁰

To create a tribal-state gaming compact, a tribal nation must negotiate with the State on the compact’s provisions before both parties sign the agreement.⁹¹ Negotiation typically involves determining the percentage of gambling revenue a tribe will contribute to California.⁹² Additionally, tribes negotiate for any specific gaming activity that the California Constitution permits tribes to conduct.⁹³ The State must negotiate in good faith with tribal nations given that a particular tribe is

⁸⁰ See *Id.* (“Notwithstanding subdivisions . . . (e) [banning casinos operating in Nevada and New Jersey], and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law.”).

⁸¹ CAL. PENAL CODE § 337(a).

⁸² *Id.*

⁸³ CAL. CONST. art. IV, § 19.

⁸⁴ See *Id.* (limiting California legislative power only to authorize gaming that is not in “casinos of the type operating in Nevada and New Jersey”—i.e., non-banked games).

⁸⁵ Jill R. Dorson, *Proposition 26 Isn’t Just About Legal Wagering, and Card Rooms Are Scared*, SPORTSHANDLE (Sept. 30, 2022), <https://sportshandle.com/proposition-26-more-than-wagering/> [hereinafter *Card Rooms Are Scared*] (on file with the *University of the Pacific Law Review*).

⁸⁶ *Beginner’s Guide to Pari-Mutuel Wagering*, LAUREL PARK, https://www.laurelpark.com/sites/www.laurelpark.com/files/content/racing-101/Beginners_Guide_to_Parimutuel_wagering.pdf (last visited Jan. 14, 2023) (on file with the *University of the Pacific Law Review*) (“Pari-mutuel wagering means, literally, a mutuel wager or ‘betting among ourselves.’”); see CAL. CONST. art. IV, § 19 (“The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.”).

⁸⁷ 25 U.S.C. § 2710 (stating a tribe needs state permission to conduct Class II gaming).

⁸⁸ WITKIN, *supra* note 14.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ 25 U.S.C. § 2710(d)(3)(A).

⁹² *Id.* § 2710(d)(3)(C).

⁹³ *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250, 1259 (9th Cir. 1994).

negotiating to conduct a gaming activity that the California Constitution permits.⁹⁴ Therefore, California's tribes can only negotiate to operate slot machines or conduct banking and percentage card games because California's Constitution only allows those types of games.⁹⁵

Both tribal compacts and the California Constitution have provisions granting tribal nations the exclusive right to Class III gaming in California.⁹⁶ These exclusive rights are in operating slot machines and conducting banking and percentage card games like baccarat and blackjack.⁹⁷ However, most compacts allow California to abrogate these exclusive rights by enacting or amending a constitutional or statutory provision.⁹⁸ If the State terminates these exclusivity rights, tribes may terminate the compact or stop paying regulatory fees.⁹⁹

III. ATTEMPTS TO LEGALIZE SPORTS BETTING IN CALIFORNIA

California's potential market for sports betting is noteworthy because California has the highest population and GDP in the country.¹⁰⁰ Moreover, regulated sports gambling could generate hundreds of millions of tax dollars for California.¹⁰¹ Thus, both tribes and private sportsbooks have attempted to legalize sports betting in California since *Murphy*.¹⁰² In 2022 alone, gaming companies, tribes, and lobbyists spent almost half a billion dollars on campaign spending to compel voters to authorize sports betting in California.¹⁰³ However, none of these attempts have come to fruition, mainly because the competing forces in the gaming industry want the possible revenue from sports betting all for themselves.¹⁰⁴

⁹⁴ *Id.*; CAL. CONST. art. IV, § 19.

⁹⁵ CAL. CONST. art. IV, § 19(f).

⁹⁶ See Tribal-State Compact, *supra* note 14, § 4.8 (defining the Cahuilla Indians' exclusive right to conduct "banking or percentage card games" on its lands).

⁹⁷ CAL. CONST. art. IV, § 19(f).

⁹⁸ See Tribal-State Compact, *supra* note 14, § 4.8 (providing Cahuilla tribe options in the event of a statute or Constitutional amendment that takes away the exclusive right).

⁹⁹ *Id.*

¹⁰⁰ Alicia Hughes, *California Sports Betting: When Will CA Sportsbooks Be Legalized?*, GAMBLING TODAY (Dec. 20, 2022), <https://www.gamingtoday.com/california/> (on file with the *University of the Pacific Law Review*); Matthew A. Winkler, *California Poised to Overtake Germany as World's No. 4 Economy*, BLOOMBERG (Oct. 24, 2022), <https://www.bloomberg.com/opinion/articles/2022-10-24/california-poised-to-overtake-germany-as-world-s-no-4-economy> (on file with the *University of the Pacific Law Review*); Jason Fernando, *Gross Domestic Product (GDP): Formula and How to Use It*, INVESTOPEDIA (Sept. 29, 2022), <https://www.investopedia.com/terms/g/gdp.asp> (on file with the *University of the Pacific Law Review*) ("Gross Domestic Product (GDP) is the total monetary or market value of all the finished goods and services produced within a country's [or state's] borders in a specific time period.").

¹⁰¹ *Legalized Sports Betting Could Generate Millions for California as State Considers Cuts to Public Services*, CALMATTERS (June 2, 2020), <https://calmatters.org/commentary/my-turn/2020/06/legalized-sports-betting-could-generate-millions-for-california-as-state-considers-cuts-to-public-services/> (on file with the *University of the Pacific Law Review*).

¹⁰² See Gedye, *supra* note 4 (reporting on two recent, voter-rejected propositions to legalize sports betting in California).

¹⁰³ *Id.*

¹⁰⁴ See *id.* (characterizing the rejection of recent attempts to legalize sports betting as a positive for cardrooms and casinos in California that opposed these attempts to legalize sports betting).

As the California Constitution regulates gaming, any addition or subtraction of gaming rights must go through the Constitution's formal amendment process.¹⁰⁵ There are two ways to adopt an amendment to the California Constitution.¹⁰⁶ Through the first process, both houses of the California Legislature must approve the amendment by a two-thirds vote.¹⁰⁷ Then, the amendment will pass if a majority of California voters support the amendment in the next general election.¹⁰⁸ In the second process, the supporters of an amendment must first obtain eight percent of California voters' signatures to propose an "initiative measure."¹⁰⁹ After these signatures certify the initiative measure, then it will pass if a majority of voters approve the initiative in the next election.¹¹⁰

Proposition 26—the California Sports Wagering Regulation and Unlawful Gambling Enforcement Act—was an initiative measure that would have allowed sports wagering at tribal casinos and horse racing tracks.¹¹¹ Additionally, Proposition 26 would have authorized roulette and dice games in tribal casinos.¹¹² An extra provision in Proposition 26 would have allowed private citizens to bring lawsuits against California's cardrooms for violating California gambling laws.¹¹³ After supporters received enough votes to place Proposition 26 on the 2022 California election ballot, nearly sixty-seven percent of voters rejected Proposition 26.¹¹⁴

Proposition 27, the California Solutions to Homelessness and Mental Health Support Act, was another initiative measure on the 2022 ballot attempting to legalize online sports wagering in California.¹¹⁵ This proposition would have given any organization, such as a tribal nation or large sportsbook corporation, the ability to operate sportsbooks online in California.¹¹⁶ The State would have used the tax revenue from these online sportsbook operations to fund projects related to homelessness and gambling addictions.¹¹⁷ Moreover, fifteen percent of tax revenue

¹⁰⁵ CAL. CONST. art. IV, § 19; CAL. CONST. art. XVIII.

¹⁰⁶ CAL. CONST. art. XVIII, §§ 1, 3.

¹⁰⁷ *Id.* § 1; *see also* CAL. CONST. art. IV, § 2 (creating the Senate and Assembly as the two houses of the California legislature and describing number of seats, term limits, etc).

¹⁰⁸ CAL. CONST. art. XVIII, § 2; *see Types of Elections*, LEAGUE OF WOMEN VOTERS OF CAL., <https://cavotes.org/types-elections> (last visited Feb. 24, 2022) (on file with the *University of the Pacific Law Review*) ("The general election is one that is held in the whole state and is not limited to voters in a particular party or a specific locality.").

¹⁰⁹ CAL. CONST. art. XVIII, § 3; CAL. CONST. art. II, § 8(b) (noting that the number of signatures must equal at least eight percent "of the votes for all candidates for Governor at the last gubernatorial election").

¹¹⁰ CAL. CONST. art. II, § 10.

¹¹¹ *Proposition 26*, LEGIS. ANALYST'S OFF. (Nov. 8, 2022), <https://lao.ca.gov/BallotAnalysis/Proposition?number=26&year=2022> (on file with the *University of the Pacific Law Review*); *Text of Proposed Laws*, <https://vig.cdn.sos.ca.gov/2022/general/pdf/top126.pdf> (last visited June 4, 2023) (on file with the *University of the Pacific Law Review*).

¹¹² *Proposition 26*, *supra* note 112.

¹¹³ *Id.*

¹¹⁴ Gedy, *supra* note 4.

¹¹⁵ *Proposition 27*, LEGIS. ANALYST'S OFF. (Nov. 8, 2022), <https://lao.ca.gov/BallotAnalysis/Proposition?number=27&year=2022> (on file with the *University of the Pacific Law Review*); *Text of Proposed Laws*, *supra* note 112.

¹¹⁶ *Proposition 27*, *supra* note 116.

¹¹⁷ *Id.*

would have gone to tribes “not involved in online sports betting.”¹¹⁸ Around eighty-two percent of voters rejected Proposition 27 in the 2022 general election.¹¹⁹

IV. TRIBAL CASINOS SHOULD HAVE THE EXCLUSIVE RIGHT TO IN-PERSON SPORTS BETTING

While voters rejected Proposition 26 and Proposition 27—initiative measures that would have legalized sports betting in California—illegal sports betting persists in the State.¹²⁰ This is detrimental to California because the State is not able to regulate or collect taxes on illegal sports betting.¹²¹ In-person sports betting would give Californians the ability to bet responsibly and the State could collect tax revenue from sports betting.¹²² Moreover, tribal casinos should operate in-person sports betting because sports betting falls under Class III gaming, which California already gives tribal casinos the exclusive right to conduct.¹²³

Section A hypothesizes why voters did not support Proposition 26 and Proposition 27 and outlines the competing interests in the gaming industry.¹²⁴ Section B argues the benefits of legalizing sports betting on tribal lands in California.¹²⁵ Section C explains how offering sports betting outside of tribal lands would deteriorate tribal-state relations.¹²⁶

A. Why Voters Rejected Proposition 26 and Proposition 27

Out of those who voted, sixty-seven percent of Californians rejected Proposition 26, while eighty-two percent rejected Proposition 27 in the 2022 general election.¹²⁷ At first glance, the rejection of recent sports betting initiatives may indicate California voters disapprove of any legal sports betting.¹²⁸ However, consumers encountered a barrage of advertisements from the propositions’

¹¹⁸ *Id.*

¹¹⁹ Gedy, *supra* note 4.

¹²⁰ *Id.*

¹²¹ See Ryan Butler, *Despite Growth, Legal Sports Betting Still Just Fraction of Illegal Market*, ACTION NETWORK (Dec. 11, 2021), <https://www.actionnetwork.com/general/despite-growth-legal-sports-betting-still-just-fraction-of-illegal-market> (on file with the *University of the Pacific Law Review*) (describing how the illicit sportsbook market is still prevailing in spite of legal sportsbooks in multiple states).

¹²² See Raymond Welch & Greg Sarris, *Opinion: California and Its Indian Tribes Would Be Losers if Online Gambling Is Permitted*, TIMES SAN DIEGO (Feb. 7, 2022), <https://timesofsandiego.com/opinion/2022/02/07/california-and-its-indian-tribes-would-be-losers-if-online-gambling-is-permitted/> (on file with the *University of the Pacific Law Review*) (stating in-person sports betting at tribal casinos would create jobs, increase state tax revenues, and prevent underage gambling).

¹²³ See Tribal-State Compact, *supra* note 14, § 4.8 (providing Cahuilla tribe exclusive right to conduct Class III gaming on its Indian lands).

¹²⁴ *Infra* Section IV.A.

¹²⁵ *Infra* Section IV.B.

¹²⁶ *Infra* Section IV.C.

¹²⁷ Gedy, *supra* note 4.

¹²⁸ *Id.*

campaigns leading up to the election.¹²⁹ Organizations supporting and opposing the propositions spent almost half a billion dollars on campaign spending.¹³⁰

Most of Proposition 27 and Propositions 26's campaign spending went towards advertising.¹³¹ Some advertisements regarding the propositions did not even mention sports betting.¹³² A University of California, Berkeley, poll found that voters who had seen advertisements were less likely to support either proposition than those who had not.¹³³ Therefore, the rejection of the propositions was likely the result of a fight between the competing forces in California's gaming industry rather than a disapproval of sports betting.¹³⁴ California's tribes, out-of-state sportsbooks, cardrooms, and pari-mutuel horse racing tracks were all attempting to compel voters to align with their individual interests.¹³⁵ Subsection 1 gives three reasons legislative efforts to legalize sports betting failed.¹³⁶ Subsection 2 suggests how the gaming industry may gain greater voter approval.¹³⁷

1. Three Reasons Legislative Efforts Failed

First, the tribes involved in gaming opposed Proposition 27 because it would have legalized all online sports betting.¹³⁸ Had Proposition 27 passed, gaming tribes would no longer have the exclusive right to all class III gaming and online sportsbooks would have negatively impacted tribal gaming revenue.¹³⁹ In addition, pari-mutuel horse racing tracks might have lost gaming revenue if Proposition 27 legalized online sports betting because betting on horse racing is similar to sports betting.¹⁴⁰ Because tribes and horse racing tracks needed to minimize this threat, they engaged in advertising to compel voters to reject Proposition 27.¹⁴¹ Moreover, they created initiative-measure Proposition 26 to try and legalize sports betting only at tribal casinos and pari-mutuel horse racing tracks.¹⁴² Even though Proposition 26 failed, tribal nations and horse racing tracks

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Gedy, *supra* note 4.

¹³⁴ *See Id.* ("Californians were subjected to a barrage of ads, some of which made confusing claims or didn't mention sports betting at all. Voters who saw lots of those ads opposed the measures at higher rates than people who saw few or none, the UC Berkeley polling found. The propositions, themselves, were complex, and weren't singularly focused on sports betting.").

¹³⁵ *Id.*

¹³⁶ *Infra* Subsection A.1.

¹³⁷ *Infra* Subsection A.2.

¹³⁸ *See Proposition 27, supra* note 116 ("Proposition 27 allows tribes or gambling companies to offer online sports betting.").

¹³⁹ *See* Gedy, *supra* note 4 (quoting Jacob Mejia, vice president of public affairs for the Pechanga Band of Indians, who stated that Proposition 27 was "the biggest threat to Indian gaming in a generation").

¹⁴⁰ *See* Bart Shirley, *California Sports Betting*, LEGAL SPORTS REP. (Feb. 28, 2023), <https://www.legalsportsreport.com/california/> (on file with the *University of the Pacific Law Review*) ("Aside from betting on horse racing, there are no legal sportsbooks that accept bets from anyone within the state of California.").

¹⁴¹ Gedy, *supra* note 4.

¹⁴² *See Proposition 26, supra* note 112 ("Proposition 26 allows in-person sports betting at racetracks and tribal casinos.").

won when voters did not approve Proposition 27 because that failure did not legalize online sports betting.¹⁴³

Second, California's cardrooms that offer games, like poker, opposed both initiative measures.¹⁴⁴ Cardrooms rely on gamblers that want to play in-person, non-banked games like poker.¹⁴⁵ Both initiative measures were threats to the cardrooms because cardrooms want to preserve the status quo of gaming law in California.¹⁴⁶ The current status quo benefits cardrooms because they are the only non-tribal, private entities that may offer gambling in California other than horse racing tracks.¹⁴⁷ Moreover, Proposition 26 contained a provision that would have allowed any private citizen to sue a cardroom, so cardrooms feared costly litigation in the future.¹⁴⁸ Consequently, California's cardrooms spent money advertising against both propositions.¹⁴⁹ The cardrooms won their bet when voters disapproved of both initiative measures.¹⁵⁰

Third, the online sportsbook companies opposed Proposition 26 because it would have excluded them from the sports betting market in California.¹⁵¹ Online sportsbooks targeted Proposition 26 with confusing advertisements while supporting Proposition 27—the measure that would have authorized them to do business in California.¹⁵² Sportsbooks also attempted to alleviate concerns about California's tribes by including a provision in Proposition 27 giving all non-gaming tribes 15% of the tax revenue from sports betting.¹⁵³ However, these attempts did not come to fruition when voters rejected Proposition 27.¹⁵⁴

Conflict among these competing interests created contentious opposition and support for each proposition created a contentious atmosphere that discouraged voters from authorizing sports betting.¹⁵⁵ Voters were often confused about the distinctions between the propositions and tired of seeing a plethora of advertisements.¹⁵⁶ Moreover, the Propositions were complex and contained provisions that did not pertain to sports betting, so voters had trouble understanding whether the propositions were really about sports betting.¹⁵⁷ For example, Proposition 26 included a provision to allow roulette gaming in tribal casinos and

¹⁴³ See Gedye, *supra* note 4 (characterizing the defeat of Proposition 27 as a win for the tribal casinos).

¹⁴⁴ *Id.*

¹⁴⁵ *Card Rooms Are Scared*, *supra* note 86.

¹⁴⁶ See Gedye, *supra* note 4 (“Cardrooms ... are pleased with the outcome [of the general election].”).

¹⁴⁷ See CAL. CONST. art. IV, § 19 (limiting non-tribal entities' ability to operate gaming to only horse racing and non-banked games).

¹⁴⁸ *Card Rooms Are Scared*, *supra* note 86.

¹⁴⁹ *Id.*

¹⁵⁰ Gedye, *supra* note 4.

¹⁵¹ See *Proposition 26*, *supra* note 112 (“Proposition 26 allows in-person sports betting at racetracks and tribal casinos.”).

¹⁵² Gedye, *supra* note 4.

¹⁵³ *Proposition 27*, *supra* note 116.

¹⁵⁴ Gedye, *supra* note 4.

¹⁵⁵ See Gedye, *supra* note 4 (“As the campaign [for both propositions] wore on, support eroded and opposition grew dramatically.”).

¹⁵⁶ See *id.* (citing a study that showed “voters who saw lots of” ads for the propositions “opposed the measures at higher rates than people who saw few or none”).

¹⁵⁷ *Id.*

would have authorized private suits against cardrooms.¹⁵⁸ These provisions not only confused voters, they also discouraged voters from authorizing sports betting.¹⁵⁹

2. Suggestions for Greater Voter Approval

The gaming industry should learn from its mistakes in the 2022 election to propose a sports betting measure that does not confuse voters.¹⁶⁰ Voters rejected the 2022 legislative proposals in part because of the proposals' confusing, complex nature and little attention to the addictive nature of sports betting.¹⁶¹ A proper sports betting measure should be simple, only pertain to sports betting, and address concerns about addiction and youth gambling.¹⁶² Doing so is likely to result in voters passing future legislative proposals because voters would better understand the proposed law.¹⁶³

Additionally, a sports successful betting measure would allow the competing interests in the gaming industry to work together.¹⁶⁴ It is likely impossible to legalize sports betting without agreement and participation from a majority of California's gaming industry.¹⁶⁵ In addition, any private gaming company needs to ensure that it works with the tribes because tribes already have a stronghold on the gambling industry in California.¹⁶⁶

B. Benefits of Legal, In-Person Sports Betting

California voters' apprehension to legalize sports betting is partially due to the addictive nature of sports betting.¹⁶⁷ The act of gambling is addictive because of the brain's release of dopamine while waiting for a bet's result.¹⁶⁸ This release of dopamine while "waiting for the result of a bet ... is just as powerful as when

¹⁵⁸ *Card Rooms Are Scared*, *supra* note 86.

¹⁵⁹ Gedy, *supra* note 4.

¹⁶⁰ *See Id.* (describing how the propositions were complex because they were not "singularly focused on sports betting").

¹⁶¹ *Id.*

¹⁶² *See* Frank Schwab, *Gov. Gavin Newsom Opposes California's Dying Sports Betting Prop 27*, YAHOO! SPORTS (Oct. 26, 2022), <https://sports.yahoo.com/gov-gavin-newsom-opposes-californias-dying-sports-betting-prop-27-214329145.html> (on file with the *University of the Pacific Law Review*) (describing how Governor Newsom opposed Proposition 27 because it would have "increase[d] the risks of underage gambling").

¹⁶³ *See* Gedy, *supra* note 4 (noting voters were confused about the 2022 legislative proposals regarding sports betting).

¹⁶⁴ *Compare Proposition 26*, *supra* note 112 (authorizing sports betting only for tribes), *with Proposition 27*, *supra* note 116 (authorizing sports betting anywhere in California).

¹⁶⁵ *See* Gedy, *supra* note 4 (stating that any sports betting legislation must "respect the tribes, who have immense resources and immense political support in the state").

¹⁶⁶ *Id.*

¹⁶⁷ *See* Mark Kreidler, *Addiction Experts Fear the Fallout if California Voters Legalize Sports Betting*, L.A. TIMES, (Oct. 5, 2022), <https://www.latimes.com/california/story/2022-10-05/addiction-experts-fear-the-fallout-if-california-legalizes-sports-betting> (on file with the *University of the Pacific Law Review*) ("Both ballot measures offer limited new resources to help people with gambling problems or addictions, and neither requires the state to improve tracking or treatment.").

¹⁶⁸ Drost, *supra* note 19.

the result actually happens.”¹⁶⁹ Additionally, sports betting is strategic gambling, so bettors often “believe they have an edge because they follow the teams,” which creates an “illusion of control.”¹⁷⁰ The illusion of control associated with sports betting contributes to it being more addictive than other forms of gambling.¹⁷¹ Moreover, Californians are wary of the risks that sports betting could pose to children and young adults.¹⁷² Advertisements depicting sports betting could lead children to a gambling addiction later in life.¹⁷³

Although sports betting can potentially increase gambling addictions, Californians already bet billions yearly on sporting events through illegal sportsbooks.¹⁷⁴ Since sports betting is legal in countries like Costa Rica and Panama, Americans operate illegal sportsbooks out of those countries.¹⁷⁵ This conduct is illegal because the Federal Wire Act prohibits sending money through interstate or foreign commerce for placing “bets or wagers on any sporting event or contest.”¹⁷⁶ However, officials often focus on prosecuting the operators of these sportsbooks, rather than consumers.¹⁷⁷

Because Californians are using illicit avenues to bet on sports, the State is possibly losing hundreds of millions of dollars in potential tax revenue.¹⁷⁸ Statistics show that Californians spend around fifteen billion dollars a year through illegal sportsbooks.¹⁷⁹ If California gaming entities could capture all fifteen billion dollars in illegal bets, they would profit about one billion dollars.¹⁸⁰ A tribe typically pays around ten percent of profits to the state, and sports betting licensing requires even

¹⁶⁹ *Id.*

¹⁷⁰ Eric Adelson, *As Sports Betting Goes Mainstream, Addiction Experts Are on High Alert*, WASH. POST (Sept. 6, 2022), <https://www.washingtonpost.com/sports/2022/09/06/sports-gambling-addiction/> (on file with the *University of the Pacific Law Review*); see also Shalini Singh et al., *Pathological Gambling: An Overview*, 10 MED. J. OF DR. D.Y. PATIL VIDYAPEETH 120, 121 (2017) (“Strategic gamblers train themselves and participate in the specific forms of gambling such as a game of cards, poker tournaments, betting on sporting events, and on stock market investments.”).

¹⁷¹ Gemma Mestre-Bach et al., *Sports-Betting-Related Gambling Disorder: Clinical Features and Correlates of Cognitive Behavioral Therapy Outcomes*, 133 ADDICTIVE BEHAVS. 1, 2 (May 18, 2022).

¹⁷² Schwab, *supra* note 164.

¹⁷³ Drost, *supra* note 19.

¹⁷⁴ Gedy, *supra* note 4.

¹⁷⁵ *Illegal Sports Betting*, AM. GAMBLING ASSOC. (May 31, 2022), <https://www.americangaming.org/illegal-sports-betting/> (on file with the *University of the Pacific Law Review*).

¹⁷⁶ 18 U.S.C. § 1084.

¹⁷⁷ See *Illegal Sports Betting*, *supra* note 177 (“While federal law is abundantly clear on the illegality of such operations, these books and even the media, often claim it is not illegal for the consumer to use offshore sites. While it is true that no federal law targets bettors using offshore books, many states have laws that make using these books illegal.”).

¹⁷⁸ See Gedy, *supra* note 4 (“Californians are currently placing billions in bets each year on illicit offshore sport betting websites—unsafe and unregulated enterprises that offer no protections for minors or consumers and generate no support for state priorities.”).

¹⁷⁹ Dan Favale, *Illegal California Sports Betting Is Reportedly a \$15 Billion Market*, ONLINE SPORTS BETTING (June 16, 2022), <https://www.onlinesportsbetting.net/usa/california/illegal-sports-betting-in-california-generates-15-billion-per-year.html> (on file with the *University of the Pacific Law Review*).

¹⁸⁰ See *New AGA Report Shows Americans Gamble More Than Half a Trillion Dollars Illegally Each Year*, AM. GAMING ASS’N. (Nov. 30, 2022), <https://www.americangaming.org/new/new-aga-report-shows-americans-gamble-more-than-half-a-trillion-dollars-illegally-each-year/> (on file with the *University of the Pacific Law Review*) (showing that estimated revenue for every \$15 billion handled by an illegal sportsbook is around \$1 billion, with around \$175 million in missed state revenue).

more payment to a state.¹⁸¹ Therefore, legal sports betting could bring in at least a hundred million dollars to California.¹⁸² In addition, licensing fees for gaming entities can cost over a million dollars per year.¹⁸³ Proposition 27's licensing fees for online sports betting would have cost a private gaming entity one hundred million dollars and a tribe ten million.¹⁸⁴ Proposition 27 also expected state revenue in the hundreds of millions of dollars if the state passed it.¹⁸⁵

Moreover, illegal sportsbooks do not have safeguards that prevent minors or problem gamblers from placing bets because there are no age restrictions or "self-exclude" options on those sites.¹⁸⁶ However, tribal compacts typically have stringent regulatory requirements for how tribal casinos operate.¹⁸⁷ Because gambling is illegal unless a state regulates it, gambling is a privilege, and states have significant authority to regulate it.¹⁸⁸ If sports betting was legal, California would have broad authority to regulate the sportsbooks to ensure protective measures for minors and problem gamblers.¹⁸⁹ California could also use the additional revenue from a legal sportsbook market to provide addiction counseling or fund other State projects.¹⁹⁰ However, while sports betting is still illegal in California, the vast amount of money involved in illegal transactions is going to black market sportsbook operators.¹⁹¹

If California legalizes online sports betting, then out-of-state corporations will most likely succeed in profits and customer base compared to any California-based sportsbook—tribal or not.¹⁹² Existing sportsbooks FanDuel, DraftKings, and BetMGM already share three-quarters of the sportsbook market in areas where sports betting is legal.¹⁹³ Because these sportsbooks have pre-existing online betting systems and revenue to conduct advertising, these companies would likely

¹⁸¹ See Tribal-State Compact, *supra* note 14, § 4.5 (describing the Agua Caliente Band's regulatory payments, ranging from six to eleven percent of "net win" dependent on the number of gaming devices).

¹⁸² See Favale, *supra* note 181 (stating estimated California illegal sports betting market is \$15.7 billion).

¹⁸³ See Proposition 27, *supra* note 116 (proposing a \$100 million licensing fee for private gaming entities).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Gedy, *supra* note 4; *Responsible Gaming*, DRAFTKINGS, <https://www.draftkings.com/about/responsible-gaming/> (last visited Dec. 29, 2022) (on file with the *University of the Pacific Law Review*) (showing that "self-exclude" options allow gambling addicts to disable betting abilities on their device).

¹⁸⁷ See Tribal-State Compact, *supra* note 14, § 9.0 (defining state regulations in a tribal nation's compact to operate casinos).

¹⁸⁸ CABOT & MILLER, *supra* note 10, at 7; see also, e.g., CAL. PENAL CODE § 330 (West 2022) (prohibiting gambling in CA); CAL. CONST. art. IV, § 19 (regulating and permitting specific gaming activities).

¹⁸⁹ See *State v. Rosenthal*, 559 P.2d 830, 833 (Nev. 1977) ("It is established beyond question that gaming is a matter of privilege conferred by the State rather than a matter of right.").

¹⁹⁰ See Gedy, *supra* note 4 ("Californians deserve the benefits of a safe, responsible, regulated, and taxed online sports betting market.").

¹⁹¹ *Id.*

¹⁹² See Matt Rybaltowski, *Bloomberg Summit: Sports Betting Market in 'Early Innings' After Super Bowl Frenzy*, SPORTSHANDLE (Feb. 18, 2022), <https://sportshandle.com/bloomberg-summit-2022/> (on file with the *University of the Pacific Law Review*) (showing that the top three sports betting companies have a combined share of three quarters of the sports betting market).

¹⁹³ *Id.*

capitalize on the California sports betting market.¹⁹⁴ Moreover, these large companies have the money to obtain expensive licenses for sports betting.¹⁹⁵ If voters passed Proposition 27, the 2022 online sports betting measure, licensing fees to conduct sports betting would have cost one hundred million dollars.¹⁹⁶ California-based sportsbook startups would have difficulty competing in the sportsbook market when it costs one hundred million dollars to begin conducting business in California.¹⁹⁷ While any tax revenue from these sportsbooks' wagers would go to California, these large, pre-existing sportsbooks would likely control the California sports betting market.¹⁹⁸

In-person sports betting at tribal casinos would ensure revenue from sports betting goes to California's tribes because it would preclude large sportsbooks from the sports betting market.¹⁹⁹ Moreover, in-person sports bettors would not be tempted by the efficiency of online sports betting or the accompanying advertisements during a game.²⁰⁰ These influences would not exist if bettors had to travel to a casino, withdraw cash, and physically place bets.²⁰¹ Also, children would not be able to skirt any weak verification processes that online sportsbooks may employ by, for example, using a parent's identification or fake identification.²⁰² Additionally, revenue from sports betting would go to tribes in California that depend on gaming revenue to ensure the economic self-reliance of their tribe.²⁰³ Giving gaming rights to out-of-state corporations that can operate in major California cities could decrease tribal revenue by "allowing virtually anyone, anywhere, anytime to gamble."²⁰⁴ Therefore, in-person sports betting at

¹⁹⁴ See Grace Gedy, *California Sports Betting Initiative Backed by FanDuel, DraftKings Would Block Small Competitors*, CALMATTERS (Apr. 27, 2022), <https://calmatters.org/economy/2022/04/california-sports-betting-initiative-backed-by-fanduel-draft-kings-would-block-small-competitors/> (on file with the *University of the Pacific Law Review*) (noting out-of-state sportsbooks "need" the California sports betting market to make future gains).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See Gedy, *supra* note 4 (quoting a spokesperson for the online sports betting measure stating that tax revenue from "online sports betting can provide substantial solutions to fill future budget gaps").

¹⁹⁹ See Welch & Sarris, *supra* note 123 (stating in-person sports betting at tribal casinos would create jobs, help tribes not involved in gaming, and still increase state tax revenues while the other proposition "funded by DraftKings and FanDuel, would legalize online betting and put the future of sports betting in California in the hands of out-of-state, online gambling corporations. Their measure would authorize the largest expansion of gambling in state history—allowing virtually anyone, anywhere, anytime to gamble.").

²⁰⁰ See Adelson, *supra* note 172 ("There's no extra step of physically withdrawing cash from an ATM, driving to the casino, or even waiting for a blackjack table dealer [when placing bets through online sportsbooks].")

²⁰¹ *Id.*

²⁰² See Welch & Sarris, *supra* note 123 (discussing how "there is no sure-proof way to prevent kids from placing bets online").

²⁰³ See *Id.* ("Indian gaming has promoted tribal self-reliance—supporting education, infrastructure, health care, housing and other vital resources for our people.").

²⁰⁴ *Id.*; see also Dan Walters, *California's Tribal Casinos Now Want Sports Betting*, CALMATTERS (June 2, 2021), <https://calmatters.org/commentary/2021/06/california-tribal-casinos-sports-betting-gambling/> (on file with the *University of the Pacific Law Review*) ("Tribal leaders fear that if gamblers could place sports bets on their computers, they would be less likely to personally visit casinos.").

tribal casinos would cure some of the negative side effects of online sports betting and strengthen tribal-state relations.²⁰⁵

C. Offering Sports Betting Outside Tribal Lands Will Deteriorate Tribal-State Relations

The State of California has historically discriminated against Native Americans.²⁰⁶ When California obtained statehood in 1850, its gold rush inspired Americans to move to California to obtain financial freedom.²⁰⁷ However, twenty years later, a combination of the white population, disease, and famine killed about eighty percent of California's indigenous people.²⁰⁸ Even the United States military was engaged in large "massacres [that] wiped out entire tribal populations."²⁰⁹ In the last half-century, some tribal nations have been able to use the gambling industry to create financial independence.²¹⁰

Moreover, these tribes' voices have become powerful influences on the California Legislature.²¹¹ Tribes use the gambling industry to create jobs, generate both state and tribe revenue, and provide infrastructure for tribal communities.²¹² Because of the gambling industry's ability to help California's tribes achieve independence after a history of discrimination, the State must ensure it protects the tribal gaming industry.²¹³

California's tribal nations have the exclusive right to conduct Class III gaming in California, which is the type of gaming sports betting falls under.²¹⁴ Because tribal nations already have this exclusive right to perform Class III gaming, California should allow tribes to conduct in-person sports betting on tribal premises.²¹⁵ Additionally, tribal-state compacts regarding sports betting should apply the same exclusive rights provisions because California must continue to ensure tribes' exclusive right to conduct all Class III gaming.²¹⁶ California should not allow private sportsbooks to operate in the State because that would terminate

²⁰⁵ See Welch & Sarris, *supra* note 123 (citing limited safeguards for children and problem gamblers on online sports betting platforms, as well as tribes' self-reliance through gaming as reasoning to oppose online sports betting in California).

²⁰⁶ Erin Blakemore, *California's Little-Known Genocide*, HISTORY (Dec. 4, 2020), <https://www.history.com/news/californias-little-known-genocide> (on file with the *University of the Pacific Law Review*).

²⁰⁷ *Id.*

²⁰⁸ *Id.* ("[T]he state spent a total of about \$1.7 million—a staggering sum in its day—to murder up to 16,000 people [of indigenous descent].").

²⁰⁹ *Id.*

²¹⁰ Walters, *supra* note 206.

²¹¹ *Id.*

²¹² Welch & Sarris, *supra* note 123.

²¹³ See Welch & Sarris, *supra* note 123 ("Indian gaming has promoted tribal self-reliance—supporting education, infrastructure, health care, housing and other vital resources for our people.").

²¹⁴ See Tribal-State Compact, *supra* note 14, § 4.8 (providing Cahuilla tribe the exclusive right to conduct Class III gaming on its Indian lands).

²¹⁵ *Id.*

²¹⁶ See *Id.* (allowing the Cahuilla tribe the option to terminate its compact or withhold specific payments to the State in the event the State abrogates tribes' exclusive right to conduct Class III gaming).

the exclusive rights provisions under tribal-state compacts.²¹⁷ This action would negatively impact not only tribal-state relations but tribes themselves because Californians could gamble anywhere in the State.²¹⁸

Federal law bars tribes from conducting sports betting outside of tribal lands even if California broadly legalizes sports betting.²¹⁹ The IGRA only gives tribes the right to conduct gaming on tribal lands, preventing any gambling on behalf of tribal casinos outside of that tribe's borders.²²⁰ Therefore, online sports betting places tribes at a disadvantage because non-tribal sportsbooks would capture a much larger share of the betting market in California's large cities.²²¹ Gamblers in cities like Los Angeles and San Francisco could place bets on their mobile phone—places where tribes could not participate in sports betting.²²² Because fewer Californians would use tribal sportsbooks as opposed to private ones, online sports betting could weaken tribal-state relations even more.²²³

Opponents of tribal gaming argue the exclusive right to sports betting gives them “a virtual monopoly on what could be a multi-billion-dollar expansion of legal gambling in California.”²²⁴ However, tribes already have a “virtual monopoly” on California's gambling industry because tribal compacts give each tribe the exclusive right to conduct gaming in its sovereign borders.²²⁵ Moreover, requiring sports betting to take place in person at tribal casinos brings traffic to tribal casinos, increases state tax revenues, and keeps minors away from gambling.²²⁶ Therefore, tribal gaming is a step toward “greater economic independence” for tribes that California historically discriminated against.²²⁷

While giving tribes the exclusive right to in-person sports betting is consistent with California gaming law, online sports betting appears inevitable.²²⁸ However, the competitive nature of California's gaming industry—tribes versus

²¹⁷ See Tribal-State Compact, *supra* note 14, § 4.8 (providing the Cahuilla tribe options in the event of a statute or Constitutional amendment that takes away the exclusive right, including termination of the tribal-state compact).

²¹⁸ See Welch & Sarris, *supra* note 123 (arguing that legalizing online sports betting in California “would authorize the largest expansion of gambling in state history—allowing virtually anyone, anywhere, anytime to gamble”).

²¹⁹ See 25 U.S.C. § 2701 (“Indian tribes have the exclusive right to regulate gaming activity on Indian lands.”).

²²⁰ *Id.*

²²¹ See *Id.* (“Indian tribes have the exclusive right to regulate gaming activity on Indian lands . . .”); see also 18 U.S.C. § 1084 (prohibiting sending money through interstate or foreign commerce for the purpose of placing a bet or wager on a sporting event).

²²² See Welch & Sarris, *supra* note 123 (arguing that legalizing online sports betting in California “would authorize the largest expansion of gambling in state history—allowing virtually anyone, anywhere, anytime to gamble”).

²²³ See Walters, *supra* note 206 (“Tribal leaders fear that if gamblers could place sports bets on their computers, they would be less likely to personally visit casinos.”).

²²⁴ Walters, *supra* note 206.

²²⁵ Walters, *supra* note 206; Tribal-State Compact, *supra* note 14, § 4.8 (providing Cahuilla tribe the exclusive right to conduct Class III gaming on its Indian lands).

²²⁶ Welch & Sarris, *supra* note 123.

²²⁷ Edward D. Castillo, *California Indian History*, NATIVE AM. HERITAGE COMM'N, <https://nahc.ca.gov/resources/california-indian-history/> (last visited Jan. 2, 2023) (on file with the *University of the Pacific Law Review*); see also Welch & Sarris, *supra* note 123 (“Tribal casinos generate nearly 125,000 jobs for Californians, \$20 billion for state and local economies, and \$1.3 billion in revenue sharing to the state and local governments annually.”).

²²⁸ See Gedy, *supra* note 4 (“California is the only state [with a sports betting ballot measure] where voters said no to sports betting.”).

private sportsbooks—is why California has yet to legalize sports betting.²²⁹ If California’s gaming industry wants to legalize online sports betting, the tribes and private sportsbooks will likely have to cooperate instead of compete with one another.²³⁰ Gaming entities such as private sportsbooks that want to operate online sports betting in California should take note of Washington’s sports betting authorization.²³¹

In 2020, Washington legalized online and in-person sports betting on tribal lands.²³² Tribes in Washington partner with pre-existing sportsbooks like BetMGM and DraftKings to easily operate online sportsbooks.²³³ This is beneficial for the tribes because they can operate a sportsbook without having to spend money developing an online sportsbook.²³⁴ These partnerships are good for the private sportsbooks as well because they get a share of the profits and advertise their sportsbook.²³⁵ Although bettors cannot use sportsbooks outside of tribal lands, this gives the Washington gaming industry an opportunity to work together in legalizing online sports betting.²³⁶ These partnerships allow tribes and private sportsbooks to conduct sports betting through cooperation instead of direct competition.²³⁷ Therefore, gaming entities in California should look at Washington’s sports betting laws if the industry desires legal online sports betting.²³⁸

V. REGULATORY PROPOSALS TO DETER THE PROBLEMATIC SYMPTOMS OF SPORTS BETTING

Gambling addictions lead to a higher rate of suicide “than any other addiction.”²³⁹ The reality of gambling addiction likely indicates why so many Californians are opposed to online sports betting.²⁴⁰ However, regulations that ensure protections for minors and problem gamblers from the temptations of gambling when watching sporting events could help curb the apprehension of online sports betting.²⁴¹ Moreover, unregulated, illegal sportsbooks already offer Californians the ability to bet on sports with no protections for minors or problem

²²⁹ See *id.* (“You have to respect the tribes, who have immense resources and immense political support in the state.”).

²³⁰ See Shirley, *supra* note 141 (analyzing Washington’s sports betting laws allow private sportsbooks to partner with tribes to offer online sports betting on tribal lands).

²³¹ See *id.* (analyzing Washington’s sports betting laws allow private sportsbooks to partner with tribes to offer online sports betting on tribal lands).

²³² *Id.*

²³³ *Id.*

²³⁴ See Shirley, *supra* note 141 (discussing how tribes use private sportsbooks’ technology to “power the retail sports betting operations”).

²³⁵ See *id.* (noting that tribes use private sportsbook brand names to advertise their sportsbook on tribal lands).

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ See *id.* (describing how tribes and private sportsbooks partner together to operate online sports betting).

²³⁹ Drost, *supra* note 19.

²⁴⁰ See Gedye, *supra* note 4 (indicating about 83% of Californians voted against legalizing online sports betting).

²⁴¹ See Drost, *supra* note 19 (discussing regulations on sports betting advertisements that help slow youth gambling addictions).

gamblers.²⁴² Therefore, legalizing sports betting could divert betting activity away from illegal sportsbooks and—with proper regulations—protect children and problem gamblers.²⁴³ Section A explains how sports betting may lead to gambling addiction.²⁴⁴ Section B proposes regulations to deter the problematic symptoms of sports betting.²⁴⁵

A. Sports Betting May Lead to Gambling Addiction

At its core, gambling is risking something of value on an unknown outcome “in the hopes of gaining something of greater value.”²⁴⁶ Traditional gambling typically includes games like poker, blackjack, and the lottery, but the definition of gambling also fits everyday activities like investing.²⁴⁷ According to psychologists, gambling is addictive because the brain receives dopamine “while someone is waiting for the result of a bet.”²⁴⁸ Psychologists typically place gamblers into two categories: “recreational” gamblers or “problem” gamblers.²⁴⁹ Problem gamblers—gambling addicts—can relate gambling to difficulties in their life.²⁵⁰ Such difficulties may include economic debt, involvement in illegal activities, domestic violence, and suicidal thoughts.²⁵¹ In the United States, gambling addicts make up around two percent of the population.²⁵²

Experts warn that sports betting intensifies gambling addictions because gamblers’ brains release even more dopamine from when they watch a sporting event.²⁵³ Additionally, scientific studies show gamblers engaged in sports betting are at a high risk of becoming gambling addicts.²⁵⁴ However, these studies do not

²⁴² Gedy, *supra* note 4 (“Californians are currently placing billions in bets each year on illicit offshore sport betting websites.”).

²⁴³ *See id.* (“Californians deserve the benefits of a safe, responsible, regulated, and taxed online sports betting market.”).

²⁴⁴ *Infra* Section V.A.

²⁴⁵ *Infra* Section V.B.

²⁴⁶ Singh et al., *supra* note 172, at 120.

²⁴⁷ *See Id.* (“Gambling is defined as placing something of value at risk in the hopes of gaining something of greater value.”).

²⁴⁸ Drost, *supra* note 19; Stephanie Watson, *Dopamine: The Pathway to Pleasure*, HARV. HEALTH PUBL’G (July 20, 2021), <https://www.health.harvard.edu/mind-and-mood/dopamine-the-pathway-to-pleasure> (on file with the *University of the Pacific Law Review*) (“Dopamine is most notably involved in helping us feel pleasure as part of the brain’s reward system.”).

²⁴⁹ *See* Singh et al., *supra* note 172, at 120 (adding that the term “problem gambling” broadly covers pathological gambling, disordered gambling, and compulsive gambling).

²⁵⁰ *Id.*

²⁵¹ Singh et al., *supra* note 172, at 120; *Compulsive Gambling*, MAYO CLINIC <https://www.mayoclinic.org/diseases-conditions/compulsive-gambling/symptoms-causes/syc-20355178> (last visited Dec. 29, 2022) (on file with the *University of the Pacific Law Review*); Drost, *supra* note 19 (“People who struggle with problem gambling are the highest risk of suicide, [more] than any other addiction.”).

²⁵² Kurt Streeter, *The Rising Human Cost of Sports Betting*, N.Y. TIMES (Jan. 31, 2022), <https://www.nytimes.com/2022/01/31/sports/football/super-bowl-sports-betting.html> (on file with the *University of the Pacific Law Review*).

²⁵³ Drost, *supra* note 19.

²⁵⁴ *See* Mestre-Bach et al., *supra* note 173, at 2 (“Sports betting, relative to non-sports betting, has been more strongly linked to gambling problems and cognitive distortions related to illusion of control, probability control and interpretive control.”).

consider that gambling addicts typically engage in many forms of gambling.²⁵⁵ Still, online sports betting gives gamblers little control over their addiction when sportsbooks advertise on every sports network and are available on any device.²⁵⁶

Online sports betting gives gamblers easy access to sportsbooks on any internet-connected device, allowing gamblers to place bets anywhere at any time.²⁵⁷ Moreover, online sportsbooks give gamblers the ability to bet—before and during a game—on whether a multitude of different events will occur throughout the game.²⁵⁸ Bets may include who will win, whether the combined total of points is over or under a specific number, or whether multiple outcomes will occur—a “parlay” bet.²⁵⁹ This combination of interconnectivity and the illusion of control—where bettors “believe they have an edge because they follow the teams”—suggests online sports betting exacerbates gambling addictions.²⁶⁰

Many online sportsbooks have tools to help gambling addicts such as “self-exclude” options in which gamblers can disable betting on their device.²⁶¹ However, sportsbooks are also attempting to capitalize on the next generation of gamblers.²⁶² Online sportsbooks have partnered with at least eight universities to advertise promotional codes at games for millions of dollars.²⁶³ These lucrative deals help “athletic departments recoup some of the revenue they lost during the pandemic.”²⁶⁴

Although university athletic departments can profit off sportsbook partnerships, experts are worried that constant sportsbook advertising induces young people to begin gambling and become addicted.²⁶⁵ Studies on how gambling affects young adults show “the rate of problem gambling among college students is higher than in the adult population.”²⁶⁶ Additionally, sportsbook advertising

²⁵⁵ *Id.*

²⁵⁶ See Adelson, *supra* note 172 (arguing gambling addictions may be “enhanced by the rapidity of the technology in the bet-by-5G era”).

²⁵⁷ See *od.* (“There’s no extra step of physically withdrawing cash from an ATM, driving to the casino, or even waiting for a blackjack table dealer.”); Alex W., *How to Bet on DraftKings Sportsbook: Simple Beginners Guide*, GAMBLE USA (Dec. 20, 2022), <https://gamble-usa.com/guides/how-to-bet-on-draftkings-sportsbook/> (on file with the *University of the Pacific Law Review*) (“Although retail sports betting has been around for a while now, betting online is a different ballgame.”).

²⁵⁸ Alex W., *supra* note 259.

²⁵⁹ *Id.*

²⁶⁰ Adelson, *supra* note 172 (“The “illusion of control” may be enhanced by the rapidity of the technology in the bet-by-5G era.”).

²⁶¹ See, e.g., *Responsible Gaming*, *supra* note 188 (“At DraftKings ... we always give you the option to self-exclude.”).

²⁶² See Anna Betts et al., *How Colleges and Sports-Betting Companies ‘Caesarized’ Campus Life*, N.Y. TIMES (Nov. 21, 2022), <http://www.nytimes.com/2022/11/20/business/caesars-sports-betting-universities-colleges.html> (on file with the *University of the Pacific Law Review*) (discussing major sportsbooks’ recent deals with universities to promote sportsbooks on campuses and at collegiate games).

²⁶³ Anna Betts et al., *supra* note 265.

²⁶⁴ *Id.*

²⁶⁵ See Drost, *supra* note 19 (quoting a gambling addiction counselor concerned that sportsbook advertisements are “geared toward younger and younger generations”).

²⁶⁶ KNOW THE ODDS, THE DANGERS OF YOUTH GAMBLING ADDICTION 12 (2013) https://knowtheodds.org/wp-content/uploads/2013/05/NYCPG_ebook_YouthGambling_052114.pdf (on file with the *University of the Pacific Law Review*).

during sporting events on television exposes teenagers and children to gambling.²⁶⁷ Studies show that children who are exposed to “and begin gambling by age 12 are four times more likely to become” gambling addicts later in life.²⁶⁸ Exposure to gambling includes advertisements depicting gambling through television, billboards, and the internet.²⁶⁹ These studies show sports betting advertisements might lead young adults and children to gambling addictions.²⁷⁰

B. Regulatory Proposals to Deter Gambling Addiction

With online gambling becoming so prominent, governments need to regulate this activity so it does not create a new generation of gambling addicts.²⁷¹ An issue in gaming law is that casinos have no duty to exclude gambling addicts from losing money while they can exclude any winning player from their premises.²⁷² Even if a player places themselves on a “self-exclude” list, a casino or sportsbook is not obligated to stop the player from gambling.²⁷³ Based on the addictive tendencies associated with online sports betting, due to its ubiquitous nature and the illusion of control, online sports betting will exacerbate problem gambling.²⁷⁴ Therefore, regulations should ensure that players can easily exclude themselves from all sportsbook platforms.²⁷⁵

For instance, in New Jersey, problem gamblers can apply to a state program that will terminate that person’s access to all online sportsbooks operating in the state.²⁷⁶ This law has been successful because problem gamblers do not have to self-exclude themselves from every sportsbook and New Jersey participates in

²⁶⁷ Mike Florio, *NFL Allows Up to Six Sportsbook Commercials Per Game*, NBC SPORTS (Aug. 12, 2021), <https://profootballtalk.nbcsports.com/2021/08/12/nfl-allows-up-to-six-sportsbooks-commercials-per-game/> (on file with the *University of the Pacific Law Review*).

²⁶⁸ KNOW THE ODDS, *supra* note 269, at 7.

²⁶⁹ *Id.*

²⁷⁰ *See id.* (“[S]tudies have shown that children who are introduced to and begin gambling by age 12 are four times more likely to become problem gamblers.”); Beth Ann Mayer, *Kids as Young as 11 Are Becoming Addicted to Online Gambling*, PARENTS (Dec. 23, 2021), <https://www.parents.com/kids/safety/kids-as-young-as-11-are-becoming-addicted-to-online-gambling/> (on file with the *University of the Pacific Law Review*) (summarizing that research shows a person’s “prefrontal cortex is not fully developed until they turn 25, so their understanding of risky behaviors” is not fully developed).

²⁷¹ *See* Zack Jones, *Rise of the IGaming Industry: Is the United States Ready to Accept Online Casinos?*, FORBES (Apr. 21, 2021), <https://www.forbes.com/sites/zackjones/2021/04/21/the-rise-of-the-igaming-industry-what-is-in-store-for-the-citizens-of-united-states/> (on file with the *University of the Pacific Law Review*) (summarizing the rising prominence of online gambling).

²⁷² *Taveras v. Resorts Int’l Hotel*, No. 07-4555, 2008 WL 4372791, at *6 (D.N.J. 2008) (denying any tort claims against a casino based on the plaintiff’s losses suffered due to her gambling addiction). *See generally* *Uston v. Hilton Hotels Corp.*, 448 F. Supp. 116 (D. Nev. 1978) (allowing a casino to exclude a winning player because they were counting cards).

²⁷³ *Stulajter v. Harrah’s Ind. Corp.*, 808 N.E.2d 746 (Ind. App. 2004) (denying any tort claims against a casino for sending plaintiff marketing materials and allowing plaintiff access to casino after plaintiff placed himself on the casino’s self-exclude list).

²⁷⁴ *Mestre-Bach et al.*, *supra* note 173, at 2.

²⁷⁵ *See* Steven Petrella, *How to Ban Yourself From Sports Betting Through Self-Exclusion*, ACTION NETWORK (Dec. 9, 2022), <https://www.actionnetwork.com/education/how-to-ban-yourself-from-sports-betting-through-self-exclusion> (on file with the *University of the Pacific Law Review*) (“You can lose money in seconds without ever getting off the couch.”).

²⁷⁶ *Id.*

enforcing the self-exclusion list.²⁷⁷ California could operate similarly to New Jersey's self-exclusion program to ensure addicts' self-exclusion from all sportsbooks.²⁷⁸

In the United States, the National Football League (NFL) contracted with sportsbooks to limit the number of sports betting advertisements to six per game.²⁷⁹ The NFL did this because it wanted to allow sportsbook advertisements for people in states that have authorized sports betting while not "overwhelming the game broadcasts."²⁸⁰ Limiting betting advertisements to a specific number per game might alleviate problem gambling.²⁸¹ However, sportsbooks advertisements will still expose gambling to children watching sporting events during normal hours.²⁸² Therefore, just limiting the number of sportsbook advertisements per game may not be a meaningful way to curb gambling exposure to minor children.²⁸³

Moreover, these advertisements are shown in states without legal sports betting.²⁸⁴ This further exposes children and problem gamblers to gambling even when it is illegal.²⁸⁵ One approach to combating this issue is seen in the United Kingdom.²⁸⁶ The United Kingdom prohibits sportsbook advertisements until after nine PM.²⁸⁷ This caused a decline in youth gambling addictions.²⁸⁸ While sports networks are concerned about losing advertising dollars, the California Legislature should protect minors from gambling addictions through regulations like those in the United Kingdom.²⁸⁹ Additionally, Massachusetts lawmakers are considering a regulation that prohibits sportsbook advertising unless "85% of viewership [for a certain sporting event] is over the age of 21."²⁹⁰ Although Massachusetts has not enacted this law yet, it could also help influence California's regulation of sports betting because California could craft a similar law.²⁹¹

While limiting advertising is one factor that may decrease gambling addictions from sports betting, the state of Washington barred sports betting on all

²⁷⁷ *Id.*

²⁷⁸ *See id.* (discussing statewide programs that allow players to ban themselves from all sportsbook platforms).

²⁷⁹ Florio, *supra* note 270.

²⁸⁰ *Id.*

²⁸¹ *See* Drost, *supra* note 19 (arguing that sportsbooks advertisements shown during games need to be regulated).

²⁸² *See* Florio, *supra* note 270 (limiting sportsbook advertisements to six per NFL game); *NFL Schedule: 2023—Week 1*, NFL, <https://www.nfl.com/schedules/2023/REG1/> (on file with the *University of the Pacific Law Review*) (showing NFL games start as early as 10:00 AM Pacific Standard Time).

²⁸³ *See* Drost, *supra* note 19 (arguing that any kind of sportsbook advertising is detrimental by exposing minors to gambling).

²⁸⁴ Sam McQuillan, *Sports Betting Ads Under Fire by Lawmakers*, ACTION NETWORK (May 18, 2022), <https://www.actionnetwork.com/legal-online-sports-betting/sports-betting-ads-lawmakers> (on file with the *University of the Pacific Law Review*).

²⁸⁵ *Id.*

²⁸⁶ Drost, *supra* note 19.

²⁸⁷ Drost, *supra* note 19.

²⁸⁸ *Id.*

²⁸⁹ *See id.* (noting the UK has seen "a reduction in young people getting addicted to sports gambling"); *see also* Florio, *supra* note 270 ("After decades of loathing gambling ... the NFL is loving it. More specifically, the NFL is loving the money that comes from it.").

²⁹⁰ Sam McQuillan, *supra* note 287.

²⁹¹ *Id.*

in-state collegiate sporting events.²⁹² Prohibiting residents from betting on familiar teams could likely eliminate the “illusion of control” that makes bettors confident they know who will win because they follow the team.²⁹³ For example, college students might bet on their school’s team because they go to the school and know the team.²⁹⁴ Although Washington residents can still bet on in-state, professional teams—like the Seattle Seahawks—this regulation could decrease the amount of college students betting on college games.²⁹⁵ Since college students are more likely to develop a gambling addiction than their adult counterparts, this regulation could protect young adults from developing an addiction.²⁹⁶ Therefore, a regulation barring sports betting on in-state collegiate teams could help alleviate concerns about problem gambling affecting young adults in California.²⁹⁷

VI. CONCLUSION

Although online sports betting legalization appears inevitable, the divergent interests of private sportsbooks and California’s tribes make any such legalization unfeasible.²⁹⁸ California’s first step in legalizing sports betting should grant tribes the exclusive right to conduct in-person sports betting to ensure compliance with tribal-state compacts.²⁹⁹ Moreover, to promote and legalize online sports betting, these competing forces need to partner with one another like the tribes and sportsbooks in Washington.³⁰⁰ However, the dangerous nature of online sports betting could compound problem gambling in the State.³⁰¹ California needs to ensure it puts proper regulations in place to alleviate the symptoms of problem gambling and protect minors from exposure to gambling.³⁰²

²⁹² Shirley, *supra* note 141.

²⁹³ See Adelson, *supra* note 172 (“People who bet on sports often believe they have an edge because they follow the teams.”).

²⁹⁴ *Id.*

²⁹⁵ Shirley, *supra* note 141.

²⁹⁶ KNOW THE ODDS, *supra* note 269, at 12.

²⁹⁷ See Shirley, *supra* note 141 (stating Washington law prohibits sports betting on in-state collegiate teams).

²⁹⁸ See Gedye, *supra* note 4 (highlighting the interests that desire sports betting).

²⁹⁹ See Tribal-State Compact, *supra* note 14, § 4.8 (stating tribes in CA have the exclusive right to conduct Class III gaming).

³⁰⁰ See Shirley, *supra* note 141 (showing private sportsbooks and tribes in Washington state have the ability to partner to conduct online sports betting).

³⁰¹ See Drost, *supra* note 19 (noting gambling addicts have a higher rate of suicide than any other addiction).

³⁰² See Gedye, *supra* note 4 (“Californians deserve the benefits of a safe, responsible, regulated, and taxed online sports betting market.”).