

**Proposition 27:  
Legalize Sports Betting and Revenue for Homelessness Prevention  
Fund Initiative**

Initiative Constitutional Amendment and Statute

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By

**Ismael Perez**

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2023  
B.A., Sociology cum laude, California State University, Sacramento, 2020*

&

**Danielle Diele**

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2024  
B.S., Agricultural Business, California Polytechnic State University, San Luis Obispo, 2019*

## I. EXECUTIVE SUMMARY

Proposition 27, also known as the Legalize Sports Betting and Revenue for Homelessness Prevention Fund Initiative, is an initiative constitutional amendment and statute that would permit online sports gambling from anywhere in the state.<sup>1</sup> The initiative would impose a ten-percent surcharge on all gross receipts from bets placed on online sports gambling and creates a fund to address homelessness.<sup>2</sup> This initiative will allocate eighty-five percent of the funds generated to address homelessness and mental health support. The final fifteen percent will be allocated to non-gaming tribes.<sup>3</sup>

A **YES** vote supports permitting online sports betting in California for people 21 years of age or older, creating and funding a new regulatory body for gaming, imposing a ten-percent tax on online sports betting, and supporting a Fund with the new taxes to allocate money for the homelessness crisis in California.

A **NO** vote supports maintaining existing law and keeping online sports betting illegal in California.

## II. THE LAW

### A. Background

#### 1. *Online Gambling and Sports Gambling; Congress' Suspicion From the Start*

As online gambling rose in popularity with the advent of the web in the 1990s, Congress was worried about the industry being unregulated.<sup>4</sup> Therefore, Congress passed the Unlawful Internet Gambling Enforcement Act in 2006, which made it illegal for a wagering business to accept payment in connection with internet gambling.<sup>5</sup> Congress later softened this outright ban on online gambling so that the government may license, regulate, and tax internet gambling.<sup>6</sup>

Similarly, Congress wanted to set a federal ban on all sports gambling from the outset. The Professional and Amateur Sports Protection Act (PASPA) was enacted in 1992 and banned sports betting.<sup>7</sup> The PASPA makes it unlawful for a State or its subdivisions “to sponsor, operate, advertise, promote, license, or authorize by law or compact ... a lottery, sweepstakes, or other betting, gambling, or wagering scheme based ... on” competitive sporting events.<sup>8</sup>

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<sup>1</sup> Cal. Proposition 27 § 3 (2022).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* § 4, art. 1.

<sup>4</sup> *Gambling*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/gambling> (last visited Oct. 15, 2022).

<sup>5</sup> *See* 31 U.S.C. §§ 5301, 5361–5367 (codifying the Unlawful Internet Gambling Act).

<sup>6</sup> *Gambling*, *supra* note 4.

<sup>7</sup> Commencing with 28 U.S.C. § 3701.

<sup>8</sup> *Id.* § 3702.

## 2. *A Change in the Landscape of Sports Gambling*

Twenty-six years after the outright ban on sports betting, the Supreme Court of the United States considered the constitutionality of PASPA in *Murphy v. NCAA*.<sup>9</sup> In this case, the people of New Jersey had approved legalizing sports gambling by amending the state constitution via an initiative, Public Question 1, in 2011.<sup>10</sup> The Act was quickly challenged by sports leagues like the NCAA for violating PASPA.<sup>11</sup> The state relied on an argument that PASPA violated the Constitution because it limited the state’s lawmaking power and violated the “anti-commandeering” doctrine.<sup>12</sup> The anti-commandeering doctrine is a judicially created doctrine interpreted from the Constitution which establishes that the federal government cannot create any law that forces, or commandeers, a state to adopt or enforce federal law.<sup>13</sup>

The Supreme Court ruled that New Jersey’s state constitutional amendment permitting online sports betting was legal.<sup>14</sup> The Supreme Court reasoned that the federal ban on sports betting, under PASPA, commandeered the states to enforce the federal prohibition on sports betting and therefore was unconstitutional.<sup>15</sup> With that, the federal prohibition of sports betting was overruled, opening the gates for states to permit sports betting.

Now, over thirty-one states permit sports gambling; five of the enabling laws were passed using an initiative measure.<sup>16</sup> Twenty-one of those states also permit online sports gambling.<sup>17</sup>

### B. Existing Law

Chapter 29 of Title 25 of the United States Code, the Indian Gaming Regulation Act (“IGRA”) was enacted in 1988 and permits gambling on Indian Tribal Land.<sup>18</sup> This code divides the type of gaming by class and sets restrictions based on the classification. Class I gaming is defined as “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.” Class I gaming is within the exclusive jurisdiction of Indian Tribes.<sup>19</sup> Class II gaming includes Bingo, games similar to Bingo at the same facility, and card games.<sup>20</sup> Class II gaming is also

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<sup>9</sup> *Murphy v. NCAA*, 138 S.Ct. 1461 (2018).

<sup>10</sup> *Id.* at 1471.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Steven Schwinn, *Symposium: It’s time to abandon anti-commandeering (but don’t count on this Supreme Court to do it)*, SCOTUSBLOG, <https://www.scotusblog.com/2017/08/symposium-time-abandon-anti-commandeering-dont-count-supreme-court/> (Aug. 17, 2017).

<sup>14</sup> *Murphy v. NCAA*, *supra* note 9, at p. 1478.

<sup>15</sup> *Id.*

<sup>16</sup> *California Proposition 27, Legalize Sports Betting and Revenue for Homelessness Prevention Fund (2022)*, BALLOTPEdia, [https://ballotpedia.org/California\\_Proposition\\_27\\_Legalize\\_Sports\\_Betting\\_and\\_Revenue\\_for\\_Homelessness\\_Prevention\\_Fund\\_Initiative\\_\(2022\)](https://ballotpedia.org/California_Proposition_27_Legalize_Sports_Betting_and_Revenue_for_Homelessness_Prevention_Fund_Initiative_(2022)) (last visited Oct. 15, 2022).

<sup>17</sup> Dan Preciado, *States Where Sports Betting is Legal*, FORBES, <https://www.forbes.com/betting/sports-betting/legal-states/> (July 5, 2022).

<sup>18</sup> See 25 U.S.C. §§ 2701–2721 (setting forth all of the regulations and penalties for gambling on tribal lands).

<sup>19</sup> 25 U.S.C. § 2703.

<sup>20</sup> *Id.*

within the jurisdiction of the Indian Tribes, but the card games must be permitted by the State.<sup>21</sup> Lastly, Class III gaming, all other types of gaming that is not Class I or II, requires Native American Tribes to enter Tribal-State Gaming Compacts with states to permit the gambling.<sup>22</sup> Tribal-State Gaming Compacts are agreements which may be entered into between the federally recognized Native American Tribe and the State concerning Class III Gaming and any amendments or other modifications to the agreements. These agreements must be approved by the Secretary of the Interior and published in the Federal Register.<sup>23</sup> The Indian Gaming Regulation Act preempts state regulations of Class I and II gambling—aside from card games—on Indian Tribal Lands, otherwise states can permit or prohibit all other types of gambling in their states as they wish.<sup>24</sup>

Native Americans entered into Tribal-State Gaming Compacts with California in 2000, when Proposition 1A, an initiative constitutional amendment, permitted the negotiation of these compacts.<sup>25</sup> At the time, Governor Gray Davis had already negotiated 57 Tribal-State Gaming Compacts that would permit other types of gambling, but needed the Proposition to pass.<sup>26</sup> The Proposition passed and slot machines, lottery games, and banked and percentage card games were permitted on Tribal land when the Gaming Tribe entered into a Tribal-State Gaming Compact with California. Proposition 1A passed with 64.42% of “YES” votes.<sup>27</sup> Today, there have been a total of 1046 Tribal-State Gaming Compacts nationally, with 189 in California.<sup>28</sup> Many Tribes enter into multiple compacts for their separate casinos and they also make amendments to their compacts.<sup>29</sup>

### C. Path to Ballot

An initiative proposing a constitutional amendment requires the amount of signatures to be equal to at least eight percent of the total votes cast for the office of Governor at the last gubernatorial election.<sup>30</sup> Therefore, the total number of votes required for an initiative constitutional amendment for this election cycle was 997,139.<sup>31</sup>

On August 31, 2021, John J. Moffatt and Kurt Oneto filed the initiative. On May 2, 2022, the campaign submitted 1,568,835 signatures for verification. On June 27, 2022, the office of Secretary of State announced that a random sample of signatures projected that 1,142,317

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<sup>21</sup> 25 U.S.C. § 2703.

<sup>22</sup> *Id.* § 2710.

<sup>23</sup> *Tribal-State Compact Definition*, LAW INSIDER, <https://www.lawinsider.com/dictionary/tribal-state-compact> (last visited on Oct. 15, 2022).

<sup>24</sup> 25 U.S.C. § 2701.

<sup>25</sup> *Ballot Analysis of Proposition 1A (1999)*, LAO, [https://lao.ca.gov/ballot/2000/1A\\_03\\_2000.html](https://lao.ca.gov/ballot/2000/1A_03_2000.html) (last visited on Oct. 15, 2022).

<sup>26</sup> *Id.*

<sup>27</sup> *California Proposition 1A, Gambling on Tribal Lands Amendment (March 2000)*, BALLOTPEDIA, [https://ballotpedia.org/California\\_Proposition\\_1A,\\_Gambling\\_on\\_Tribal\\_Lands\\_Amendment\\_\(March\\_2000\)](https://ballotpedia.org/California_Proposition_1A,_Gambling_on_Tribal_Lands_Amendment_(March_2000)).

<sup>28</sup> *Gaming Compacts*, DEPT. INDIAN AFFAIRS, <https://www.bia.gov/as-ia/oig/gaming-compacts> (last visited on Oct. 15, 2022).

<sup>29</sup> *See id.* (listing all of California’s Tribal-State Compacts).

<sup>30</sup> CAL. CONST., art. II, § 8(b).

<sup>31</sup> *Statewide Initiative Guide*, CAL. SEC. OF STATE 1, 12, <https://elections.cdn.sos.ca.gov/ballot-measures/pdf/statewide-initiative-guide.pdf> (2022).

signatures were valid. Therefore, the initiative constitutional amendment qualified to appear on the ballot at the general election.<sup>32</sup>

To obtain the requisite amount of signatures, sponsors of the initiative spent \$18,815,649.25 with 2022 Campaigns Inc. to qualify this measure for the ballot.<sup>33</sup> The total cost per signature was \$18.87.<sup>34</sup> You can find the verification of the signatures on the Cal Access website provided by the Secretary of State.<sup>35</sup>

#### D. Proposed Law

Proposition 27, the Legalize Sports Betting and Revenue for Homelessness Prevention Fund Initiative, seeks to permit online sports gambling by way of state constitutional amendment and proposes new statutes to regulate online sports gambling and create a new homelessness fund.<sup>36</sup> The proposed law would also create a new regulatory committee to oversee sports betting in California. The full proposition text is a total of 63 pages providing complex language and regulations with a definitions section at the end of the proposed Chapter.

##### 1. *Constitutional Amendments*

###### i. Adds Section 19.5 to Article IV to the California Constitution

Proposition 27 permits a gaming tribe, an online sports betting platform with an operating agreement with a gaming tribe, or a qualified gaming entity with a market access agreement with a gaming tribe to offer online sports betting to persons aged 21 years or older in California.<sup>37</sup> The initiative sets forth that online sports betting is only permitted to be offered/operated as set forth in Chapter 4.7 (commencing with Section 19750) to Division 8 of the California Business and Professions Code—a Chapter this initiative creates.<sup>38</sup> Proposition 27 reiterates that sports betting will remain prohibited on youth sports events.<sup>39</sup> The Proposition further sets forth that the taxes imposed by the new California Business and Professions Chapter shall preempt any and all taxes imposed by the state and local entities on online sports betting operators and their online sports betting revenues.<sup>40</sup> State and local governments may impose taxes on online sports betting operators if it is a general tax on all businesses that does not rely on the classification as a sports betting operator nor imposes additional taxation on online sports betting revenues.<sup>41</sup>

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<sup>32</sup> *Proposition 27, supra* note 16.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *See generally* Cal Access, CA Gov., <https://cal-access.sos.ca.gov/> (last visited on Oct. 15, 2022).

<sup>36</sup> Cal. Proposition 27 § 2 (2022).

<sup>37</sup> Cal. Proposition 27 § 3 (2022).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* § 3(c).

<sup>40</sup> *Id.* § 3(d).

<sup>41</sup> *Id.*

ii. Adds Section 15.5 to Article XIII B in the California Constitution

Proposition 27 prohibits governments from including appropriations of revenues from the Trust Fund created by this Act.<sup>42</sup> Further, it prohibits the adjustment in the appropriations limits pursuant to Section 3 of this Article from the Trust Fund created by this Act or any other fund or account pursuant to that Act.<sup>43</sup>

iii. Adds Sections 23.5 to Article XVI in the California Constitution

This addition just clarifies that the funds created by this Act are different from the taxes imposed by this initiative from “General Fund revenues.”<sup>44</sup> The General Fund is the statewide fund that collects revenues from state taxes. As such, the taxes imposed herein are not subject to subdivisions (a) and (b) of Section 8 to Article XVI and its implementing statutes.<sup>45</sup> That means that the revenues from this Fund would not have to be set aside for public schools, which is required for general revenues and taxes.<sup>46</sup>

2. *Statutory Enactments*

Proposition 27 also adds Chapter 4.7 (commencing with Section 19750) to Division 8 of the California Business and Professions Code, also known as the Online Sports Betting Act.<sup>47</sup> This chapter has a total of 13 Articles codifying the regulations for online sports betting, licensing requirements, and the creation of a fund and commission, amongst other things.

i. Article 1: Creates the Online Sports Betting Trust Fund

Creates the California Online Sports Betting Trust Fund (Fund) to address homelessness and provide funds for non-gaming tribes.<sup>48</sup> Money is deducted from the fund pursuant to paragraph (2) of Section 19751 and to repay the loan authorized by Section 19784.<sup>49</sup> Paragraph (2) of Section 19751 permits reimbursing an auditor for biennial audits up to \$600,000 per audit, to be adjusted with inflation.<sup>50</sup> Section 19784 sets forth that the Division of Online Sports Betting Control will initially take out a \$30 million loan from the General Fund, to be repaid within five years.<sup>51</sup>

Further, this article sets forth that eighty-five percent of the funds remaining will be used to address homelessness and for gambling addiction programs.<sup>52</sup> The funds are to be distributed to cities, counties, and continuums of care according to the formula used under the Homelessness

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<sup>42</sup> Cal. Proposition 27 § 5 (2022).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* § 6.

<sup>45</sup> *Id.*

<sup>46</sup> *See* CAL. CONST., art. 16, § 8 (setting forth the requirements for general tax revenues).

<sup>47</sup> *Id.* § 4.

<sup>48</sup> Cal. Proposition 27 § 4, art. 1 (2022).

<sup>49</sup> *Id.* § 19750 (d).

<sup>50</sup> *Id.* § 19751.

<sup>51</sup> *Id.* art. 9, § 19784.

<sup>52</sup> *Id.* § 19751.

Housing, Assistance, and Prevention program (HHAP), or any successor statute.<sup>53</sup> The funds given to cities, counties, and continuums of care are subject to the same accountability and reporting requirements under HHAP law, or any successor statute.<sup>54</sup> A portion of the money in the account may also be appropriated for mental health treatment programs.<sup>55</sup>

Fifteen percent of the funds are to be allocated to tribes that do not have a tribal operator license, an operating agreement with an online sports betting platform, or a market access agreement with a qualified gaming entity.<sup>56</sup> The funds may also be appropriated to cover the costs incurred by the Division and the Department in carrying out this chapter.<sup>57</sup> The Division is established by article 9 of this Chapter, and is vested with the exclusive power to carry out this Chapter.<sup>58</sup> The Division takes the place of the Attorney General in enforcing the Chapter; although, the Attorney General appoints the Director of this Division and the Director serves at the pleasure of the Attorney General.<sup>59</sup> The Department is defined at the end of this Chapter, in Article 13, as the Department of Justice.<sup>60</sup>

The costs to cover the administration will be appropriated from the Fund in the same proportions as the original allocations; 85% will come from the Homelessness Account and 15% from the Tribal Economic Development Account. Each year, the funds will be appropriated and then distributed to the accounts pursuant to this chapter.<sup>61</sup>

#### ii. Article 2: Protection of Minors and Consumers

Article 2 of this Chapter prohibits anyone under the age of 21 from betting on a sporting event.<sup>62</sup> An online sports betting operator shall use commercially reasonable efforts to verify that a person placing a bet is 21 or older.<sup>63</sup> This Article further provides requirements for consumer protections, such as advertising regulations<sup>64</sup> and a requirement for messages about gambling addiction.<sup>65</sup> The online sports betting operator will face penalties for not adhering to this Article.

#### iii. Article 3: Protection of Sports Integrity

Article 3 of this Chapter sets regulations for online sports operators so as to maintain the integrity of sports betting.<sup>66</sup> Specifically, this article prohibits the online sports betting operator's directors, principal owners, employees, and any of their household members from placing bets

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<sup>53</sup> *Id.*

<sup>54</sup> Cal. Proposition 27 § 4, art. 1 (2022); *see* Subsection II.E. *infra* (discussing HHAP law and its requirements).

<sup>55</sup> *Id.* § 19751.

<sup>56</sup> *Id.* § 19751.5(b)(1).

<sup>57</sup> *Id.* § 19750.

<sup>58</sup> Cal. Proposition 27 art. 9, § 19778 (2022).

<sup>59</sup> *Id.*

<sup>60</sup> Cal. Proposition 27 art. 13, § 19794(g) (2022).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* § 19752.

<sup>63</sup> *Id.* § 19753.

<sup>64</sup> *Id.* § 19755 (requiring an online sports betting operator to use reasonable measures to ensure that advertisements do not target minors or people who are self-excluded from placing bets).

<sup>65</sup> *Id.* § 19753.

<sup>66</sup> Cal. Proposition 27 § 19758, art. 1 (2022).

on their platform.<sup>67</sup> Further, athletes, coaches, referees, and other people associated with sports leagues or teams are prohibited from placing bets on sports online.<sup>68</sup>

This article also requires the online sports betting operator to maintain the security of betting, consumer, and other confidential data.<sup>69</sup> The operators must keep records on all bets placed online.<sup>70</sup> Online sports betting operators are also required to report abnormal betting and other suspicious activity to the Division created by Proposition 27.<sup>71</sup>

#### iv. Article 4: Online Sports Betting Operators

Article 4 of this Chapter permits online sports betting for operators who comply with all licensing requirements set herein.<sup>72</sup> The initial license fee for a tribal operator or online sports betting platform is \$10 million and \$1 million when renewing the license.<sup>73</sup> The initial license fee for a qualified gaming entity operator is \$100 million and \$10 million when renewing the license.<sup>74</sup> Under Article 6, all operators also have to pay \$100,000 for a supplier license, and \$10,000 renewal fee.<sup>75</sup> In order to obtain licensing, the qualified gaming entity must provide copies of an agreement with a gaming tribe.<sup>76</sup> These licensing fees would also go into the Fund.<sup>77</sup>

#### v. Article 5: State of California's Jurisdiction Over Online Sports Betting

Article 5 of this Chapter reiterates that this Act is within the jurisdiction of California.<sup>78</sup> Further, this article clarifies that the jurisdiction of the State does not infringe on the rights granted to federally-recognized tribes.<sup>79</sup>

#### vi. Articles 6–8: Online Sports Betting Suppliers, Key Persons, and Surcharges

Article 6 sets forth that Online Sports Betting suppliers need to obtain a license.<sup>80</sup> Article 7 sets forth that Online Sports Betting Key Persons need to obtain a license.<sup>81</sup> Both of these terms are defined in Article 13 of this Chapter. Article 8 requires tribes and online sports betting operators with sports betting licenses, in accordance with this chapter, to pay ten percent of gross receipts from sports bets to the Fund.<sup>82</sup> The gross receipts includes the funds made from online

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<sup>67</sup> Cal. Proposition 27 § 19758, art. 1 (2022).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* § 19758(d)(1).

<sup>70</sup> *Id.* § 19760.

<sup>71</sup> *Id.* § 19759.

<sup>72</sup> Cal. Proposition 27 § 19762, art. 1 (2022).

<sup>73</sup> *Id.* § 19763.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* art. 6.

<sup>76</sup> *Id.* art. 4, § 19767.

<sup>77</sup> Prop 27, LAO, <https://lao.ca.gov/BallotAnalysis/Proposition?number=27&year=2022> (Nov. 8, 2022).

<sup>78</sup> *Id.* art. 5, § 19769.

<sup>79</sup> *Id.* § 19770.

<sup>80</sup> *Id.* art. 6, § 19771.

<sup>81</sup> *Id.* art. 7, § 19773.

<sup>82</sup> *Id.* art. 8, § 19774.



sports betting minus the funds it paid out as winnings to patrons using online sports betting, all voided debts, and the excise taxes paid pursuant to federal law.<sup>83</sup> The 10% surcharge must be paid electronically monthly.<sup>84</sup>

vii. Articles 9–10: Division of Online Sports Betting Control and The Independent Advisory Committee

The Online Sports Betting Act also creates the Division of Online Sports Betting Control (“Division”)<sup>85</sup> and The Independent Advisory Committee (“Committee”).<sup>86</sup> The Division would take the place of the Attorney General in enforcing the Act. The Attorney General shall appoint a Director of the Division and the Director shall serve at the pleasure of the Attorney General.<sup>87</sup> The Division is permitted to impose fines starting at \$2,500 but not exceeding \$15,000.<sup>88</sup> The Committee shall have 17 members, in which the Governor appoints 4, the Assembly Speaker appoints 3, the Senate President Pro Tempore appoints 3, the Lieutenant Governor appoints 2, the Controller appoints 2, the Treasurer appoints 2, and the Secretary of State appoints 1. No single organization, such as a gaming tribe, qualified gaming entity, law enforcement organization, or public health organization shall have more than one individual appointed to this Committee, although representatives from all of these fields are required.<sup>89</sup> The Committee is to advise and make recommendations on implementing this Chapter to the Division and the Director.<sup>90</sup>

viii. Article 12: Trade Secrets and Personal and Proprietary Information

Article 12 of the Online Sports Betting Act provides that proprietary information, trade secrets, or personal information about any person or entity is not a public record subject to disclosure.<sup>91</sup> The information obtained from licensing applications would be protected and not disclosed to members of the public.

ix. Article 13: Definitions

Article 13 of this Chapter sets forth all of the definitions for this act.<sup>92</sup> This includes definitions for committee, key person, online sports betting, and a qualified gaming entity amongst other definitions.<sup>93</sup>

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<sup>83</sup> Cal. Proposition 27 § 19774, art. 8 (2022).

<sup>84</sup> *Id.*

<sup>85</sup> Cal. Proposition 27 § 19775, art. 9 (2022).

<sup>86</sup> *Id.* art. 10, § 19777.

<sup>87</sup> *Id.* § 19775.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* § 19788.

<sup>91</sup> *Id.* art. 12, § 19792.

<sup>92</sup> *Id.* art. 13, § 19794.

<sup>93</sup> *Id.*

## x. Conflicting and Non-Conflicting Initiative Measures

Section 8 of this Act inputs the language from the California Constitution on conflicting measures and also establishes that this initiative is *not* in conflict with Proposition 26. Rather, this Section states that both initiatives supplement and complement each other.<sup>94</sup>

## xi. Liberal Construction

Section 9 sets forth that this Act shall be construed liberally to give full effect to its intent and purposes, set forth in Section 2 of this Act.<sup>95</sup>

## xii. Legal Defense

Under existing case law, if the Act is challenged in the courts, then the Attorney General has to defend the proposition.<sup>96</sup> This Act adds that if this Act is challenged and both the Attorney General and Governor refuse to defend the law, then either the Attorney General shall do its due diligence in appointing independent counsel to defend the Act including a requirement that the Attorney General should receive written affirmation that independent counsel will faithfully and vigorously defend this Act; or, if the Attorney General and Governor fail to defend this Act, the Controller of the Act shall receive a continuous appropriation from the General Fund to obtain independent counsel.<sup>97</sup> As such, if the Attorney General and the Governor fail to defend Proposition 27, this Section permits the Controller of this Act to seek independent counsel with California's taxes.

## E. Current Funding/Revenue

### 1. *Tribal-State Compacts*

Native American Tribes must enter in Tribal-State Compacts with California in order to offer Class III gaming.<sup>98</sup> As part of their Tribal-State Compacts, the gaming tribes have to provide funding to local governments and non-gaming tribes. The Revenue Sharing Trust Fund was created by Tribal-State Compacts and provides funds for non-gaming tribes.<sup>99</sup> Some recent tribal state compacts also provide investments into local jurisdictions, law enforcement, and low-income housing.<sup>100</sup> The amount invested into the special fund varies depending on the compact,

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<sup>94</sup> Cal. Proposition 27 § 19794, art. 13 (2022).

<sup>95</sup> *Id.* § 9.

<sup>96</sup> Perry v. Brown, 52 Cal.4th 1116, 1120 (2011).

<sup>97</sup> *Id.*

<sup>98</sup> *Governor Newsom Signs Tribal Compacts – August 2021*, CA Gov., <https://www.gov.ca.gov/2021/08/24/governor-newsom-signs-tribal-compacts-august-2021/#:~:text=The%20compacts%20support%20tribal%20investment,other%20public%20service%20and%20infrastructure> (Aug. 24, 2021).

<sup>99</sup> *Funding for Non-Gaming Tribes and Local Governments*, TASIN, <https://www.tasin.org/policy-issues/funding-for-non-gaming-tribes-and-local-governments> (last visited Oct. 15, 2022).

<sup>100</sup> *Funding for Non-Gaming Tribes and Local Governments*, TASIN, <https://www.tasin.org/policy-issues/funding-for-non-gaming-tribes-and-local-governments> (last visited Oct. 15, 2022).

but, as of 2014, gaming tribes have contributed over \$1 billion dollars to non-gaming tribes through the Revenue Sharing Trust Fund.<sup>101</sup>

## 2. *State Homeless Funding- A Never-Ending Problem*

California has been attempting to resolve the homelessness crisis for decades by providing funds and shelter. Funds have either been underutilized or not sufficient to provide long-term solutions to homelessness. Most recently, Gavin Newsom committed \$12 billion over the next two years to combat the homelessness crisis in the 2021–22 budget.<sup>102</sup> As part of the budget, Gavin Newsom has provided funds for Project Roomkey, the program that transitions hotels into permanent affordable housing.<sup>103</sup> Although this is a large amount of expenditures, most of the proposed funding is one-time payments and not annual or regular funding.<sup>104</sup>

The California Health and Safety Code established the Homeless, Housing Assistance and Prevention Program (HHAP) Fund in 2020.<sup>105</sup> The HHAP fund was first supplied with 650 million dollars that were to go to continuums of care (COC), cities, and counties.<sup>106</sup> The fund then received over another billion dollars to disperse to cities, counties, and COCs.<sup>107</sup> Continuums of care are “regional or local planning bod[ies] that coordinate housing and services funding for homeless families and individuals.”<sup>108</sup> The funds were to be distributed in accordance with the statute as follows:

- 29.23% of the funds (\$190 million) to continuums of care.
- 42.31% of the funds (\$275 million) to cities.
- 26.92% of the funds (\$175 million) to counties.<sup>109</sup>

The allocation of funds to the individual COCs, cities, and counties will depend on the homeless population determined by the Housing and Urban Development Point-in-Time count (PIT).<sup>110</sup> This Act required entities to report the specific uses and expenditures of the funds, the number of people served with the funds, the type of housing assistance provided, and outcome data of successful housing.<sup>111</sup>

### F. Relevant Failed Previous Attempts/Legislatives/Cases

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<sup>101</sup> *Id.*

<sup>102</sup> *Governor Newsom Signs Historic Housing and Homelessness Funding Package as Part of \$100 Billion California Comeback Plan*, CA GOV., <https://www.gov.ca.gov/2021/07/19/governor-newsom-signs-historic-housing-and-homelessness-funding-package-as-part-of-100-billion-california-comeback-plan/> (July 24, 2021).

<sup>103</sup> *The Governor's Homelessness Plan*, LAO, <https://lao.ca.gov/Publications/Report/4521> (Feb. 9, 2022).

<sup>104</sup> *See id.* (proposing little to no recurring funds for homelessness measures).

<sup>105</sup> Chapter 6 (commencing with Section 50216) of Part 1 of Division 31.

<sup>106</sup> CAL. HEALTH & SAFETY CODE § 50218 (2022).

<sup>107</sup> *Homeless Housing, Assistance and Prevention (HHAP) Grant Program*, CA GOV., [https://bcsh.ca.gov/calich/hhap\\_program.html](https://bcsh.ca.gov/calich/hhap_program.html) (last visited Oct. 15, 2022).

<sup>108</sup> *What is a Continuum of Care?*, NATL. ALLIANCE END HOMELESSNESS, <https://endhomelessness.org/resource/what-is-a-continuum-of-care/> (Jan. 14, 2010).

<sup>109</sup> *Id.* § 50216.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* § 50220.6.

## 1. *Attempts to Legalize Sports Betting*

Assemblymember Adam Gray attempted to amend the California Constitution after the *Murphy* decision to permit sports betting in 2017 and 2018 with Assembly Constitutional Amendment (ACA) 18, but to no avail.<sup>112</sup> The bill was referred to the Appropriations committee on May 31, 2018. The committee took no action and the bill died November 30, 2018.<sup>113</sup>

Again in 2019, Assemblymember Gray and Senator Bill Dodd attempted to pass California Constitutional Amendments to permit mobile gambling with ACA 16 and Senate Constitutional Amendment (SCA) 6.<sup>114</sup> SCA 6 was referred to the appropriations suspense file and died in the 2019-2020 legislative session.<sup>115</sup> ACA 16 was again referred to the Appropriations committee and died on November 30, 2020.<sup>116</sup> The language from ACA 16 and SCA 6 became The California Sports Wagering and Consumer Protection Act, or Proposition 26.<sup>117</sup>

## 2. *Attempts to Fund Homelessness Measures Annually*

California currently lacks any regular annual funding to solve the homelessness crisis. Governor Gavin Newsom recently approved \$5 billion in funding to address homelessness, but, once again, the majority of the funds are one time funding to address homelessness.<sup>118</sup> California has also had attempts to provide dedicated annual state funding to address homelessness, but they fall short during the legislative process. One such example is Assembly Bill (AB) 71 from the 2021–22 Legislative Session.<sup>119</sup> AB 71 proposed a tax increase on only a certain type of business funds, income from overseas, in accordance with a federal policy from the Trump administration.<sup>120</sup> This new tax proposed in the bill was reported to create approximately \$200

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<sup>112</sup> ACA 18, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as amended on July 20, 2017, but not enacted).

<sup>113</sup> Legislative History of ACA 18, available at [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201720180ACA18](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180ACA18) (last visited Oct. 15, 2022).

<sup>114</sup> Michael Sciangula, *California Sports Betting – Legislation, Timeline, and Latest Updates*, SPORTSHANDLE, <https://sportshandle.com/california/> (Aug. 25, 2022).

<sup>115</sup> Legislative History of SCA 6, available at [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201920200SCA6](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200SCA6) (last visited Oct. 15, 2022).

<sup>116</sup> Legislative History of ACA 16, available at [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201920200ACA16](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200ACA16) (last visited Oct. 15, 2022).

<sup>117</sup> Michael Sciangula, *California Sports Betting – Legislation, Timeline, and Latest Updates*, SPORTSHANDLE, <https://sportshandle.com/california/> (Aug. 25, 2022).

<sup>118</sup> *California Enacts \$308 Billion State Budget, Falling Short of Advocates' Proposed Housing and Homelessness Investments*, NATL. LOW INCOME HOUS. COAL., <https://nlihc.org/resource/california-enacts-308-billion-state-budget-falling-short-advocates-proposed-housing-and#:~:text=ERASE-California%20Enacts%20%24308%20Billion%20State%20Budget%2C%20Falling%20Short%20of%20Advocates,Proposed%20Housing%20and%20Homelessness%20Investments&text=California%20Governor%20Gavin%20Newsom%20> (July 11, 2022).

<sup>119</sup> AB 71, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (as amended on May 27, 2021, but not enacted).

<sup>120</sup> *Id.*

million to address homelessness each year.<sup>121</sup> The bill failed early in the legislative session and therefore there is currently no annual state funding to address homelessness in California.<sup>122</sup>

### III. DRAFTING ISSUES

#### A. Ambiguous Terms

Section 19750 (C) of the Online Sports Betting Act sets forth that “portions of the money in the account [the California Solutions to Homelessness and Mental Health Support Account] may also be appropriated for mental health treatment programs.”<sup>123</sup> This section does not provide any further clarification on how much money should be allocated to assist with mental health support. Furthermore, this section also does not specify if these funds are subject to the reporting requirements like the rest of the funds utilized to assist homelessness. Some issues may arise in which the funds are being allocated to mental health support programs but someone could argue that the law would require some kind of accounting and reporting.

Furthermore, Section 19750 provides that the funds to address homelessness are to be utilized in accordance with HHAP, but there are provisions specific to that law that do not make sense in the new Fund.<sup>124</sup> First, HHAP had a fixed budget of \$600 million at first and divided those funds between COCs, cities, and counties.<sup>125</sup> The Fund created by the Online Sports Betting Act will not be fixed, so it is unclear whether this Act will just use the same proportions for each influx of funding. This Act provides no guidance on percentages of allocations, or how to split the funds by city/county, which can lead to some issues. Secondly, HHAP’s reporting can be on a form approved by the program council,<sup>126</sup> but it is unclear whether this Proposition will adopt similar forms.

Section 19753 (a) of the Online Sports Betting Act provides that “An online sports betting operator shall use commercially reasonable efforts to verify that a person placing, making, or initiating a bet on a sporting event is of the legal minimum age for placing such a bet.”<sup>127</sup> This Section and the rest of this Act do not thoroughly explain what commercially reasonable efforts entail. This could lead to a need for judicial interpretation if a party brings a suit due to a child partaking in online sports betting on their device.

#### B. Amendment Clause

Section 19790 of the Online Sports Betting Act provides the requirements for amending the Chapter. Amendment requires “a statute passed in each house of the Legislature by rollcall vote entered into the journal, five-sixths of the membership concurring, provided that the statute

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<sup>121</sup> AB 71, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (as amended on May 27, 2021, but not enacted).

<sup>122</sup> Legislative History of AB 71, available at [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=20210220AB71](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=20210220AB71) (last visited Oct. 15, 2022).

<sup>123</sup> Cal. Proposition 27 § 19750, art. 1 (2022).

<sup>124</sup> *Id.*

<sup>125</sup> CAL. HEALTH & SAFETY CODE § 50218 (2022).

<sup>126</sup> *Id.* § 50219.

<sup>127</sup> Cal. Proposition 27 § 19753 (a) (2022).

is consistent with, and furthers the purpose of, this chapter.”<sup>128</sup> This amendment clause would require that any legislative amendment of this Chapter be consistent with and further the purpose of this Act, as set forth in Section 2. Also, the amendment would require passage by a supersupermajority, which essentially makes it impossible for the Legislature to amend. One minor change that this Act needs is moving the definitions article to the top of the chapter so that the rest of the Act makes sense when reading it in order. Even a minor amendment like this would require a substantial number of votes in both houses, making it harder to fix.

Further sub-subdivision (b)(2) of the same Section provides that “the Legislature may amend the percentage allocation of moneys between the California Solutions to Homelessness and Mental Health Support Account and Tribal Economic Development Account set forth in subdivision (d), and paragraph (2) of subdivision (e), of Section 19750 by a statute passed in each house of the Legislature by rollcall vote entered into the journal, two-thirds of the membership concurring.”<sup>129</sup> This amendment clause only affects a change to the allocation of funds, and the requirements are different. This amendment would only need a supermajority, which would be easier to pass.<sup>130</sup> It is unusual that the same Chapter has two amendment clauses, having different standards for amendments of the same chapter.

Also, this second amendment clause mysteriously does not require the amendment to be consistent with and further the purpose of the Chapter. The advertisements for Proposition 27 rely heavily on providing assistance to solve homelessness, making that the purpose of this Act.<sup>131</sup> But since this amendment clause does not require an amendment to the allocation of funds to be consistent with the purpose of this Act, that could possibly mean that the Legislature could amend the allocation formula to give ninety percent of the funds to non-gaming Tribes.

### C. Severability Clause

Section 7 of this Act Establishes that each provision of this Act is severable.<sup>132</sup> If any portion of this Act is found to be invalid or unconstitutional, then the remaining provisions shall remain valid and enforceable.<sup>133</sup>

The majority of this proposition relies on the constitutional amendments permitting sports gambling online. If the constitutional amendment is held invalid in court, then it would be hard to argue that it could be severed from the remainder of the proposition. The heart of the Proposition would be defeated if the constitutional amendments are struck down.

### D. What Happens if Both Prop 26 and 27 Pass?

Article II, Section 10 of the California Constitution provides, “[i]f provisions of two or more measures approved at the same election conflict, the provisions of the measure receiving

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<sup>128</sup> *Id.* § 19790.

<sup>129</sup> Cal. Proposition 27 § 19790 (b)(2) (2022).

<sup>130</sup> *Id.*

<sup>131</sup> *Yes on Prop 27*, <https://yestoprop27.com/> (last visited Oct. 15, 2022).

<sup>132</sup> *Id.* § 7.

<sup>133</sup> *Id.*

the highest number of affirmative votes shall prevail.”<sup>134</sup> Therefore, two conflicting initiative measures cannot both take effect. The measure with the lower number of votes will therefore not go into law even if it is passed by the people.

Proposition 26, or the California Sports Wagering Regulation and Unlawful Gambling Enforcement Act, is also on the ballot this year, which would permit sports betting on Tribal-casino land—and some limited horse tracks—and it will legalize roulette and dice games at Tribal casinos.<sup>135</sup> Many opponents of Proposition 27 have supported Proposition 26, stating that Proposition 26 supports the gaming tribes in our state. For example, “The Yes on 26, No on 27 - Coalition for Safe, Responsible Gaming” is leading the campaign in support of the ballot initiative. The coalition is supported by several Native American Indian tribes, including the top donors to the campaign—the Pechanga Band of Luiseno Indians, Yocha Dehe Wintun Nation, Agua Caliente Band of Cahuilla Indians, Federated Indians of Graton Rancheria, and the Barona Band of Mission Indians. The campaign had raised over approximately \$120 million.”<sup>136</sup> The opponents to Proposition 27 strongly believe that Proposition 26 is a completely different initiative that is in conflict with Proposition 27.<sup>137</sup>

Nonetheless, Section 8 of Proposition 27 addresses conflicting initiative measures, setting forth, “Notwithstanding subdivision (a), this initiative measure shall not be deemed to be in conflict with the California Sports Wagering Regulation and Unlawful Gambling Enforcement Act . . .” (Proposition 26).<sup>138</sup> This section sets forth a finding that the voters believe this initiative and Proposition 26 are complementary and supplementary to each other, and not competing.<sup>139</sup> This is a novel provision to include in an initiative. It is unusual for an initiative to affirmatively announce that the Proposition is not in conflict with another when it seems pretty clear that the two propositions are conflicting.

If Proposition 27 passes with more votes, then it is likely that Proposition 26 will also go into effect permitting sports betting also on tribal lands, since Proposition 27 seems to acknowledge that Proposition 26 can be supplementary.<sup>140</sup> But if Proposition 26 passes with more votes, then it is likely that Proposition 27 will not go into effect due to a conflict. Proponents of Proposition 27 will then begin litigation seeking declaratory relief to claim that the propositions are not in conflict.<sup>141</sup> The courts will likely find that the propositions are in conflict despite the affirmative language in Proposition 27, but this will be a new issue. If the courts look at the plain language of the propositions, then it is clear that there is a conflict because

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<sup>134</sup> CAL. CONST. art. II, § 10 (b).

<sup>135</sup> *California Proposition 26*, BALLOTPEDIA, [https://ballotpedia.org/California\\_Proposition\\_26,\\_Legalize\\_Sports\\_Betting\\_on\\_American\\_Indian\\_Lands\\_Initiative\\_\(2022\)](https://ballotpedia.org/California_Proposition_26,_Legalize_Sports_Betting_on_American_Indian_Lands_Initiative_(2022)) (last visited Oct. 15, 2022).

<sup>136</sup> *Id.*

<sup>137</sup> *See id.* (listing the opponents of Proposition 27 who support Proposition 26).

<sup>138</sup> Cal. Proposition 27 § 8 (2022).

<sup>139</sup> *Id.*

<sup>140</sup> GRACE GEDYE, *What happens if Californians pass two sports betting initiatives?*, CAL MATTERS, <https://calmatters.org/economy/2022/06/sports-betting-california/> (June 23, 2022).

<sup>141</sup> *Id.*

Proposition 26 permits sports betting only in-person in limited areas,<sup>142</sup> while Proposition 27 would permit sports betting online anywhere in California.

#### IV. CONSTITUTIONAL AND STATUTORY ISSUES

##### A. Single-Subject Rule

California initiatives are subject to the single subject rule, which is set forth in the state constitution.<sup>143</sup> The single-subject rule requires ballot initiatives to address a single subject, topic, or issue.<sup>144</sup> Article II, Section 8(d) of the California Constitution states, “An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.”<sup>145</sup> Essentially, if an initiative embraces more than one subject, it can neither be submitted to, nor enacted by, the voters. The single-subject rule is not violated if all of the parts of the initiative are “reasonably germane” to each other and to the general purpose of the initiative.<sup>146</sup>

Here, it is arguable that the single-subject rule is violated because Proposition 27 is an initiative to address homelessness but the biggest impact it will have is permitting online sports betting, thus changing the landscape of gambling in the state. Homelessness and online sports betting are not reasonably germane to each other. Proponents of Proposition 27 may argue that this act is not changing Homelessness laws, rather it is just providing funds incident to permitting sports gambling. Further, they may argue that all of the gambling regulations are one subject, and not in violation of the single-subject rule. There is likely to be litigation on this issue if Proposition 27 passes, but a court is likely to side with the proponents argument that this law only amends gambling laws while providing funds for homelessness.

##### B. Defending the Act

In 2010, Proposition 8 was passed which amended the State Constitution to prohibit same-sex marriages.<sup>147</sup> Same-sex couples challenged the constitutionality of the proposition and sought injunctive relief.<sup>148</sup> Same-sex couples got their relief in the trial court, but proponents of the initiative wanted to appeal.<sup>149</sup> Kamala Harris, the Attorney General at the time, vowed to abandon defending the initiative because she believed that it was unconstitutional.<sup>150</sup> Proponents then wanted to defend the initiative on appeal as a party to the action. The California Supreme Court ruled that the proponents did have standing to fight the challenge if the state chose not

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<sup>142</sup> See *Proposition 26*, *supra* note 135 (allowing in-person sports betting on tribal lands and in select horsetracks).

<sup>143</sup> *Raven v. Deukmejian*, 801 P.2d 1077 (Cal. 1990).

<sup>144</sup> *Single Subject Rule*, BALLOTPEdia, [https://ballotpedia.org/Single-subject\\_rule](https://ballotpedia.org/Single-subject_rule) (last visited on Oct. 15, 2022).

<sup>145</sup> CAL. CONSTITUTION art. II, § 8.

<sup>146</sup> *Raven v. Deukmejian*, 801 P.2d 1077 (Cal. 1990).

<sup>147</sup> *Perry v. Brown*, 52 Cal.4th 1116, 1120 (2011).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 1125.

<sup>150</sup> Matt Baume, *Kamala Harris Vows to Abandon Prop 8*, NBC, <https://www.nbcbayarea.com/news/local/harris-vows-to-abandon-prop-8/1860319/> (Dec. 2, 2010).



to.<sup>151</sup> The Supreme Court of the United States affirmed this holding.<sup>152</sup> The US Supreme Court further held that only an agent of the State can defend the initiative, usually the Attorney General, but that could be another state actor if permitted by state law. For example, in New Jersey, the speaker of the state legislature was permitted to defend an initiative in a case that arose there.<sup>153</sup>

Section 10 of this Act requires the Attorney General to appoint independent counsel to defend the initiative if they and the Governor choose not to defend the initiative.<sup>154</sup> This may not be permitted in the law based on precedent. In *Hollingsworth v. Perry*, the Supreme Court of the United States held that Petitioners, proponents of Proposition 8—the constitutional amendment to recognize marriage is between man and woman—did not have standing to appeal the decision after the state officials chose not to defend the act.<sup>155</sup> The Supreme Court required the proponents of the initiative to have standing, which requires, amongst other things, a concrete and particularized injury.<sup>156</sup> Therefore, the Court held that the proponents of Proposition 8 had no standing because their injury was generalized as same-sex marriage would not ultimately affect them.<sup>157</sup>

Here, the initiative is trying to extend the powers to defend the initiative to private parties, either asking the Attorney General to pick independent counsel or asking for funds from the General Fund with no limit to pick independent counsel on their own. This would be a large extension and would permit non-state actors to defend the initiative. Independent counsel would still need to represent someone who has standing, so the issue of a proper party still persists it seems. The independent counsel hired by the proponents would need to argue that the proponent has a particularized injury to have standing. The proponents of this measure are the online sports betting operators, like Fanduel or DraftKings. This proposition not passing would certainly cause them injury, so it is possible that they would have standing to sue. Still, this provision may be challenged in court and the Proposition may be in some trouble if the Attorney General chooses not to defend this act.

### C. Creating a New Department to Regulate Online Sports Betting

Article 9 of the Online Sports Betting Act creates the Division of Online Sports Betting Control within the Department of Justice to enforce this Act.<sup>158</sup> This Division was created to investigate potential violations of this Act. In California, there already exists a regulatory body to investigate gambling establishments, the California Gambling Control Commission.<sup>159</sup> The Commission members are exclusively appointed by the Governor and confirmed by the

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<sup>151</sup> *Perry v. Brown*, 52 Cal.4th 1116, 1131 (2011).

<sup>152</sup> *Hollingsworth v. Perry*, 570 U.S. 693, 702 (2013).

<sup>153</sup> *Id.*

<sup>154</sup> Cal. Proposition 27 § 10 (2022).

<sup>155</sup> *Hollingsworth*, *supra* note 152, at p. 693.

<sup>156</sup> *Id.* at 704.

<sup>157</sup> *Id.*

<sup>158</sup> Cal. Proposition 27 § 19775, art. 9 (2022).

<sup>159</sup> *About the Commission*, CGCC, <http://www.cgcc.ca.gov/?pageID=aboutus&pageName=About%20Us> (last visited Oct. 15, 2022).

Senate.<sup>160</sup> This new Division would have a seventeen-person committee with appointments from the Governor, the Senate pro tem, the Assembly Speaker, the Treasurer and others. This Proposition creates a new, costly department when California already had a preexisting department that could have handled the responsibilities.<sup>161</sup> The Commission and the Attorney General have not commented on Proposition 27.

## V. FISCAL EFFECTS

The advertisements for Proposition 27 assert that this Proposition will create hundreds of millions of dollars of funding to address homelessness.<sup>162</sup> But, many officials and scholars call that number into question because the amount of money that will be put into the Fund it is highly speculative. Governor Gavin Newsom has remained neutral on this measure, but states that this measure is not a homelessness measure, downplaying its impact on addressing homelessness.<sup>163</sup> Further, the Legislative Analysts' Office has also expressed that the amount of money that this Act will create is speculative and unknown.<sup>164</sup>

As mentioned above, Article 9 of the Online Sports Betting Act creates the Division of Online Sports Betting Control within the Department of Justice to enforce this Act.<sup>165</sup> This Division was created to investigate potential violations of this Act. In addition to duplicating the functions of the California Gambling Control Commission<sup>166</sup>, this new committee will take a loan of 30 million from the General Fund and use proceeds from the Fund created by the Act to repay the loan.<sup>167</sup> Paying for the staffing of the new committee and the infrastructure to support it is a substantial cost that should be considered.

## VI. PUBLIC POLICY ISSUES

### A. Proponents Arguments

A spokesperson, Nathan Click, for the campaign stated: "Our measure is the only one that would guarantee hundreds of millions each year in solutions to homelessness and mental health support. We have found Californians are enthusiastic about it and the housing and mental health solutions it would provide the state."<sup>168</sup> The spokesperson is trying to focus on the aspect that this initiative will provide consistent funding to address homelessness.

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<sup>160</sup> CAL. BUS. & PROF. CODE § 19813 (2022).

<sup>161</sup> See Cal. Proposition 27 § 19775, art. 9 (2022) (requiring a \$30,00,000 loan from the General Fund to create the new Division).

<sup>162</sup> *Yes on Prop 27*, <https://yestopprop27.com/> (last visited Oct. 15, 2022).

<sup>163</sup> *Should sports betting be legalized in CA? Gov. Newsom, Graton Casino, Bay Area groups weigh-in*, ABC, <https://abc30.com/online-in-person-sports-betting-props-native-american-tribes-california-governor-gavin-newsom-prop-26-27-november-ballot-graton-casino/12163033/> (last visited Oct. 15, 2022).

<sup>164</sup> *Prop 27*, LAO *supra* note 77.

<sup>165</sup> Cal. Proposition 27 § 19775, art. 9 (2022).

<sup>166</sup> *About the Commission*, *supra* note 159.

<sup>167</sup> See Cal. Proposition 27 § 19775, art. 9 (2022) (requiring a \$30,00,000 loan from the General Fund to create the new Division).

<sup>168</sup> *California Proposition 27, Legalize Sports Betting and Revenue for Homelessness Prevention Fund (2022)*, BALLOTEDIA,

The Major League Baseball league released the following statement in support: "As legalized sports betting continues to expand across the country, Major League Baseball remains committed to protecting the integrity of its games and creating a safe experience for fans who wish to wager on those games. Proposition 27 -- the only measure on California's upcoming ballot that would authorize and regulate online sports betting -- includes strong integrity provisions designed to help MLB carry out those commitments."<sup>169</sup> MLB is focused on expanding online sports betting and doing so safely for patrons.

Some California Officials also support this initiative. For example, Mayor Robert Garcia from Long Beach said "I'm joining my fellow mayors in endorsing this important initiative because this is an all-hands on deck moment in our fight against homelessness. To solve California's homelessness crisis over the long-term, we need sustainable sources of funding to house those experiencing homelessness and provide them the medical and mental health services they need. That's what this measure provides."<sup>170</sup> Once again, the proponent is focusing solely on the part of the initiative that focuses on providing funds to address homelessness.

A small number of smaller non-gaming Tribes support Proposition 27 because they see the potential of revenue for them with online sports betting. They do not have casinos and Proposition 27 would allocate them some revenue from gambling.

#### B. Opponents Arguments

Some officials from the business and government sectors do not support this initiative. Pat Fong Kushida, from the California Asian Pacific Chamber of Commerce, stated: "The Corporate Online Gambling Proposition was written for the sole benefit of out-of-state gambling corporations. This measure would give online gambling corporations near total control over the sports wagering market, effectively hijacking any local economic benefits for our small businesses, while sending 90% of profits from sports gambling out-of-state and even out of country."<sup>171</sup> The opponents tend to focus on taking away the exclusivity of gambling rights from Native American Tribes in California.

Similarly, Senate Minority Leader Scott Wilk stated: "Prop 27 eliminates the sovereign right of California tribes to operate gaming in California. They have proven to be excellent stewards of this responsibility."<sup>172</sup> Again, opponents of Proposition 27 focus on taking away the sovereignty of gaming tribes.

Most tribes have gone against Proposition 27. James Siva, Chairman of California Nations Indian Gaming Association stated: "Don't be fooled. These measures are not a fix to

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[https://ballotpedia.org/California Proposition 27, Legalize Sports Betting and Revenue for Homelessness Prevention Fund Initiative \(2022\)](https://ballotpedia.org/California_Proposition_27,_Legalize_Sports_Betting_and_Revenue_for_Homelessness_Prevention_Fund_Initiative_(2022)) (last visited Oct. 15, 2022).

<sup>169</sup> *Proposition 27, supra* note 16.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> See Kaitlyn Schallhorn, *California Legislative Leadership Opposes Prop 27, An Online Sports Betting Ballot Measure*, OC REGISTER, <https://www.ocregister.com/2022/08/10/california-legislative-leadership-opposes-prop-27-an-online-sports-betting-ballot-measure/> (Aug. 10, 2022).

homelessness, but rather a massive explosion of gaming that will directly undercut tribal sovereignty and self-sufficiency.”<sup>173</sup> Tribes seem to be worried that online sports betting will take away a large part of their revenue, and thus hinder their sovereignty and development.

Similarly, the Californians for Tribal Sovereignty and Safe Gaming website released the following: “If it passes, the promise of gaming exclusivity between California voters and our Native American Tribes will be broken, threatening the \$23.2 billion in economic activity and 181,532 California jobs Tribal gaming provides. This measure is a direct attack on tribal sovereignty.”<sup>174</sup> Once again, Tribes worry that online sports betting threatens their sovereignty and economy.

However, other tribes are concerned the high cost of entry for online sports betting—including a \$10 million licensing fee—would limit the number of tribes who could participate.<sup>175</sup>

### C. Neutral Views

Gavin Newsom, California Governor, stated: “I know initiatives and folks will say anything. Perhaps that initiative will provide a few dollars,” and “I’m not supporting or opposing it, I haven’t given it a lot of thought, but it is not a homeless initiative. I know Angelenos can read between the lines and they know better.”<sup>176</sup> Governor Newsom does not think Proposition 27 is a homeless initiative. Nonetheless, he is neutral on the proposition but remains suspect of the motive.

## VII. **CAMPAIGN FINANCE**

California’s sports betting initiatives (Prop 26 and 27) have broken the record for campaign funding, surpassing \$357 million.<sup>177</sup> Prop 27 has had \$214 million in campaign funding.<sup>178</sup>

### A. Proponents

Proponents of the initiative have contributed \$169,248,331.12, obtaining contributions from a number of large gambling companies. Attached is a list of the the largest donors:

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<sup>173</sup> *California Proposition 27*, *supra* note 16.

<sup>174</sup> *Id.*

<sup>175</sup> See Liz Kreutz, *Should Sports Betting Be Legalized In Ca? Gov. Newsom, Graton Casino, Bay Area Groups Weigh-in*, ABC, <https://abc30.com/online-in-person-sports-betting-props-native-american-tribes-california-governor-gavin-newsom-prop-26-27-november-ballot-graton-casino/12163033/> (Aug. 25, 2022).

<sup>176</sup> *Id.*

<sup>177</sup> *California’s Sports Betting Propositions Break Spending Records*, SPECTRUM, <https://spectrumnews1.com/ca/la-west/inside-the-issues/2022/08/26/california-s-sports-betting-propositions-break-spending-records> (Aug. 26, 2022).

<sup>178</sup> *California Proposition 27*, *supra* note 16.

Donor	Cash Contributions	In-Kind Contributions	Total Contributions
Betfair Interactive US LLC (Fanduel Sportsbook)	\$35,000,000.00	\$7,850.00	\$35,007,850.00
Crown Gaming, Inc. (Draftkings)	\$33,224,666.00	\$1,009,718.64	\$34,234,384.64
BetMGM LLC	\$25,000,000.00	\$0.00	\$25,000,000.00
FBG Enterprises LLC	\$25,000,000.00	\$0.00	\$25,000,000.00
Penn National Gaming, Inc.	\$25,000,000.00	\$0.00	\$25,000,000.00

## B. Opponents

Opponents to the initiative have contributed over \$ \$214,567,397.89, which includes big donations from Native American Tribes as follows:

Donor	Cash Contributions	In-Kind Contributions	Total Contributions
San Manuel Band of Mission Indians	\$78,056,060.00	\$73,247.52	\$78,129,307.52
Federated Indians of Graton Rancheria	\$31,850,000.00	\$9,359.00	\$31,859,359.00
Pechanga Band of Indians	\$25,150,000.00	\$170,155.10	\$25,320,155.10
Yocha Dehe Wintun Nation	\$22,100,000.00	\$171,872.87	\$22,271,872.87
Agua Caliente Band of Cahuilla Indians	\$11,500,125.00	\$1,743.25	\$11,501,868.25

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## VIII. CONCLUSION

Proposition 27 is an initiative constitutional amendment and statute that would permit online sports gambling from anywhere in the state.<sup>180</sup> The initiative purports that it will create hundreds of millions in funding to address homelessness in California, although the actual impact is unknown.<sup>181</sup> This initiative will allocate eighty-five percent of the funds to address homelessness and mental health support. The final fifteen percent will be allocated to non-gaming tribes.<sup>182</sup>

A **YES** vote supports permitting online sports betting in California for people 21 years of age or older and supports creating a Fund with the new taxes to provide money for the homelessness crisis in California.

A **NO** vote supports keeping existing law and keeping online sports betting illegal in California.

<sup>179</sup> *California Proposition 27*, *supra* note 16.

<sup>180</sup> Cal. Proposition 27 § 3 (2022).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* § 4, art. 1.