

SCA 11 (Burton)
Indian Gaming Constitutional Amendment
Assembly Elections Committee
September 7, 1999

Mr. Chairman and Members:

I have authors amendments that are referenced in the analysis before you. The language reflects a consensus agreement between many of the Indian tribal leaders and the Governor.

SCA 11 will allow the Governor to enter into a compact with any one or all federally recognized tribes on Indian lands in California.

Basically SCA 11 will do two major things:

1. This Constitution amendment allows the Governor to negotiate with Indian tribes regarding gaming on their lands and enter into a compact agreement that must be ratified by the Legislature; and
2. Allows the Native American tribes to continue to conduct, at a minimum, the types of gaming that there are currently engaging in at the present time. Those

You will notice that the specifics regarding what will happen to Indian gaming in California are not included in this Constitutional Amendment. We will see that in a different vehicle, hopefully in the next few days. That compact that will cover such issues as the rate of expansion for gaming on California Indian lands, revenue sharing and organized labor will be part of future legislation that we will have the opportunity to review and ratify.

I ask for your aye vote.

CLOSING STATEMENT

This is a positive resolution to a long and expensive battle that the Sovereign Indian nations have had to wage to continue to offer gaming on their lands. Proposition 5 was the most expensive initiative campaign in the United States. The Indian tribes are ready to begin that process again. Your support of this Constitutional amendment will prevent that expensive ordeal.

I have heard many Members refer to wanting to fulfill the will of the people. Here you have a chance to do just that. Your support of this measure will help to implement the will or if you will, the vision of the more than 60% of the California voters.

Your yes vote means that the 50% drop in unemployment and 68% reduction in welfare on reservations with casinos will continue and likely improve. Our failure to pass the measure would mean a 75% loss in the revenues of the gaming tribe.

Let's do the right thing. I urge your aye vote.

9/21/99 SCA.1 file

CA Indian Gambling, 300

Two tribes mistakenly receive approval for gambling compacts

SAN DIEGO (AP) Two Indian tribes mistakenly received legislative approval for gambling compacts with Gov. Gray Davis in the frenzy of last-minute action before the 1999 session ended.

In one of its last acts of the session, the Legislature earlier this month hurriedly passed a bill approving gambling compacts with 57 tribes.

But two of those tribes had not signed a gambling compact with Davis.

Mesa Grande had no intention of putting a casino on its north San Diego County reservation, and Jamul hasn't decided whether to pursue gambling or collect a share of the revenues from other tribes' slot machines.

"We were in the midst of a midnight session and getting compacts cranked out that night," said Davis spokeswoman Hilary McLean.

A representative sent by Mesa Grande to the negotiations inadvertently put the name of the tribe on a list of tribes seeking compacts after mistaking the document for a statement of support for other gambling tribes, said tribal chairman Howard Maxcy.

"We had no intention of signing a compact," Maxcy said.

Jamul did sign a one-page "letter of intent" to consider an agreement, but won't decide until next month whether to embark on gambling or collect up to \$1.1 million a year under a revenue-sharing plan for non-gambling tribes, tribal chairman Kenneth Meza.

An amended list released by the governor's office Monday replaces Mesa Grande and Jamul with two tribes not named in the compact-ratification bill, the Chukchansi Indians near Fresno and the Elem Indian Colony near Ukiah. *Picayune*

The new compacts must be ratified by voters in a constitutional amendment the Legislature placed on the March ballot.

VIEJAS INDIAN RESERVATION

ANTHONY R. PICO, TRIBAL CHAIRMAN
STEVEN F. TeSAM, VICE CHAIRMAN
PAULETTE A. LEWIS, TRIBAL SECRETARY
ANITA R. UQUALLA, TRIBAL TREASURER
VIRGINIA M. CHRISTMAN, COUNCILWOMAN
MABEL M. VELASQUEZ, COUNCILWOMAN
GILBERT J. HILL, COUNCILMAN



P.O. BOX 908
ALPINE, CA 91903
619-445-3810
(619) 445-5337, FAX

September 13, 1999

Pres. pro Tempore John Burton
California State Senate
State Capitol, Room 205
Sacramento, CA. 95814

Via Facsimile: (916) 445-4722

Dear Senator Burton:

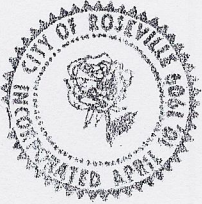
I just wanted to write and personally thank you for your support of SCA-11 seeking a state constitutional amendment for tribal government gaming.

Your support means a lot to me, and to all tribal governments in the State of California.

I hope you have an enjoyable legislative recess, and we look forward to working with you when the legislature reconvenes in January.

Sincerely,

Anthony R. Pico, Tribal Chairman
Viejas Band of Kumeyaay Indians



CITY COUNCIL
CITY OF ROSEVILLE
TRADITION • PRIDE • PROGRESS

311 VERNON STREET, #208 • ROSEVILLE, CA 95678
PHONE: (916) 774-5362 • FAX: (916) 786-9175

PK

September 10, 1999

Hon. John Burton
President Pro Tem of the State Senate
State Capitol, Room 205
Sacramento, CA 95814

Hon. Antonio R. Villaraigosa
Speaker of the State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: SCA11- Indian Gaming

Dear Senator Burton & Assemblyman Villaraigosa:

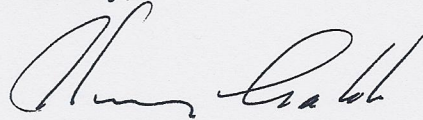
The Roseville City Council wishes to go on record as being opposed to gambling in California. We specifically oppose Senate Constitutional Amendment Number 11 (SCA11). We urge you and other members of the State Legislature to vote "no" on the measure. In the wake of the California Supreme Court's recent invalidation of Proposition 5, SCA11 is being hurriedly rushed through both houses of the Legislature in an effort to qualify it as an initiative measure on the ballot next March. The speed with which SCA11 has been rushed through the Legislature has prevented the opportunity for reasoned debate that such an important issue demands, and has perhaps masked some flaws in the measure. At the very least, the public and local agencies feel they have been left out of the debate.

In 1984 the people of the State of California enacted a constitutional amendment that prohibited Nevada-style casino gambling in the state. SCA11 would expressly overrule that mandate by the people, and will allow Class III casinos in California. However, the benefits of the measure would be restricted to "federally recognized Indian tribes," which could amount to preferential treatment on the basis of race or ethnicity, as prohibited by the California Constitution.

Class III gambling is a big-money enterprise that will inevitably have negative effects on local jurisdictions. SCA11 does not allow for local concerns to be meaningfully addressed, since it places the duty and authority to negotiate gaming compacts only in the hands of the Governor and the Legislature.

We urge you to reconsider your support for SCA11 and to keep this measure off the ballot. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry Crabb". The signature is fluid and cursive, with the first name "Harry" and the last name "Crabb" clearly distinguishable.

HARRY CRABB
Mayor, City of Roseville

COMMITTEE ON MORAL CONCERNS

Art Croney, *Executive Director/Lobbyist*
Office: (916) 446-5131
FAX: (916) 446-5744



P.O. Box 2768
Sacramento, CA 95812

September 9, 1999

Third Reading

Please vote **NO** on SCA 11 (Burton); casino legalization.

This bill would legalize Nevada-style casinos on Indian lands. The Committee On Moral Concerns opposes this bill for the following reasons:

1. This constitutional amendment will legalize slot machines, banking and percentage games, and lottery games on Indian lands. These are the most addictive and harmful forms of gambling.
2. Approximately 5% of people age 16 - 75 become compulsive gamblers when these forms of gambling become legal and convenient. Depending on how rapidly new casinos appear, this measure may cause the destruction of up to 1,066,400 California families in the current generation. Many more problem gamblers will damage themselves and their families, but recover eventually. There is enough human suffering in our state without amending the constitution to guarantee more.
3. We have nothing against the Indians who support this measure, but they need to find a legitimate source of income. There is more economic opportunity in California than any other time or place in human history. We encourage them to break their fixation with this socially destructive endeavor.

Art Croney

Jack Allen*Attorney at Law*15015 Bestor Boulevard.
Pacific Palisades, California 90272(310) 454-2062

Fax (310) 454-8037

August 30, 1999

Senator John Burton,
President Pro Tem
State Capitol Room 205
Sacramento, CA 95814

Re: Indian gambling

My dear Senator Burton:

I sincerely urge you not to support the Legislature approving a ballot measure amending the State Constitution to permit Indian gambling. Let me say that I am part Indian so it is not a matter to me of Indian vs. non-Indian.

My concern is that any measure, whether it amends the State Constitution or whether it is mere legislation, that distinguishes between races or ethnic origin, is unconstitutional on its face in that it violates the equal protection clauses of the 5th and 14th Amendments to the United States Constitution. In deciding whether or not Proposition 5 was constitutional, it was unnecessary for the California Supreme Court to reach this issue because Proposition 5 clearly violated the California Constitution provisions relating to the State Lottery.

Under article I section 8, paragraph 3 of the Federal Constitution, it is clear Congress has the authority to permit gambling on Indian reservations. However, the Federal Constitution does not give the states authority to regulate Indian affairs. Congress has authorized gambling on Indian Reservations so long as the gambling is in accord with state law. But that does not mean that the State can single out Indians and give them special privileges that others citizens of the State cannot also enjoy.

The State must treat all citizens equally. Therefore, any amendment to the State Constitution that singles out Indians and grants them special privileges is on its face unconstitutional.

If the Legislature is to put a Constitutional Amendment on the ballot regarding gambling, it should not put another measure on the ballot that is clearly unconstitutional on its face, just as Proposition 5 was. Instead, if the Legislature wants to allow gambling on Indian reservations, then amend the Constitution to provide for gambling anywhere in the State where it is permitted by local authorities. Such an amendment would be racially and ethnically neutral.

Respectfully yours,

JACK ALLEN



September 2, 1999

SCA 11 file

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

The California State Association of Counties (CSAC) would like to convey important considerations regarding the current negotiations involving "Indian Gaming" in the State of California.

First, we applaud your efforts in developing compacts with the Indian tribes in order to address this critical issue facing the State. CSAC understands that the discussions have included consideration for local agency impacts and some level of conformance with regulatory processes in the form of monetary compensation. However, we present the following for your consideration.

We recognize the sovereignty granted the tribes on tribal lands, however, we strongly urge your consideration of a provision which ensures some level of local agency agreement with the tribes attempting to site such facilities. This is extremely important in order to address potential environmental impacts on neighboring communities. The potential proliferation of gaming casinos throughout the State has the potential to impact water availability, air quality, traffic congestion, etc. Just as every other type of development is subject to the California Environmental Quality Act (CEQA), CSAC strongly urges you to consider subjecting such development to similar scrutiny in order to protect the citizens of California.

We greatly appreciate your current efforts and consideration for our concerns in this matter. Please feel free to contact me at your convenience, should you wish to discuss our position further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Szalay', written over the typed name and title.

Steven C. Szalay
Executive Director

SCS/db

SCAN

MEMORANDUM

To: Mr. Speaker
45th Assembly district staff

FROM: Fredericka Moore McGee

RE: Summary of California Supreme Court decision on
Proposition 5
Hotel Employees & Restaurant Employees Int'l Union v. Gray
Davis, as Governor, Frank Lawrence and Eric Cortez v. Gray
Davis, Frank Lawrence

DATE: August 24, 1999

Background:

Prop. 5, as passed by the Californian voters during the November 1998 election, sought to amend only the Government Code. The initiative declared findings that the tribal gaming facilities authorized under Prop. 5 were materially different from the casinos operating in Nevada and New Jersey, because their patrons are offered a wide variety of house-banked games. The initiative also outlined the specific gaming activities that were to be permitted by the passage of the proposition, which included electronic gaming.

On November 20, 1998 both the Hotel Employees and Restaurant Employees International Union and Eric Cortez filed separate petitions for writs of mandate to the California Supreme Court requesting that it grant a stay to prevent the implementation of Proposition 5 based on both California and federal law. The Supreme Court agreed to hear the writ petitions, instead of requiring that the matters first be heard by lower courts, as the issues presented were of "great public importance and must be resolved promptly." After the writs were filed, the tribal-state compacts were disapproved by the Secretary of Interior. This compact would have permitted the use of slot machines and electronic machines with card games such as blackjack and baccarat at Indian casinos.

Former Governor Wilson responded in support of the Union's and Cortez's claims against Prop. 5, however, when Governor Davis assumed office, that

response was withdrawn and a new response was filed which expressed neutrality on the claims and prayer for relief.

Summary of Court Conclusion:

Since the mid-1800s the California Constitution has generally prohibited all lottery and sale of lottery tickets. In 1911 slot machines were specifically prohibited under the Penal Code. However, in 1984 the Constitution was amended to permit lotteries and took the power from the Legislature to authorize any casinos of the type currently operating in Nevada and New Jersey and specifically prohibited such casinos.

In 1987 the U.S. Supreme Court held in California v. Cabazon Band of Mission Indians [480 U.S. 202], that Congress had granted certain state, including California, broad criminal jurisdiction over offenses committed by or against Indians on Indian territory. If the state generally prohibited the activity, then the state law applied. However, if the state simply regulated the activity, the state law did not generally apply.

If a statute is inconsistent with the California Constitution, it is void. Article IV, section 19(e) of the California Constitution states that, "[t]he Legislature has no power to authorize...casinos of the type currently operating in Nevada and New Jersey. The court held that the legislative power can be exercised by the Legislature and is also reserved to the people acting through initiative. As a result, the power of the citizens is also limited through the initiative process as it is a legislative act.

The type of casino being referred to in the language is ambiguous as it could mean the building structure, facilities, or the types of gaming being allowed. The Court found that the type of games being referred to in the 1984 Constitutional amendment referred to the types of gaming activities that were prohibited in California, but permitted in Nevada and New Jersey, such as slot machines and banking card games. The Court also determined that some of the card games (including blackjack) were in fact, banking games and therefore, prohibited. However, the Court did permit card games operated as lotteries. The tribal gaming terminals were also found to be prohibited under California law.

Further, the Court found that federal law did not exempt gambling on Indian lands from state regulatory laws. In fact, the federal Indian Gaming Law at Section 23 states, "all State laws pertaining to licensing, regulation or prohibition of gambling... shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State."

Lastly, the Court found the last sentence of Government Code section 98005 (the state's waiver of immunity from suit in disputes arising out of negotiations for new and amended tribe-state compacts other than the measure's model compact) to be valid and separable from the unconstitutional portions of the initiative. The provision in essence the state gave consent to be sued in actions regarding future tribe-state compacts and those matters will be within the jurisdiction of the federal courts.

Justice J. Kennard wrote a dissenting opinion reasoning that federal law, not state law, authorizes Indian gambling by encouraging tribes to enter into compacts with states to address gambling on Indian land. Justice Kennard was the sole dissenter.



SCAN

United States Attorney
Central District of California

(213) 894-4600

1200 United States Courthouse
112 North Spring Street
Los Angeles, California 90012

September 2, 1999

To The Counsel On The
Annexed Service Lists

Dear Counsel:

I write on behalf of the four United States Attorneys in California and the Department of Justice concerning Indian gaming in California in the wake of the California Supreme Court's recent decision invalidating Proposition 5.

We are aware that the State is in the process of attempting to negotiate compacts with tribes that currently do not have compacts. We understand that such compacts would not become effective unless the voters ratify the gaming at issue in an amendment to the State constitution in March 2000.

In light of the foregoing, the Department of Justice will not proceed with enforcement actions against tribes that enter into provisional compacts with the state before October 13, 1999 (the date on which the Ninth Circuit stay expires in the Central District of California's enforcement actions), as long as the tribes do not expand their current gaming or initiate uncompact Class III gaming. Our deferral of enforcement will extend until March 2000.

Tribes that do not enter into compacts with the State prior to October 13, 1999 must cease all uncompact gaming or be subject to appropriate enforcement action.

The four United States Attorneys in California and other representatives of the Department of Justice are available to meet with you to discuss issues or questions that you may have. If you are interested in doing so, please contact me at the following telephone number: (213) 894-4600.

Very truly yours,

ALEJANDRO N. MAYORKAS
United States Attorney