

OFFICE OF THE GOVERNOR

May 13, 2005

Via Facsimile (916) 978-6099 & U.S. Mail

Mr. Clay Gregory, Regional Director  
Bureau of Indian Affairs  
Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825

Re: Scotts Valley Band of Pomo Indians Land Acquisition Application

Dear Mr. Gregory:

Thank you for granting our request for an extension of time to comment on the proposed acquisition of land in Contra Costa County, California, by the Bureau of Indian Affairs (BIA) in trust for the benefit of the Scotts Valley Band of Pomo Indians. I write to express Governor Schwarzenegger's firm opposition to this land acquisition.

The Governor's reasons for opposing this acquisition are two-fold. First, during the campaign to pass Proposition 1A, the initiative that amended the California Constitution to permit Indian tribes to conduct class III gaming on Indian lands, the People of the State were assured that a vote in favor of passage would not lead to wide-spread Indian gaming in urban areas. The following text appeared in Proposition 1A's ballot argument, a copy of which is enclosed to this letter for your reference.

"Proposition 1A and federal law generally limit Indian gaming to tribal land. The claim that casinos could be built anywhere is totally false." Carl Olson, former federal field investigator, National Indian Gaming Commission.

"The majority of Indian Tribes are located on remote reservations and the fact is their markets will only support a limited number of machines." Bruce Stromborn, economist and author of the only comprehensive economic impact study of Indian gaming in California.

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Ballot Pamphlet, Primary Election (March 7, 2000) rebuttal to argument against Proposition 1A, p. 7.<sup>1</sup>

As recently as April 5, 2005, in testimony before the Senate Committee on Indian Affairs, the principal spokesperson for the proponents of Proposition 5 and Proposition 1A, Mark Macarro, Chairman of the Temecula Band of Luiseno Mission Indians of the Pechanga Reservation, located in Riverside County, California, acknowledged that Proposition 1A was never intended to result in Indian gaming in urban locales. In support of legislation that would require the Lytton Band of Pomo Indians to submit land in San Pablo, California, to the post-1988 gaming land acquisition requirements of 25 U.S.C. § 2719, Chairman Macarro provided the following testimony:

The other reason we support this legislation is that it will reverse an action which violates a promise that all California Indian tribes made to the citizens of California when propositions 5 and 1A were considered and approved: During the time those propositions were considered, tribes in California pledged that the passage of those propositions would not result in the proliferation of urban gaming, but would be confined to a tribe's existing reservation lands, the vast majority of which are not located in urban areas.

Testimony of Mark Macarro, Oversight Hearing Before the Senate Committee on Indian Affairs on S. 113, a bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust, Tuesday, April 5, 2005; see also *Proposition 5 Stakes are High, Indian Gaming: Tribal Interests, Gambling Revenues Ride on Political Wheel of Fortune*, San Jose Mercury News (August 31, 1998) (describing the Proposition 5 campaign); *Gambling Battle Quieter, Cheaper Prop. 1A Ad Gives Incomplete Picture*, Fresno Bee, (Jan. 15, 2000) (describing the Proposition 1A campaign) (copies attached). It is indisputable that the purpose of Proposition 1A was to create a limited exception to the State's general public policy prohibiting casino-style gaming, and to allow "remote" Indian tribes an opportunity for economic and governmental advancement. Proposition 1A was never intended to expose the most populous areas of the State to the harmful effects of casino-style gaming.

Although the voters of the State were led to believe that fears of urban Indian gaming were little more than baseless paranoia, only nine months following passage of Proposition 1A, in December 2000, Congress passed, and President Clinton signed into law, the Omnibus Indian Advancement Act of 2000 (PL 106-568, 14 Stat. 2868, December 27, 2000), which established an Indian reservation for the Lytton Band of Pomo Indians in San Pablo, California, also in the heart of the San Francisco Bay Area, and which required the State to negotiate a gaming compact with the Lytton Band without the benefit of withholding gubernatorial concurrence under section 2719. Now, the Scotts Valley, Gudiville, and Lower Lake Tribes,

<sup>1</sup> In *Hotel Employees and Restaurant Employees International Union v. Davis*, the California Supreme Court noted that Proposition 5's proponents also contended that tribal gaming in California would differ from the archetypical Nevada or New Jersey casino-style gaming in that "tribal casinos will not be clustered together in an urban 'strip.'" *Hotel Employees and Restaurant Employees Intern. Union v. Davis*, 21 Cal.4th 585, 609 (1999) [striking down as unconstitutional Proposition 5, the statutory tribal gaming initiative that preceded Proposition 1A].

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among others, have proposals for Bay Area casino projects at various stages of development. Allowing any of these proposals to proceed would offend the State's public policy, would betray the California electorate's good faith, and would subvert the notions of cooperative federalism that lie at the heart of the Indian Gaming Regulatory Act (IGRA) of 1988. See *Artichoke Joe's v. Norton*, 353 F.3d 712, 715 (9<sup>th</sup> Cir. 2003) ("IGRA is an example of 'cooperative federalism' in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme.").

This proposed land acquisition, if approved, will also undermine the constitutionality of California's Indian gaming regime. As you may be aware, the State has successfully defended a challenge to the constitutionality of Proposition 1A, which challenge alleged that California violated the Equal Protection Clause of the United States Constitution when it permitted Indian tribes to conduct class III gaming on Indian lands, to the exclusion of all others. *Artichoke Joe's, supra*, 353 F.3d at 731. In upholding Proposition 1A, the Ninth Circuit Court of Appeals relied upon the State's restriction of tribal gaming "to carefully limited locations" as a reasonable means of serving the State's interest in protecting the public health, safety, welfare, and good order.

California's exception of operations on tribal lands from its long-standing prohibition on class III gaming passes constitutional muster. Before Proposition 1A was ratified, California absolutely banned casino-style gaming. See *Hotel Employees*, 88 Cal Rptr.2d 56, 981 P.2d at 996 (tracing the history of California's gambling prohibitions back to 1849). Thus, its regulation of gambling does not involve the State's attaching a "vice" label to an activity without a corresponding prohibition. See *44 Liquormart*, 517 U.S. at 514, 116 S.Ct. 1495. California has expressed its legislative judgment that "[u]nregulated gambling enterprises are inimical to the public health, safety, welfare, and good order." Cal. Bus. & Prof. Code § 19801(e)(1). By limiting class III gaming to tribal lands, Proposition 1A, and the compacts negotiated pursuant to it, foster California's "legitimate sovereign interest in regulating the growth of Class III gaming activities in California." Tribal-State Compact, pmbl. F.

Further, limiting class III gaming operations to those run by tribes is reasonably designed to defend against the criminal infiltration of gaming operations. By restricting large-scale gambling enterprises to carefully limited locations, California furthers its purpose of ensuring that such gaming activities "are free from criminal and other undesirable elements." *Id.*

Thus, a rational basis exists for California's decision to restrict class III gaming operations to those conducted by Indian tribes on their own lands. California could, of course, pursue these interests even more effectively by banning class III gaming altogether. However, as discussed above, rational-basis review does not require states to choose an all-or-nothing approach. It requires only that the means chosen are reasonable.

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*Artichoke Joe's, supra*, 353 F.3d at 740. Proposals like the Scotts Valley Tribe's will erode the State's legal basis for distinguishing between Indian and non-Indian gaming, because the State's interest in protecting the public health, safety, welfare and good order will no longer be served by the careful limitation of casinos to remote Indian lands.

Governor Schwarzenegger and California's Indian tribes are making great strides towards establishing a long-term, stable relationship on gaming matters. By granting the Scotts Valley application, the Bureau of Indian Affairs would undermine either the legality of Indian gaming in California, or the monopoly position that tribes now enjoy. While the Scotts Valley Tribe may be well-served by the proposed acquisition, the State, and all other tribes would be harmed.<sup>2</sup>

The Governor urges the Bureau of Indian Affairs and the Secretary of the Interior to exercise its discretion to reject the Scotts Valley trust application, and all other similar acquisitions.

Sincerely,



PETER SIGONS  
Legal Affairs Secretary

cc: The Honorable Gale Norton, Secretary, U.S. Department of the Interior  
The Honorable John McCain, U.S. Senate, Chairman, Committee on Indian Affairs  
The Honorable Daniel Inouye, U.S. Senate, Member, Committee on Indian Affairs

Enclosures

<sup>2</sup> Because most tribal-state gaming compacts executed by the State of California contain provisions for the sharing of gaming revenue with all non-gaming tribes, Indian gaming in California benefits all signatory and non-signatory tribes.



1A

## Gambling on Tribal Lands. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

### GAMBLING ON TRIBAL LANDS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Modifies state Constitution's prohibition against casinos and lotteries, to authorize Governor to negotiate compacts, subject to legislative ratification, for the operation of slot machines, lottery games, and banking and percentage card games by federally recognized Indian tribes on Indian lands in California, in accordance with federal law.
- Authorizes slot machines, lottery games, and banking and percentage card games to be conducted and operated on tribal lands subject to the compacts.

#### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Uncertain fiscal effect on state and local tax revenues ranging from minor impact to significant annual increases.
- State license fees of tens of millions of dollars each year available for gambling-related costs and other programs.

#### Final Votes Cast by the Legislature on SCA 11 (Proposition 1A)

Assembly: Ayes 75  
          Noes 4

Senate: Ayes 35  
          Noes 0

#### Analysis by the Legislative Analyst

##### BACKGROUND

##### Gambling in California

The State Constitution and various other state laws limit the types of legal gambling that can occur in California. The State Constitution specifically:

- Authorizes the California State Lottery, but prohibits any other lottery.
- Allows horse racing and wagering on the result of races.
- Allows bingo for charitable purposes (regulated by cities and counties).
- Prohibits Nevada- and New Jersey-type casinos.

Other state laws specifically prohibit the operation of slot machines and other gambling devices (such as roulette). With regard to card games, state law prohibits: (1) several specific card games (such as twenty-one), (2) "banked" games (where the house has a stake in the outcome of the game), and (3) "percentage" games (where the house collects a given share of the amount wagered).

State law allows card rooms, which can operate any card game not otherwise prohibited. Typically, card room players pay a fee on a per hand or per hour basis to play the games.

##### Gambling on Indian Land

Gambling on Indian lands is regulated by the 1988 federal Indian Gaming Regulatory Act (IGRA). The IGRA defines gambling under three classes:

- *Class I* gambling includes social games and traditional/ceremonial games. An Indian tribe can offer Class I games without restriction.
- *Class II* gambling includes bingo and certain card games.

Class II gambling, however, specifically *excludes* all banked card games. An Indian tribe can offer only the Class II games that are permitted elsewhere in the state.

- *Class III* gambling includes all other forms of gambling such as banked card games (including twenty-one and baccarat), virtually all video or electronic games, slot machines, parimutuel horse race wagering, most forms of lotteries, and craps.

An Indian tribe can operate Class III games only if the tribe and the state have agreed to a tribal-state compact that allows such games. The compact can also include items such as regulatory responsibilities, facility operation guidelines, and licensing requirements. After the state and tribe have reached agreement, the federal government must approve the compact before it is valid.

##### Gambling on Indian Lands in California

According to the federal Bureau of Indian Affairs, there are over 100 Indian rancherias/reservations in California. Currently, there are about 40 Indian gambling operations in California, which offer a variety of gambling activities.

In the past two years there have been several important developments with regard to Indian gambling in California:

- *April 1988.* The Governor concluded negotiations with the Pala Band of Mission Indians to permit a specific type of Class III gambling on tribal land. The compact resulting from these negotiations—the "Pala" Compact—was subsequently signed by 10 other tribes. These 11 compacts were approved in legislation in August 1988.

P2000

- **November 1998.** State voters approved the Tribal Government Gaming and Economic Self-Sufficiency Act—Proposition 5. The proposition, which amended state law but not the State Constitution, required the state to enter into a specific compact with Indian tribes to allow certain Class III gambling activities.
- **November 1998.** A referendum on the August 1998 legislation approving the 11 Pala compacts qualified for this ballot (Proposition 29). Once qualified, this legislation was put "on hold" pending the outcome of the vote on Proposition 29.
- **August 1999.** Proposition 5 was ruled unconstitutional by the State Supreme Court on the basis that the measure would permit the operation of Nevada- and New Jersey-type casinos.
- **September 1999.** The Governor negotiated and the Legislature approved compacts with 57 tribes—including the tribes that signed the Pala compacts authorizing certain Class III games. These take the place of all previously approved compacts, including the Pala compacts. These new compacts, however, will become effective only if (1) this proposition is approved and (2) the federal government approves the compacts.

### PROPOSAL

This proposition amends the State Constitution to permit Indian tribes to conduct and operate slot machines, lottery games, and banked and percentage card games on Indian land. These gambling activities could only occur if (1) the Governor and an Indian tribe reach agreement on a compact, (2) the Legislature approves the compact, and (3) the federal government approves the compact. (Although this proposition authorizes lottery games, Indian tribes can currently operate lottery games—subject to a gambling compact. This is because the State Constitution permits the State Lottery, and Indian tribes can operate any games already permitted in the state.)

As discussed above, the Governor and the Legislature have approved virtually identical tribal-state compacts with 57 Indian tribes in California. If this proposition is approved, those compacts would go into effect if approved by the federal government. (See Figure 1 for a brief description of these compacts' major provisions.)

### FISCAL EFFECT

#### State and Local Revenue Impact

This measure would likely result in an increase in economic activity in California. The magnitude of the increase would depend primarily on (1) the extent to which tribal gambling operations expand and (2) the degree to which new gambling activity in California is from spending diverted from Nevada and other out-of-state sources (as compared to spending diverted from other California activities).

While the measure would likely result in additional economic activity in California, its impact on state and local revenues is less clear. This is because, as sovereign governments, tribal businesses and members are exempt from certain forms of taxation. For example, profits earned by gambling activities on tribal lands would not be subject to state corporate taxes. In addition, gambling on tribal lands is not subject to wagering taxes that are currently levied on other forms of gambling in California (horse race wagers, card rooms, and the Lottery). Finally, wages paid to tribal members employed by the gambling operation and living on Indian land would not be subject to personal income taxes.

Even with these exemptions, tribal operations still generate tax revenues. For example, wages paid to nontribal employees of the operations are subject to income taxation. In addition,

certain nongambling transactions related to the operations are subject to state and local sales and use taxes. However, on average, each dollar spent in tribal operations generates less tax revenue than an equivalent dollar spent in other areas of the California economy.

Given these factors, the net impact of this measure on state and local government revenues is uncertain. For example, revenues could increase significantly if the measure were to result in a large expansion in gambling operations and a large portion of the new gambling was spending that would have otherwise occurred outside of California (such as in Nevada). On the other hand, if the expansion of gambling were relatively limited or if most of the new gambling represented spending diverted from other areas in the state's economy that are subject to taxation, the fiscal impact would not be significant.

#### Other Governmental Fiscal Impacts

The measure could result in a number of other state and local fiscal impacts, including: regulatory costs, an increase in law enforcement costs, potential savings in welfare assistance payments, and an increase in local infrastructure costs. We cannot estimate the magnitude of these impacts.

Passage of this proposition would result in the implementation of tribal-state compacts approved in September 1999—assuming these compacts are approved by the federal government. Under those compacts, the tribes would pay license fees to the state totaling tens of millions of dollars annually. The state could spend this money on Indian gambling regulatory costs, other gambling-related costs, and other purposes (as determined by the Legislature):

Figure 1

### September 1999 Compacts That Could Go Into Effect If Proposition 1A Passes

#### Major Provisions

- Slot Machines**
  - The compacts allow each tribe at least 350 slot machines.
  - Tribes may pay for licenses for additional machines, but generally may not operate more than 2,000 machines.
- Revenue Sharing Trust Fund**
  - Tribes will make quarterly payments into this fund based on the number of licensed slot machines they operate. The money will be used to provide annual payments to noncompact tribes and those tribes operating fewer than 350 machines. These payments could be up to \$1.1 million per tribe per year.
- Special Distribution Fund**
  - Tribes will make quarterly payments into this state fund (beginning in 2002) based on the number of machines they were operating as of September 1, 1999.
  - The Legislature could spend monies from the fund for the following statewide purposes: (1) grants for programs to address gambling addiction, (2) grants to the state and local governments affected by tribal gaming, (3) reimbursements of state regulatory costs, (4) payment of shortfalls in the Revenue Sharing Trust Fund, and (5) other purposes specified by the Legislature.
- Banked and Percentage Card Games**
  - The compact places no limit on the types or quantity of card games tribes could offer.
- Other Provisions**
  - The compacts authorize casino workers to unionize.
  - They set the age for gambling in Indian casinos at 18.

For text of Proposition 1A see page 90



## Gambling on Tribal Lands. Legislative Constitutional Amendment.

### Argument in Favor of Proposition 1A

#### VOTE YES ON PROP 1A AND ENSURE THAT INDIAN SELF-RELIANCE IS PROTECTED ONCE AND FOR ALL

As tribal leaders of California Indian Tribes, we have seen first-hand the transformation that Indian gaming has made in the lives of our people. Indian gaming on tribal lands has replaced welfare with work, despair with hope and dependency with self-reliance.

We are asking you to vote YES on Proposition 1A so we can keep the gaming we have on our reservations. We thank you for your past support and need your help now to protect Indian self-reliance once and for all.

We are joined by a vast majority of California's Indian Tribes that support Prop 1A, including the 59 Tribes who signed gaming compacts with Governor Davis.

For the past several years, a political dispute has threatened to shut down Indian casinos in California. To resolve this dispute, California's Indian Tribes asked voters last year to approve Proposition 5, the Indian Self-Reliance Initiative. With your help, Proposition 5 won overwhelmingly with 63 percent of the vote.

But big Nevada casinos that wanted to kill competition from California's Indian Tribes filed a lawsuit, and Prop 5 was overturned and ruled unconstitutional on a legal technicality.

So Prop 1A has been put on the March ballot to resolve this technicality and establish clearly that Indian gaming on tribal lands is legal in California.

For more than a decade, Indian casinos in California have provided education, housing and healthcare for Indian people, as well as jobs that have taken Indians off welfare. Today Indian gaming on tribal lands benefits all Californians by providing nearly 50,000 jobs for Indians and non-Indians and producing \$120 million annually in state and local taxes. After

generations of poverty, despair and dependency, there is hope. On reservations with casinos, unemployment has dropped nearly 50%; welfare has been cut by 88% and, in some cases, eliminated entirely.

#### Proposition 1A:

- Is a simple constitutional measure that allows Indian gaming in California. It protects Indian self-reliance by finally providing clear legal authority for Indian Tribes to conduct specified gaming activities on tribal lands.
- Shares Indian gaming revenues with non-gaming Tribes for use in education, housing, health care and other vitally needed services.
- Provides revenues for local communities near Indian casinos, for programs for gambling addiction and for state regulatory costs.
- Provides for tribal cooperation with local governments and for tribal environmental compliance.

If Proposition 1A fails, tribal gaming would face being shut down. This would be devastating for California Indian Tribes—and bad for California's taxpayers.

We are asking voters to protect Indian gaming on tribal land, so that we can preserve the only option most Tribes have to get our people off welfare. We are asking you to let us take care of ourselves and pay our own way. We urge you to vote YES on Proposition 1A.

#### ANTHONY PICO

*Tribal Chairman, Viejas Band of Kumeyaay Indians*

#### PAULA LORENZO

*Tribal Chairperson, Kumey Indian Rancheria*

#### MARK MACARRO

*Tribal Chairman, Pechanga Band of Luiseno Indians*

### Rebuttal to Argument in Favor of Proposition 1A

Proposition 1A is *not* about keeping tribal casinos open. It's about slot machines. Up to 100,000 of them.

Federal law says Indian casinos can offer any game that's legal anywhere in their state. Bingo, poker, lotteries, betting on horses . . . all legal here. Defeat of Proposition 1A won't change that. But they want video slot machines, the "crack cocaine" of gambling, which our Constitution prohibits.

More slot machines than the whole Las Vegas Strip. And blackjack. Games that have always been illegal in California.

Some tribes violated state and Federal law and brought in illegal slot machines.

Those illegal machines have made a few small tribes extremely rich . . . and they poured over \$75 million dollars into political campaigns in 1998! Over \$21 million of that came from the three tribes that signed Proposition 1A's argument—with only 830 total members on their reservations!

Proposition 1A would let Indian casinos operate as many as 100,000 slot machines, according to California's independent Legislative Analyst. 107 tribes, each entitled to run two casinos,

paying no state or Federal taxes on annual profits conservatively estimated between \$3.9 billion and \$8.2 billion—almost all from Californians.

Despite 1A's supporters' claims, Proposition 5 wasn't overturned by Nevada casinos on a "technicality." It was overturned by our *Supreme Court* because it violated California's *CONSTITUTION*. (So now they want to amend our Constitution!).

And Nevada? Nevada gambling companies are already being hired to run huge casinos that Proposition 1A will create.

Preserve our Constitution. **VOTE NO ON PROPOSITION 1A.**

#### BRUCE THOMPSON

*Member, California Assembly*

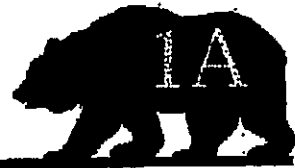
#### LEO MCCARTHY

*Former Lieutenant Governor of California*

#### MELANIE MORGAN

*Recovering Gambling Addict*

# Gambling on Tribal Lands. Legislative Constitutional Amendment.



## Argument Against Proposition 1A

Proposition 1A and the Governor's compact with gambling tribes will trigger a massive explosion of gambling in California.

Supporters call it a "modest" increase. Let's see just how "modest."

- Allows 214 casinos, TWO for every tribe.
- Slot machines in California could jump to some 50,000-100,000.
- In 2003, tribes can negotiate another increase.
- Slot machines provide 80% of all casino revenues.
- 18-year-olds are not prohibited from casino gambling.
- Legalizes Nevada-style card games not allowed in California.
- Indian casinos will pay no state or federal corporation taxes.
- Felons can be hired to run tribal casinos.
- Local governments and citizens get no input on size or location.

Casinos won't be limited to remote locations. Indian tribes are already buying up prime property for casinos in our towns and cities. And they're bringing in Nevada gambling interests to build and run their casinos.

Now California card clubs and racetracks are demanding the right to expand their gambling to keep pace: telephone and computer betting from home, slot machines, blackjack and more. If 1A passes, they'll be next in line.

This is our last, best chance to avoid the Golden State becoming the casino state. Vote no on Proposition 1A.

**BRUCE THOMPSON**  
*Member, California State Assembly*

A report funded by Congress reveals there are 5.5 million adult pathological or problem gamblers in this country, with another 15 million "at risk." About 700,000 pathological and problem gamblers live in California, with another 1.8 million

"at risk." That doesn't include a large number of teenage gamblers.

Experts tell us "Pathological gamblers engage in destructive behaviors, commit crimes, run up large debts, damage relationships with family and friends, and they kill themselves."

Proposition 1A would dramatically increase—probably double—this seriously troubled population by legalizing perhaps 50,000 to 100,000 slot machines, including interactive video games, the "crack cocaine" of gambling. These video slot machines very rapidly turn potential problem gamblers into pathological ones, warn treatment professionals.

California taxpayers will pay many millions in law enforcement costs and in health and welfare aid to troubled gamblers and their families.

Proposition 1A makes us another Nevada, virtually overnight. Do we really want that?

**LEO McCARTHY**  
*Former Lieutenant Governor of California*

Addiction isn't something we like to talk about. It's a silent disease that devastates your family, ruins friendships and destroys you personally and financially. Like hundreds of thousands of women, I know from bitter experience the dark side of gambling.

I know that the closer the opportunity to gamble is, the easier it is, the more likely you are to fall into its trap. This isn't about chances in a church drawing. It's about losing your house payment, rent money or child's college fund, and lying and cheating to get more so you can try to win it back. It's about bankruptcy, divorce, domestic violence and suicide.

Proposition 1A puts gambling casinos right in everyone's backyard, where they could profit from \$1 billion to \$3 billion per year, much of it from weak and vulnerable gambling addicts.

I know. I was one. Please, vote NO on 1A.

**MELANIE MORGAN**  
*Recovering Gambling Addict*

## Rebuttal to Argument Against Proposition 1A

Opponents to Prop 1A are using the same misleading scare tactics they tried against Prop 5 in 1998. Their arguments are just as false now as they were then.

Prop 1A

- Supports Indian self-reliance by **ALLOWING TRIBES TO RUN REGULATED GAMING ON TRIBAL LAND** and with the same types of games that exist today.
- **PRESERVES MORE THAN \$120 MILLION ANNUALLY IN STATE AND LOCAL TAXES** generated by Indian gaming.
- **SHARES MILLIONS OF DOLLARS** in gaming revenues **WITH TRIBES THAT DON'T HAVE GAMING**, to fund health care, education, care for elders, and other vitally needed programs.
- **PROVIDES REVENUE FOR LOCAL GOVERNMENT AGENCIES AND PROBLEM GAMBLING PROGRAMS.**

"Proposition 1A and federal law strictly limit Indian gaming to tribal land. The claim that casinos could be built anywhere is totally false."

Carl Olson, former federal field investigator, National Indian Gaming Commission

"The majority of Indian Tribes are located on remote reservations and the fact is their markets will only support a limited number of machines."

Bruce Stromborn, economist and author of the only comprehensive economic impact study of Indian gaming in California.

California voters, our Governor, the State Legislature and nearly all of California Indian Tribes support Prop 1A. Vote YES on Prop 1A to allow California Indian Tribes to continue on the path to self-reliance and for Indian gaming to benefit California taxpayers.

For more information on why claims against Prop 1A are false and misleading, call 1-800-248-2652 or visit our website at [Yeson1A.net](http://Yeson1A.net).

**CAROLE GOLDBERG**  
*Professor of Law and American Indian Studies*  
**JEFF SHDIVEC**  
*President, California State Firefighters Association*  
**ANTHONY FICO**  
*Chairman, Californians For Indian Self-Reliance*



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Section: Front

## PROPOSITION 5 STAKES ARE HIGH INDIAN GAMING: TRIBAL INTERESTS, GAMBLING REVENUES RIDE ON POLITICAL WHEEL OF FORTUNE.

BRANDON BAILEY, Mercury News Staff Writer

The television ads have been running all summer:

One spot shows a garish casino rising in a suburban neighborhood, to the dismay of actors portraying a young couple out for a stroll. In another, a young tribal chairman complains that out-of-state interests are funding a dishonest, anti-Indian campaign.

While most fall campaigns are just getting started, this one's already in high gear. And at the rate both sides are spending, Californians will hear countless more claims and countercharges before they vote Nov. 3 on Proposition 5, the Indian gambling measure.

Why? California gamblers -- most of them non-Indians -- dropped more than \$1.4 billion last year at tribal casinos in this state. And after years of court battles with officials who contend the casinos are illegal, a group of tribes is hoping voters will settle the dispute.

Proposition 5 would change state law to specifically authorize Indian casinos like the ones that exist now: with video slots, card games and some off-track betting. Opponents say it would lead to more gambling in the state, although backers of the measure say that's not their intent. It would clear away obstacles for more tribes to enter the business. But it doesn't provide as much regulation as state officials would like.

With annual profits topping \$630 million, the tribes sponsoring Proposition 5 say their casinos represent political independence and financial salvation for a long-impooverished and often-abused minority group.

On the other side is a broad coalition of folks who normally wouldn't be caught sitting next to each other: anti-gambling groups and Nevada casino operators, along with powerful unions and Republican Gov. Pete Wilson. Some fear the social costs of legalized gambling; others just don't like the competition.

For the Indians, it's a matter of freedom to pursue their economic interests. To the opponents, it's a question of whether California should allow more gambling -- and how to regulate the betting that's already taking place.

### Indian 'lifblood'

"Indian gaming is our lifblood," said Mary Ann Martin Andreas, chairwoman of the Morongo band, which runs a casino in Riverside County. "If we don't maintain our existing gaming, we lose the economic engine that has significantly reduced unemployment (and) taken Indians off welfare."

California's 105 tribes are relatively small and scattered, with just 55,000 members living on mostly remote reservations called rancherias. About 40 have casinos now. And many tribal leaders say gambling is their best hope for reversing the high rates of unemployment, under-education, alcoholism and other problems suffered through

decades of discrimination and neglect.

As evidence of what gambling can do, they point to new housing, sewage systems, fire engines, after-school programs and even non-gambling businesses financed with the help of casino revenue.

Federal law says Indian tribes have a right to conduct gambling on their reservations, but they are limited to the kinds of games permitted in each state. And for years, California tribes have feuded with Wilson and other officials over what kinds of games are allowed.

Though he has long opposed the Indian casinos, the governor started talks in 1996 with the Pala tribe of San Diego County, in hopes of producing an agreement that could be a model for the state. In April, Wilson and the Palas signed a pact that limits how many electronic games each tribe can have in its casino. It also forces them to replace their lucrative slot machines with games modeled on the state lottery, which Indians fear will be less profitable.

State legislators ratified the agreement last week. But a number of tribes denounced the pact, saying it violated their status as "sovereign nations" under federal law.

"The Wilson compact seeks to undermine (federal law) by taking away tribal economic development, tribal self-sufficiency and strong tribal government," charged Richard Milanovich, chairman of the Agua Caliente band.

But if most California tribes feel Wilson's terms are too restrictive, a handful have signed agreements based on the Pala model. And a few Indian leaders say Proposition 5 doesn't provide enough regulation to protect workers, casino patrons and surrounding communities.

"Ultimately, we believe the failure to offer such protections unnecessarily tarnishes the fair and decent reputation of gaming tribes," said Paula Lorenzo of the tiny Rumsey band, which has a casino outside Sacramento.

#### Exaggerated ads

The issues of regulation and growth have prompted exaggerated claims on both sides of the Proposition 5 campaign.

Indians backing the measure say their casinos are already more regulated than other forms of gambling, since they are subject to tribal government rules, state criminal law and the federal Indian Gaming Regulatory Act. Pechanga tribal Chairman Mark Macarro raises that point in one TV ad.

But critics note that California tribes have resisted state gambling oversight by invoking sovereign status. And some federal officials say the National Indian Gaming Commission, which is supposed to enforce the federal rules, is understaffed and relatively toothless.

Some of the smaller Indian casinos have had problems: internal theft, disputes over profits, even infiltration by organized crime. Tribes say they've learned from experience and taken steps to keep their operations clean.

In their own television ads, opponents have charged that Proposition 5 would lead to a great deal more gambling in California.

While the measure contains no limits on size or number of casinos, tribes say future expansion will be kept at reasonable levels by market forces -- and the fact that most Indian lands are far from major cities.

Opponents warn that a tribe only needs permission of "two politicians" to buy land and build a casino in an urban area. But the opponents' ads don't explain that the politicians in question are the governor and the U.S. secretary of the interior. According to a spokesman for the U.S. Bureau of Indian Affairs, such approval is rare.

Some experts, however, predict the initiative could lead to more non-Indian gambling in the state.

Essentially, the ballot measure would let tribal casinos continue with the games they have now -- provided winners are paid from a pool consisting of players' wagers.

If voters permit those games, the state's non-Indian card clubs and horse-racing tracks will lobby hard for the same permission, to remain competitive, said Whittier law Professor Nelson Rose, who studies and sometimes consults for the gambling industry.

"It will lead to much more gambling in California," he predicted.

Some initiative opponents, including the governor, contend that gambling is a threat to the character of California communities.

Labor raps exemptions

Some of their allies have other concerns.

Labor leaders say they oppose Proposition 5 primarily because it preserves the tribes' exemption from state worker protection and collective bargaining rules.

Nevada casinos, meanwhile, are unhappy about the prospect of more competition in the Golden State.

Analysts with Bear Stearns Inc. and BancAmerica Robertson Stephens have estimated Proposition 5 would cost Nevada corporations several hundred million dollars in annual revenue from California bettors who would no longer see a need to leave the state.

Nevada interests have been the biggest financial sponsors of the campaign against Proposition 5, along with several of California's non-Indian cardrooms.

That's strange comfort to grass-roots activists like Sacramento-area resident Patty Neifer, who has fought cardrooms in her community and now leads a group opposed to Proposition 5.

"I really don't mind having allies against gambling expansion," said Neifer. Still, she conceded, "it does make a strange alliance."

Photos (2)

PHOTO IN FAVOR(box) In an ad promoting Proposition 5, a young tribal chairman complains that out-of-state interests are funding a dishonest, anti-Indian campaign. (Scene from TV ad)(980831 FR 1A 1) PHOTO AGAINST(box) In an ad designed to oppose Proposition 5, a casino rises in a suburban neighborhood to the dismay of actors portraying a young couple. (Scene from TV ad)(980831 FR 1A 2)

ELECTION '98 RELATED STORY: PAGE 12A

— INDEX REFERENCES —

COMPANY: BEAR STEARNS COMPANIES INC .

INDUSTRY: (Entertainment (1EN08); Casinos (1CAR0); Gaming Industry (1GA25))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Nevada (1NE81); California (1CA98))

Language: EN

OTHER INDEXING: (AGUA CALIENTE; BANCAMERICA ROBERTSON STEPHENS; BEAR STEARNS INC; INDIAN; INDIAN GAMING; MORONGO; NATIONAL INDIAN GAMING COMMISSION; PALA; PALAS; PROPOSITION; TV; US BUREAU OF INDIAN) (California; Californians; Essentially; Indians; Labor; Mark Macarrn; Mary Ann Martin Andreas; Neifer; Nelson Rose; Nevada; Patty Neifer; Paula Lorenzo; Pete Wilson; Proposition; Richard Milacovich; Scene; Ultimately; Wilson) (LIS'')

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Section: TELEGRAPH

### GAMBLING BATTLE QUIETER, CHEAPER PROP. 1A AD GIVES INCOMPLETE PICTURE

BEE CAPITOL BUREAU

Proponents of Proposition 1A are airing 60-second TV commercials supporting a measure on the March 7 ballot that would let California Indian tribes offer Nevada-style gambling. Following is a description of the spot and an analysis by The Bee's Capitol Bureau:

Mark Macarro, the pony-tailed chairman of the Pechanga Band of Luiseno Indians of Riverside County, appears wearing blue jeans and a blue shirt with a bola tie. He walks forward and stands next to a tree in front of a dry creek bed and says:

"Last year, California voters overwhelmingly passed Proposition 5, the Indian self-reliance initiative. Indian gaming has transformed the lives of California Indians. Gaming has replaced welfare with work, despair with hope and dependency with self-reliance, and it has allowed us to provide better health care, housing and education for our people.

"Unfortunately, the same big Nevada casinos that wanted to kill competition from Indians were able to overturn Prop. 5 on a technicality. Now, Proposition 1A has been put on the March ballot to resolve this issue and establish once and for all that gaming on our own tribal lands is legal.

"The issue is simple: If Prop. 1A is not passed, Indian casinos in California could be shut down and the jobs and economic benefits they provide will be lost. Please help us take this final step to make Indian self-reliance a reality. Vote yes on Prop. 1A. Thank you."

Analysis: Macarro's statement that gambling has "transformed the lives of California Indians" is somewhat misleading, because only a small fraction of the state's American Indian population belong to the 41 tribes that have casinos. Many of the state's 107 federally recognized tribes will never be able to support casinos because their reservations are geographically remote. Some Indians have become very wealthy, and gambling tribes generally have been able to fund important services for their members.

The statement that Prop. 5 was overturned on a "technicality" is inaccurate. The state Supreme Court ruled that Prop. 5, which was written to allow Indian gambling to continue, was invalid because the California Constitution specifically bans Nevada-style gambling. Indeed, Prop. 1A would amend the Constitution to exempt tribes from that prohibition and let tribes operate casinos.

Macarro does not say that Prop. 1A was put on the ballot by the state Legislature with the support of Gov. Davis, who negotiated side agreements that will require gaming tribes to share revenue with nongaming tribes.

--- INDEX REFERENCES ---

NEWS SUBJECT: (Legal (LE33))

INDUSTRY: (Entertainment (1EN08); Casinos (1CA80); Gaming Industry (1GA25))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Nevada (1NF81); California (1CA98))

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SUPREME COURT; TV) (Davis; GAMBLING BATTLE; INCOMPLETE PICTURE; Macarro; Mark Macarro;  
Prop; Vote)

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