

ICGR White Paper Series on the Regulation of Tribal Sports Wagering

The Outlook in California

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Part I: Project Overview

Our goal in the *ICGR White Paper Series on the Regulation of Tribal Sports Wagering* is to help identify and understand emerging and best practices in the law, regulation, and public policy of tribal gaming.

Following in-depth examinations of tribal sports wagering regulation in Arizona, New York, and Washington,¹ we broadened our analysis to the national level.² We classified state approaches to legalizing tribal sports wagering into three emerging models: the Compact Model, the Commercial Model, and the Combined Model. Each model has implications for how regulatory authority is allocated and exercised among tribal, state, and the federal government, as well as practical considerations related to market access and competition within and across jurisdictions. Our objectives in conducting this analysis and identifying specific state models have been to identify and make accessible information for tribal operators, vendors, and others seeking to enter the tribal sports wagering market, or for regulators and policymakers looking to identify emerging practices that could be used in their jurisdictions.

This White Paper on ***“New Markets in Tribal Sports Wagering: The Outlook in California”*** extends our prior examination of how tribally owned and operated sports books are being legalized and regulated in key markets to look at the prospects for, and implications of, the legalization of sports wagering in California. When California voters go to the polls on November 8, 2022, they will encounter not one, but two ballot initiatives that would legalize sports wagering in different forms. Either Proposition 26 (essentially, in-person tribal sports

¹ See Kathryn R.L. Rand & Steven Andrew Light, *Regulation of Tribal Sports Wagering: State-Specific Analysis of Applicable Regulation Under Tribal-State Compacts in Arizona* (UNLV International Center for Gaming Regulation *White Paper Series on the Regulation of Tribal Sports Wagering #3*) (November 21, 2021); Kathryn R.L. Rand & Steven Andrew Light, *Regulation of Tribal Sports Wagering: State-Specific Analysis of Applicable Regulation Under Tribal-State Compacts in Washington* (UNLV International Center for Gaming Regulation *White Paper Series on the Regulation of Tribal Sports Wagering #2*) (September 21, 2021); Kathryn R.L. Rand & Steven Andrew Light, *Regulation of Tribal Sports Wagering: Overview of Federal Regulation and State-Specific Analysis of Applicable Regulation Under Tribal-State Compacts in New York* (UNLV International Center for Gaming Regulation *White Paper Series on the Regulation of Tribal Sports Wagering #1*) (June 24, 2021), all available at Tribal Research, White Papers and Research Fellowships, UNLV International Center for Gaming Regulation, <https://www.unlv.edu/icgr/research/white-papers#tribal>.

² See Kathryn R.L. Rand & Steven Andrew Light, *What Tribal Sports Betting Looks Like Now* (UNLV International Center for Gaming Regulation *White Paper Series on the Regulation of Tribal Sports Wagering #4*) (September 23, 2022), available at Tribal Research, White Papers and Research Fellowships, UNLV International Center for Gaming Regulation, <https://www.unlv.edu/icgr/research/white-papers#tribal>.

wagering) or Proposition 27 (at bottom, online and mobile commercial-tribal sports wagering) would authorize the state's most significant expansion of legalized gambling in a decade or more, and in so doing, likely would fall under one or more of the tribal sports wagering models we've identified. In legalizing sports wagering and creating a new \$3 billion industry in California, either Proposition would fundamentally change the game for California's 75 compacted gaming tribes.

In this White Paper, we provide an overview of the outlook for tribal sports betting in California: what's on the ballot, what's at stake, and what's likely to happen on election day.

Part II: What Tribal Sports Betting Looks Like Now

The Backdrop for Tribal Sports Wagering

Following the U.S. Supreme Court’s 2018 invalidation of the federal Professional and Amateur Sports Protection Act (PASPA), a majority of states have legalized sports wagering within their borders, whether in-person (i.e., physical or retail), mobile, or both. In many of the states that have legalized sports wagering, American Indian tribes own and operate casinos, thus opening the door to tribally operated sports books.

Under the 1988 federal Indian Gaming Regulatory Act (IGRA), sports wagering is a Class III game, requiring an approved tribal-state compact to be in place before a tribe may operate sports betting on tribal lands. While some states have limited legalization of sports betting to tribal casinos under IGRA, others have simultaneously legalized commercial operation of sports wagering, opening up the possibility for tribes to obtain state licenses to operate sports betting outside of tribal lands, sometimes under state law tailored to tribal operators.

As of now, there is a total of 36 states (plus Washington, D.C.) in which sports wagering is authorized and/or operational, whether commercial, tribal, or both. Of these, 31 states (plus Washington, D.C.) currently have legal single-game sports wagering operations in some combination of in-person/retail (29 states) or mobile/online formats (21 states + D.C.), or both. (Five states have authorized sports wagering that is not yet operational. Thirteen states either have no current legislation pending or bills that have failed.)³

A total of 29 states have tribal gaming operations pursuant to IGRA’s regulatory framework and its public policy goals, which include promoting tribal economic development, tribal self-sufficiency, and strong tribal governments through the operation of casino gaming on tribal lands.⁴ Of these 29 states, 25 permit Class III or “casino-style” gaming and four permit only Class

³ See Tribal Sports Betting Operations Tracker (International Center for Gaming Regulation, University of Nevada, Las Vegas) (Sept. 2022), at <https://www.unlv.edu/icgr/tribal#tribal> (data compiled and analyzed by Steven Andrew Light & Kathryn R.L. Rand). These numbers are likely to continue to change as state legislative sessions convene.

⁴ Tribal gaming is well established within those 29 states; in fiscal year 2021, some 510 gaming operations owned by 243 federally acknowledged tribes generated \$39 billion in Gross Gaming Revenue (GGR). See News Release, “2021 Indian Gaming Revenue Jumps to Record High \$39 Billion, Increases 40%,” National Indian Gaming Commission, Aug. 10, 2022, at <https://www.nigc.gov/news/detail/2021-indian-gaming-revenue-jumps-to-record-high-39-billion-increases-40>.

II or “bingo or games similar to bingo” gaming on tribal lands.⁵ With significant though not total overlap, there are 22 states in which tribal sports wagering is authorized and/or currently operational.⁶ There are five states in which only tribal operators are authorized to offer sports wagering.⁷

As states continue to legalize sports wagering, more American Indian tribes are building out their business models and operational capacity to open sports books or offer mobile wagering. In addition to the key factors that may influence tribal decisions to open a sports book, including weighing the barriers to entry against the upside of entering a new market,⁸ the regulatory structure authorized in a particular state impacts tribes’ sports betting operations in multiple ways, including: whether and where tribes can offer mobile wagering, what in-state commercial competition tribal operations will face, and to what extent state law and state regulations will apply to a tribe’s sports betting operations. In a highly dynamic and increasingly competitive environment, it is notable that tribes, states, and commercial operators predominantly are taking a jurisdiction-specific, market-driven approach to both legalization and to regulation.

There indeed may be benefits to a tailored approach by state and/or tribe. Yet by identifying pivotal states in the existing tribal and commercial gaming market, and zooming in on how and in what ways, in the recent rush to legalize sports wagering, those jurisdictions have landed on regulatory frameworks specific to it, we can look for instructive patterns. This has been the main objective in the *ICGR White Paper Series on the Regulation of Tribal Sports Wagering*.

Emerging Models in the Legalization and Regulation of Tribal Sports Wagering

Following our in-depth examinations of tribal sports wagering regulation in Arizona, New York, and Washington, we broadened our analysis to the national level. While the particular details may vary, we classified state approaches to legalizing tribal sports wagering into three emerging models: the Compact Model, the Commercial Model, and the Combined Model. Each model is characterized by two key factors: the extent of state regulatory authority, and where tribal sports betting is conducted.

⁵ *Id.* The federally recognized Pamunkey Indian Tribe in Virginia has signed a development deal for a new casino but is not yet operational.

⁶ *Id.* One state (Florida) has authorized tribal sports wagering but is in the midst of protracted litigation and therefore is not yet operational.

⁷ *Id.*

⁸ See, e.g., Kathryn R.L. Rand & Steven Andrew Light, “Sports Betting and Indian Gaming: Should Tribal Casinos Get in the Game?,” 9 *UNLV Gaming L.J.* 55 (2019) (positing and weighing three barriers to tribal market entry: legality and regulation; feasibility and profitability; and market and competition).

Under the **Compact Model**, state regulatory authority is determined by the terms of the applicable tribal-state compact as well as federal law and regulations pursuant to IGRA, and tribal sports betting is confined to Indian lands under federal law.

Under the **Commercial Model**, the state exercises exclusive regulatory authority, and tribal sports betting is conducted outside of Indian lands. Tribes may operate sports betting under state license and in direct competition with commercial operators.

Under the **Combined Model**, tribal sports betting is conducted and regulated through a combination of IGRA and the tribal-state compact (for tribal sports betting conducted on Indian lands), and state law (for tribal sports betting conducted outside of Indian lands but within the state's borders). Under the Combined Model, the state's regulatory authority follows the Compact Model to the extent that it applies to tribal sports betting on Indian lands, and tracks the Commercial Model to the extent that it applies to tribal sports betting outside of Indian lands.

The models have both obvious and significant implications with regard to regulatory authority and tribal sovereignty; they also have such ramifications with regard to market access and competition. The Compact Model limits tribes' markets to tribal lands, but often is accompanied by limited or no legalization of commercial sports betting, effectively establishing or maintaining tribal market exclusivity. The Commercial Model permits tribes to operate sports betting in any location deemed appropriate by the state, including state-wide mobile wagering if authorized, but puts tribal operators in direct competition with commercial operators and may lessen or remove some of the direct benefits from gaming on tribal lands. The Combined Model provides tribes with some exclusivity, at least on tribal lands, and may allow tribes to participate in state-wide mobile or online wagering, but typically puts tribes in competition with commercial operators for sports betting conducted outside tribal lands.

Part III: California’s Sports Wagering Ballot Initiatives: Propositions 26 and 27

Notably missing from the list of states that have legalized sports betting is California, the nation’s most populous state, with 23.1 million residents over the age of 21,⁹ and at least 65 professional sports teams, of which 22 or more are franchises of major sports leagues¹⁰—both of which far exceed any other state. Pursuant to IGRA, California has ratified tribal-state gaming compacts with 75 tribes, of which 63 tribes operate some 66 casinos. This, too, puts California at the top of the list compared to other states, as does its estimated \$9 billion in GGR for tribal gaming.¹¹

California voters will have the opportunity to authorize sports wagering this fall, in the form of two ballot initiatives, or Propositions. For an initiative to appear on the ballot in California, the number of valid signatures required from eligible voters is equal to 8 percent of the votes cast in the preceding gubernatorial election. In 2022, just shy of 1 million valid signatures certified by about June 30 would land an initiative on the ballot.¹² Propositions 26 and 27 each qualified on that basis, and will appear on the ballot for California’s general election on November 8, 2022.

Proposition 26: The Legalize Sports Betting on American Indian Lands Initiative

Proposition 26 (though an oversimplification, commonly understood as the “tribal initiative”) was the first to qualify of the two sports-betting ballot initiatives on which eligible Californians will vote up or down as a combined state constitutional amendment and state statute. A “yes” vote on Proposition 26 legalizes “in-person” or “retail” sports betting for eligible patrons at

⁹ See Quick Facts, California, U.S. Census Bureau (July 1, 2021), at <https://www.census.gov/quickfacts/CA>.

¹⁰ See, e.g., List of Professional Sports Teams in California, Wikipedia, https://en.wikipedia.org/wiki/List_of_professional_sports_teams_in_California. This includes 16 professional teams in the “Big 4” sports leagues (MLB, NBA, NFL, and NHL) and 6 in other commonly identified major sports leagues (MLS, WNBA, NWSL). The state also is home to several dozen lower-tier or minor-league affiliates. The true total depends, of course, on how one defines “major league,” but the point stands on California’s large number of teams in the Big 4, its additional range of teams eligible for wagering, and its outsized potential market for sports wagering.

¹¹ See State of Play (California), American Gaming Association, at <https://www.americangaming.org/state/california/>.

¹² See generally Laws Governing the Initiative Process in California, Ballotpedia, at https://ballotpedia.org/Laws_governing_the_initiative_process_in_California. Petitions may circulate for 180 days from the date the state attorney general prepares the official language, and the signatures must be certified at least 131 days before the general election. *Id.*

tribal casinos in California; that is, it requires a “physical presence” in the casino to wager on professional, college, or amateur sport and athletic events. (Betting on high school sports or events featuring a California college team is prohibited.) Proposition 26 also allows the same at existing licensed commercial horse-racing tracks in four California counties. In addition, it authorizes tribal casinos to offer roulette and dice games, including craps, if existing tribal-state compacts are amended. The Proposition establishes a 10% tax rate on commercial sports betting profits at racetracks, with 15% earmarked to the state’s Department of Health for disordered gambling prevention and mental health programs, 15% to the Bureau of Gambling Control for gaming implementation and enforcement, and the remaining 70% to the state’s General Fund. The Proposition also authorizes private lawsuits to enforce state gambling laws.¹³

Brief Analysis

Revenue-sharing or tax benefits. Tribal governments are exempt from direct taxation on gaming revenue due to tribal sovereignty; however, under tribal-state compacts, tribes make revenue-sharing payments to the state and some local governments, and to a special fund that distributes revenue to non-gaming tribes (or tribes with less than 350 slot machines). In 2021, tribes paid about \$65 million to state regulatory and gambling addiction programs, tens of millions to local governments, and around \$150 million to the State Revenue Sharing Trust Fund.¹⁴ The tribal revenue generated by sports wagering and other new games authorized by Proposition 26 therefore would be subject to the terms of existing revenue-sharing agreements and other tribal-state compact provisions in California.

Compact Model. Proposition 26 would authorize tribal sports betting under the Compact Model we have identified previously and briefly describe above: tribes would be authorized to operate retail sports betting at their tribal casinos under the terms of existing compacts (or with limited renegotiation), and pursuant to IGRA’s framework of federal law and regulations.

A “no” vote would oppose the ballot initiative. Sports wagering in any form would continue to be prohibited in California, as neither tribes nor commercial racetracks or any other entity would be authorized to take bets. Nor would tribes gain the opportunity to add roulette and dice games at tribal casinos. Existing tribal-state compacts and revenue-sharing agreements negotiated pursuant to IGRA would remain in effect. Racetracks and the state’s cardrooms would continue to operate as they have. At bottom, gaming tribes would maintain and

¹³ See California Attorney General, Initiative #19-0029 (Nov. 14, 2019), at <https://www.oag.ca.gov/system/files/initiatives/pdfs/19-0029A1%20%28Sports%20Wagering%20%26amp%3B%20Gambling%29.pdf>.

¹⁴ See [California] Legislative Analyst’s Office, Proposition 26: Analysis of Measure (n.d.), at <https://lao.ca.gov/BallotAnalysis/Proposition?number=26&year=2022>.

therefore, at one level, benefit from, the status quo: near-market exclusivity over casino-style gaming offered on tribal lands in California.

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

Like its counterpart, Proposition 27 (though an oversimplification, commonly understood as the “online initiative”) also is a ballot initiative on which eligible Californians will vote up or down as a combined state constitutional amendment and state statute. A “yes” vote on Proposition 27 legalizes mobile and online sports betting for eligible individuals 21 years of age or older anywhere in the state of California so long as the bets are placed outside of tribal lands. The Proposition allows gaming tribes to offer sports wagering, while also granting market access to qualified commercial mobile and online sports betting platforms so long as they enter into an operating agreement and partner with a gaming tribe.¹⁵ Betting on youth sports is prohibited. The initiative creates a new Division of Online Sports Betting Control within the state’s Department of Justice, authorizing it to regulate sports wagering and to investigate illegal activities.¹⁶

Proposition 27 requires various sports betting payments to the state. It levies a hefty licensing fee for operators to be paid up front to the state, of \$100 million for the commercial operator and \$10 million for a tribe for a five-year license. Renewal fees are \$1 million for a tribe and \$10 million for a commercial operator.¹⁷ It levies a 10% tax on sports betting revenues and allocates those dollars, along with the licensing fees and renewals, to a new California Online Sports Betting Trust Fund. The Fund in turn allocates 85% of net revenue to two new state accounts. The California Solutions to Homelessness and Mental Health Support Account is intended to mitigate the state’s well-documented affordable housing shortages and homelessness challenges with the construction of permanent and interim housing. The remaining 15% of revenue is allocated to a new Tribal Economic Development Account, established to assist non-gaming tribes or to gaming tribes not offering sports betting in enhancing tribal government

¹⁵ See California Attorney General, Initiative #21-0017 (Aug. 31, 2021), <https://oag.ca.gov/system/files/initiatives/pdfs/21-0017A1%20%28Sports%20Gambling%29.pdf>. The Proposition thus effectively authorizes three types of operators: a gaming tribe, an online sports betting platform with an operating agreement with a gaming tribe, or a qualified gaming company with a market access agreement with a gaming tribe. *Id.*

¹⁶ See [California] Legislative Analyst’s Office, Proposition 27: Analysis of Measure (n.d.), at <https://lao.ca.gov/BallotAnalysis/Proposition?number=26&year=2022>.

¹⁷ *Id.*

capacity or initiatives related to public health, education, infrastructure, and economic development.¹⁸

Brief Analysis

State law and revenue sharing or taxation. Any gaming tribe operating online or mobile sports wagering on its own, and therefore under a combination of existing and newly negotiated tribal-state compact provisions as well as federal law and regulation, presumably would subject sports wagering revenue to the same or similar revenue-sharing terms as its other gaming revenue. However, because any gaming tribes partnering with commercial operators to offer mobile or online sports wagering would themselves become, in effect, commercial operators, they would subject themselves to state law and regulation solely in this operating arena, and would be subject to state taxation at the 10% rate. Through operating and market access agreements, these tribes thus would waive tribal sovereignty related to sports wagering operations.

Commercial or Combined Models. Proposition 26 would authorize tribal online or mobile sports betting under the Commercial Model we have identified previously and briefly describe above: gaming tribes would either offer or partner with other commercial operators to offer online and mobile sports wagering under state law. It is also possible that Proposition 27 would ultimately result in the Combined Model for tribal sports betting: tribes in California likely would seek to leverage compact amendments to permit retail and/or mobile or online sports wagering on tribal lands.

A “no” vote would oppose the ballot initiative. Sports wagering in any form would continue to be prohibited in California. Commercial operators would not gain the opportunity to enter the California market in partnership with gaming tribes, as the Proposition required; nor, obviously, would they gain the ability to enter the market on their own, as online and mobile sports wagering would remain prohibited. As would be the case if Proposition 26 fails, existing tribal-state compacts and revenue-sharing agreements negotiated pursuant to IGRA would remain in effect. Racetracks and the state’s cardrooms would continue to operate as they have. At bottom, gaming tribes would maintain and therefore, at one level, benefit from, the status quo: near-market exclusivity over casino-style gaming offered on tribal lands in California.

¹⁸ *Id.* The Tribal Economic Development Account specifies, in essence, similar kinds of categorical public policy goals and requirements for tribes to allocate gaming revenue as those found in IGRA, such as funding for tribal government operations and programs, the general welfare of tribal members, or tribal economic development.

Part IV: What's at Stake in California?

Propositions 26 and 27 each represent a big bet by two distinct-but-loose coalitions with an enormous vested interest in their potential markets, one comprised primarily of select, highly successful California gaming tribes, the other comprised primarily of some of the nation's biggest commercial online or mobile sports betting companies.

The overall campaigns to bring sports betting to California, as well as the efforts both in favor and in opposition to each Proposition, are setting spending records. When all is said and done, as much as \$700 million likely will have been spent on a barrage of advertisements and various other political sales pitches to vote in favor of or against Proposition 26 and Proposition 27—more-than-doubling the previous mark in California set in 2020, and a record in the U.S.¹⁹ As the question of whether to legalize sports wagering in California both evolved into a showdown between competing Propositions, it may seem that the spending, advertising, and campaigning efforts became as much—or more—about generating a “no” vote than a “yes” one.

Gaming tribes in California, especially the wealthiest ones, have the most to win, or lose. They are betting that the general public wants to see retail sports betting in tribal casinos, and in commercial racetracks, more than it wants to see a much broader expansion that would come by permitting mobile wagering on commercial platforms with roots outside of California. These tribes have an obvious interest in their own “tribal initiative” passing; many of these and other gaming or non-gaming tribes alike don't share the same interest in the “commercial” measure, because it opens the gaming market to mobile or online sports wagering, divides gaming revenue and diverts a significant portion to commercial operators, and doesn't permit all gaming tribes to participate.

Major commercial mobile and online operators, such as DraftKings, FanDuel, and BetMGM, are betting that the general public wants to see the same kinds of sports-betting opportunities found in Vegas, and now, all over the U.S., with the ease and convenience of mobile wagering. They also are betting that the general public's interest in addressing seemingly intractable big-

¹⁹ See, e.g., California Proposition 26, Ballotpedia, at [https://ballotpedia.org/California Proposition 26, Legalize Sports Betting on American Indian Lands Initiative \(2022\)#cite_note-text-1](https://ballotpedia.org/California_Proposition_26,_Legalize_Sports_Betting_on_American_Indian_Lands_Initiative_(2022)#cite_note-text-1) (documenting total contributions of \$132 million in support and \$43 million in opposition to Proposition 26); California Proposition 27, Ballotpedia, at [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)) (documenting total contributions of \$169 million in support and \$249 million in opposition to Proposition 27).

picture public policy or public health issues in California, such as affordable housing shortages, homelessness, and mental health, will sweeten the deal, while also leveraging the message that tribes can still benefit, too, through operational and market access partnerships. The commercial operators have an obvious interest in their “own” initiative passing; the California market is enormous, lucrative, and until now, impenetrable to commercial online or mobile gaming. For obvious reasons, the big commercial enterprises don’t share the same interest in the tribal measure, because it maintains the terms of a relatively exclusive tribal market while foreclosing online or mobile sports or other wagering.

The tribes have built a market and established brands that they now wish to expand by adding sports betting to their portfolios. DraftKings, FanDuel, BetMGM, and other major commercial brands have made inroads into mobile wagering all over the U.S. and rightly see California as the untapped market with the biggest current potential. The rapid legalization and soon, expansion, of sports wagering is happening in many other states, including California’s neighbors—and much of it is in mobile or online. It’s logical for gaming tribes in California to see sports betting—in any form—as not only the next big thing, but the one to bet on right now.

The state of California also has much to gain, though less to lose, depending on which, if any, Proposition passes, or whether the status quo remains. Under the terms of existing tribal-state compacts, most gaming tribes in California make direct payments of gaming revenue to three state funds: the Revenue Sharing Trust Fund, the Special Distribution Fund, and the state’s General Fund. While the magnitude of the revenue increase to the state with the passage of Proposition 26 is “uncertain,” and includes various offsetting factors, such as the diversion of illegal sports wagering dollars to legal ones, the cannibalization of revenue from other economic enterprises, or additional state regulatory costs,²⁰ as well as how much wagering traffic and therefore tax dollars private racetracks generate, based on the \$3 billion GGR estimate for sports wagering alone, the overall addition to the state’s general funds clearly could be at least in the tens of millions annually. Similarly, the extent of the revenue increase to the state with the passage of Proposition 27 is also “uncertain,” with offsetting variables including the number of commercial and/or tribal operators, as well as similar diversions of revenue. It is also possible, if unlikely, that gaming tribes who enter into sports betting partnerships will seek renegotiation of their gaming compacts to mitigate some of the costs associated with being forced to partner with commercial operators. Yet the state’s legislative

²⁰ See [California] Legislative Analyst’s Office, Proposition 26: Analysis of Measure, *supra* note 15.

analysis suggests the combination of licensing fees, renewals, and revenue could generate “hundreds of millions of dollars annually.”²¹

Public opinion polls heading into the election suggest that both measures are likely to be defeated. Proposition 26 earned the support of just 31% of likely voters in a poll conducted by the UC Berkeley Institute of Governmental Studies (co-sponsored by the *L.A. Times*) in September, compared with 42% opposed. Proposition 27 had even less support: 27% of likely voters were in favor and 53% opposed.²² In late-October, a poll by the Public Policy Institute of California found similar support of Proposition 26, at 34%, with a significantly greater, and likely insurmountable, opposition of 57%. Proposition 27’s support also was similar, at 26 percent, and again, seemed to demonstrate a hardened opposition at 67%.²³

Sports wagering is here to stay. The question may be less about *whether* it comes to California, than *when*, and in *what forms*. If one, or both, measures fail, we can expect this issue to be on the ballot again in 2024.

²¹ See [California] Legislative Analyst’s Office, Proposition 27: Analysis of Measure, *supra* note 17.

²² See Taryn Luna & Phil Willon, “Dueling California Sports Betting Propositions Appear Headed to Defeat,” Poll Finds, *L.A. Times* (Oct. 4, 2022), <https://www.latimes.com/california/story/2022-10-04/2022-california-election-sports-betting-proposition-26-27-poll>. This is no surprise to many observers; ballot initiatives and referenda often are confusing to voters, especially those with low-information, and big-money spending both in favor and opposition to such measures, often by ad hoc coalitions whose competing interests coalesce under political committees with limited transparency, tends to confuse the issues further, often leading to the defeat of such measures. See, e.g., Philip Bump, “Big Ballot Initiative Money is a Lot More Effective at Saying ‘No’ than ‘Yes,’” *Washington Post* (Nov. 4, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/11/04/big-ballot-initiative-money-is-a-lot-more-effective-at-saying-no-than-yes/>.

²³ Mark Baldassare, Dean Bonner, Rachel Lawler & Deja Thomas, PPIC Statewide Survey: Californians and Their Government, Public Policy Institute of California (October 2022), at <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-government-october-2022/>. The statewide poll was conducted between October 14-23, 2022.

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