No. S272366

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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HOLLYWOOD PARK CASINO COMPANY, LLC,
and CAL-PAC RANCHO CORDOVA, LLC,

*Petitioners*,

v.

SHIRLEY WEBER, in her official capacity as the Secretary of State of the State of California,

*Respondent.*

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COALITION TO AUTHORIZE REGULATED SPORTS WAGERING, SPONSORED BY CALIFORNIA INDIAN GAMING TRIBES, a California corporation, and MARK MACARRO, EDWIN ROMERO, ANTHONY ROBERTS, and JEFF GRUBBE,

Real Parties in Interest.

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# REAL PARTIES IN INTEREST'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE

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## CERTIFICATE OF INTERESTED PARTIES OR PERSONS

In addition to the Real Parties in Interest identified in this Writ Petition, the following entities have a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves under Rule 8.208, California Rules of Court:

1. Pechanga Band of Luiseño Mission Indians
2. Barona Band of Mission Indians
3. Yocha Dehe Wintun Nation
4. Agua Caliente Band of Cahuilla Indians
5. Rincon Band of Luiseño Mission Indians
6. Santa Ynez Band of Chumash Mission Indians
7. Sycuan Band of the Kumeyaay Nation
8. Soboba Band of Luiseño Indians
9. San Manuel Band of Mission Indians

Dated: December 29, 2021

Respectfully submitted,

OLSON REMCHO, LLP

By: /s/ Lance H. Olson
Lance H. Olson

Attorneys for Real Parties in Interest

## TABLE OF CONTENTS

**Page(s)**

## TABLE OF AUTHORITIES

**Page(s)**

**CASES:**

**TABLE OF AUTHORITIES: (Continued)** **Page(s)**



**CALIFORNIA CONSTITUTION:**



**CALIFORNIA STATUTES:**



**MISCELLANEOUS:**

## INTRODUCTION

The Petition for Writ of Mandate filed by the Hollywood Park Casino Company, LLC, *et al.*, seeks to remove the California Sports Wagering Regulation and Unlawful Gambling Enforcement Act, Initiative 19-0029-A1 ("Initiative") from the November 2022 General Election ballot. As the proponents and supporters of that Initiative, Real Parties in Interest ("RPI") Coalition To Authorize Regulated Sports Wagering, Sponsored by California Indian Gaming Tribes, and Mark Macarro, Edwin Romero, Anthony Roberts, and Jeff Grubbe, file this Preliminary Opposition.

Petitioners ask this Court to exercise its original mandamus jurisdiction in order to obtain pre-election review of the Initiative. By making such a request, Petitioners are asking the Court to become immersed in a political fight between various interest groups seeking to expand gaming in California. In addition to the Initiative challenged here, there are three other initiatives that may qualify for the November 2022 ballot, including a measure financially supported by Petitioners that would expand gambling in a manner very similar to the Initiative at issue in this Petition, but with gaming expansion and enforcement provisions more favorable to Cardrooms (and therefore Petitioners).

This Court should decline Petitioners' invitation. As an initial matter, the Petition fails to adequately explain why this Court should invoke its original jurisdiction as required by Court rules. There is no urgent need for the Court to hear this case,

which could surely be heard by a lower court before the September 2, 2022 ballot-printing deadline. Petitioners have known about the Initiative for over two years; by delaying in bringing this action they have created their own sense of urgency when in fact no such urgency exists.

Even apart from Petitioners' two-year delay, they have failed to demonstrate why the matter is urgent or even why it merits pre-election review. The Petition's novel argument that the single-subject rule prohibits an initiative from expanding gaming in the state in more than one way or combining that expansion with additional rules for safer gaming falls far short of demonstrating the strong likelihood of success necessary for pre-election review. The Initiative would allow additional types of gaming while also increasing regulation and oversight over the industry, recognizing that responsible gambling requires oversight to protect minors, public safety and public health. A ballot measure's provisions need not interlock in a functional relationship; instead, they must only reasonably relate to a common theme or purpose. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 512-13 ("*Eu*").) That is exactly what this Initiative does. As demonstrated below, this Court has repeatedly rejected single-subject challenges to initiatives that proposed far more comprehensive and broad-based changes to particular areas of public interest than the modest changes presented in the Initiative.

Finally, a review of several proposed 2022 ballot measures offers essential context to this Petition and indicates that

Petitioners' real motivation here is to enlist this Court in achieving certain political advantages. While this Initiative has been formally certified as eligible for placement on the November 2022 general ballot,[1] proponents of three other potential gaming measures are currently seeking voter signatures or awaiting a circulating title and summary from the Attorney General. (Pet'rs' Exhs. 17, 18, 20.) As Petitioners correctly note, the November 2022 general election ballot may therefore very likely contain at least two or more competing ballot measures related to gambling in California. However, the Petition leaves out a key detail: One competing measure is almost entirely supported by Cardrooms: the California Solutions to Homelessness, Public Education Funding, Affordable Housing and Reduction of Problem Gambling Act (Initiative 21-0009-A1), for whom one of the Petitioners is a major financial backer.[2] Petitioners' argument about the need for pre-election review to prevent "voter confusion" rings hollow in light of their obvious political advocacy for a competing gaming initiative – one that favors

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[1] Pet'rs' Exh. 16 [Sect. of State Letter re Initiative 19-0029-A1 Eligibility for Ballot].

[2] Recipient Committee Campaign Statement (F460), Cities for Responsible Sports Betting, sponsored by Bumb & Associates, Inc. and affiliated entities, found at https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2624828&amendid=0 [listing that Park West Casinos, owner of Petitioner Cal-Pac Rancho Cordova, LLC, gave $150,000 to Cities for Responsible Sports Betting, a committee formed to support the California Solutions to Homelessness, Public Education Funding, Affordable Housing and Reduction of Problem Gambling Act.

Cardrooms but (as discussed further below) contains virtually the same elements they now challenge as violating the single-subject rule.

Petitioners cannot meet their burden to justify the Court's original jurisdiction, nor can they show that the Initiative violates the single-subject rule. The Court should thus summarily deny the Petition.

## ARGUMENT

### I. PETITIONERS HAVE NOT ADEQUATELY EXPLAINED WHY THIS COURT SHOULD EXERCISE ITS ORIGINAL JURISDICTION

Typically, this Court reserves the exercise of its original jurisdiction for matters of sufficiently great importance that require immediate resolution. (See, e.*g.*, *Cal. Redevelopment Ass'n v. Matosantos* (2011) 53 Cal.4th 231, 253 [relating to the dissolution of 400 redevelopment agencies and the proper allocation of billions of dollars in property tax revenue].) Yet, the Petition lacks any rationale justifying urgent mandamus relief. Not only have Petitioners waited two years since this Initiative was introduced to bring this challenge, they also offer no justification for why they could not have filed this Petition in a lower court given that the ballot-printing deadline is still nine months away.

Under California Rules of Court, rule 8.486(a)(1), a petition for writ of mandate "must explain why the reviewing court should issue the writ as an original matter" if the petition "could have been filed first in a lower court." Yet, Petitioners have

failed to provide an adequate explanation as to why they filed their Petition in this Court at this time.

The Initiative was submitted to the Attorney General on November 14, 2019 with a request for title and summary. After amendments were submitted in late December, the Attorney General issued a circulating title and summary on January 21, 2020. More than a million and a half signatures were submitted in November and December of 2020 – well over the threshold for facial validity.[3] On May 27, 2021 the Secretary of State certified the measure as eligible for the November 8, 2022 General Election ballot. Petitioners offer no reason for waiting more than two years from the filing of the Initiative (or even seven months from the time it qualified for the ballot) to suddenly determine that immediate review by this Court was urgently needed. Petitioners' decision to inordinately delay legal action does not justify intervention by this Court at this stage.

Petitioners appear to believe it is self-evident that any single-subject challenge, however flimsy, is entitled to immediate review by this Court based solely on *Senate of the State of California v. Jones* (1999) 21 Cal.4th 1142, 1154 ("*Jones*"). This overstates the holding of *Jones* but also fails to show why pre-election review *in this Court in the first instance* is necessary and appropriate.

While pre-election review of single-subject challenges may be appropriate in some circumstances, it is not required. *Jones*

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[3] Pet'rs' Exh. 16 [Sect. of State Letter re Initiative 19-0029-A1 Eligibility for Ballot].

did not indicate that all single-subject challenges required pre-election review, but only those that demonstrate a "strong likelihood" of such a violation.[4] For reasons discussed below, Petitioners cannot make that showing.

Even if pre-election review may be appropriate, such review can be afforded in the lower courts; nothing in *Jones* suggests that immediate review in this Court must be afforded to every single-subject challenge. Petitioners acknowledge that the ballot-printing deadline is nine months away: September 2, 2022. With nine months to the printing deadline, Petitioners surely could have filed this action in a California Superior Court, which could consider this matter with sufficient time for appellate review by the Court of Appeal or even this Court. Ignoring California Rules of Court, rule 8.486(a)(1), Petitioners fail to explain why they have not sought relief in the lower courts. Simply put, the Petitioners have failed to make the showing of urgency necessary to obtain immediate review in this Court.

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[4] *Senate v. Jones* was decided before this Court's decisions in *Costa v. Superior Court* (2006) 37 Cal.4th 986 and *Independent Energy Producers Association v. McPherson* (2006) 38 Cal.4th 1020. In both *Costa* and *Independent Energy Producers*, the Court strongly suggested that pre-election review should be limited to procedural challenges involving the manner in which a measure qualified for the ballot and that legal challenges to a measure's validity should await post-election review. And, in fact, single-subject challenges have not always been reviewed pre-election. (*See*, *e.g., Hernandez v. County of Los Angeles* (2008) 167 Cal.App.4th 12, 16.)

## II. PETITIONERS HAVE FAILED TO DEMONSTRATE A "STRONG LIKELIHOOD" THAT THE INITIATIVE VIOLATES THE SINGLE-SUBJECT RULE

The single-subject rule prohibits an initiative from "embracing more than one subject." (Cal. Const., art. II, § 8(d).) In order to obtain pre-election review based on an alleged violation of the single-subject rule, a petitioner must demonstrate a "strong likelihood" of success. (*Jones*, *supra,* 21 Cal.4th at p. 1154.) Petitioners cannot come close to meeting this burden as their single-subject claim is meritless.

The Court's decisions on the single-subject rule are consistent and well developed. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 828.) To satisfy the rule, the provisions of a measure need not effectively interlock in a functional relationship, but need only reasonably relate to a common theme or purpose. (*Eu*, *supra*, 54 Cal.3d at pp. 512-13.) The governing principle is that an initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are "'reasonably germane' to each other," and to the general purpose or object of the initiative. (*Id.* at p. 512.) The "reasonably germane" standard is applied "in an accommodating and lenient manner so as not to unduly restrict … the people's right to package provisions in a single bill or initiative." (*Californians for an Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764.)

The Initiative more than satisfies the "reasonably germane" standard under the Court's settled doctrine. The

Initiative would expand gaming in the state, but only to highly regulated and safe facilities experienced in gaming, while adding new safeguards to protect minors and public health, and also stop illegal gaming. Each of the several facets of the Initiative bears a common focus: Expanding gaming in California while strengthening the state's gambling regulations and safeguards. This goal is the readily discernible common thread that unites all of the Initiative's provisions in advancing its core purpose.

The California Constitution currently allows federally recognized Native American tribes to offer certain gaming (slot machines and banked card games) on tribal lands. The Initiative would amend the Constitution to permit some additional games (roulette and dice games), subject to compact negotiations. (Pet'rs' Exh. A at p. 13 [proposed Cal Const., art. IV, §19(f)].) The Initiative would also permit in-person sports wagering at certain highly regulated venues, including tribal facilities on tribal lands and certain privately operated horse-racing tracks. (*Id.* at pp. 13-14 [proposed Cal Const., art. IV, §19(f), (h)].)

The Findings and Declarations conclude that "Californians 21 years of age or older should have the choice to participate in legal sports wagering *in highly regulated and safe facilities that are experienced in gaming operations* and are in good standing with the appropriate federal, state, and local regulatory agencies." (*Id.* at p. 10, emphasis added [§ 2(g)].) "[T]ribal governments have an expertise in gaming operations and possess the financial resources to *responsibly* operate sports wagering," and thus they should be allowed to "offer *sports wagering,*

*roulette, and games played with dice*, after negotiations pursuant to state and federal law." (*Id.* at p. 11, emphasis added [§ 3(b)].) The Purposes and Intent section also notes that certain privately operated horse-racing tracks should be granted the privilege to offer in-person sports wagering as "these operators are also highly regulated and are experienced in gaming operations." (*Id.*, emphasis added [§ 3(c)].)

This expansion of gaming is coupled with increased oversight, regulation and supervision of gaming throughout the state. For one, the Initiative envisions "[a] well supervised sports wagering system." (*Id.* at p. 10 [§ 2(m)].) The Initiative further places significant focus on the protection of minors and therefore the Initiative does not permit wagering on high school sports events, or even California collegiate events. (*Id.* at p. 14 [proposed Cal. Const., art. IV, § 19(i)].) The Initiative also requires adults 21 or older to be physically present in a facility to place sports wagers, prohibits wagering by minors and prohibits the marketing and advertising of sports wagering to persons younger than 21 years old. (*Id.* at pp. 13-14, 16, 17 [proposed Cal. Const., art. IV, § 19(f), (h); proposed Bus. & Prof. Code § 19674; proposed Bus. & Prof. Code § 19991].)

Consistent with this approach, the Initiative provides for private civil actions to enforce California gambling laws. Specifically, persons or entities that become aware of any person engaging in behavior prohibited by state gaming laws may file a civil action in court seeking penalties of up to $10,000 per violation and request a court order to stop the illegal behavior.

(*Id.* at pp. 16-17 [proposed Bus. & Prof. Code § 19990].) *Despite Petitioners' claim, this proposed private civil action does not apply exclusively to Cardrooms.* This civil action applies to any illegal gambling in the state, including entities not authorized by law to offer sports wagering or other new gaming activities authorized by this Initiative. The connection to the expansion of new gaming is clear: This Initiative allows additional games at a finite number of highly regulated venues; if other less-regulated entities try to offer these games, Californians will have additional tools to stop this illegal activity. Thus, the Initiative "[i]ncreas[es] enforcement of existing gambling rules to ensure that all establishments that offer gambling opportunities play by the rules and follow the law." (*Id.* at p. 12 [§ 3(i)].) As described by the Purposes and Intent section, "[t]hese increased enforcement measures will ensure that all lawful gambling is free from criminal and corruptive elements and that it is conducted honestly and competitively by suitable operators and hold gambling enterprises accountable without burdening local law enforcement." (*Id.*)

The Initiative's preamble also ties these safety and enforcement provisions to the Initiative's purpose. Sports wagering must take place at "highly regulated and safe facilities that are experienced in gaming operations" (*id.* at p. 10 [§ 2(m)]) to "take sports wagering out of the black market and create a regulatory structure that prevents access by minors and protects public safety." (*Id.* at p. 11 [§ 3(a)].) The requirement for physical presence serves to reinforce the age requirement (over

21) and is coupled with a prohibition on marketing to persons under 21. (*Id.* at p. 11 [§ 3 (e)(1)-(3)].) The Findings and Intent section also recognizes that "[u]nregulated gambling enterprises are a threat to public safety and public health" and that "[c]urrent enforcement of gambling laws are inadequate. California needs more ways to enforce our state's gambling laws to protect children and vulnerable adults from unscrupulous organizations that run illegal gambling operations. Californians should be able to report and enforce violations of California laws against illegal gambling activities." (*Id.* at pp. 9-10 [§ 2(c), (l)].) To that end, an explicit purpose is to protect public safety "by strengthening the enforcement of California's current gambling laws to allow Californians to hold illegal gambling activities and operations accountable." (*Id.* at p. 10 [§ 2(h)].) These provisions thus emphasize the theme that the Initiative's expansion of gaming requires additional oversight of these industries to protect public safety.

Petitioners allege that each of the Initiative's provisions are somehow too disparate for one initiative. Under Petitioners' theory, an initiative that expands gaming to include sports wagering may not also include dice games and roulette, apparently only because they have historically been regulated separately. It defies common sense to assert that language amending the same constitutional provision to expand gaming to include both sports wagering, dice games and roulette somehow constitutes "unduly diverse or extensive provisions bearing no relationship to each other or to the general object which is sought

to be promoted." (*Jones*, *supra*, 21 Cal.4th at p. 1157-1158, citing *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253 ("*Brosnahan*").)

In addition, Petitioners argue that while gaming can be expanded in the state, voters cannot add additional safety regulations over the industry with respect to that gaming because the latter is not "germane" to the former.[5] This Court has rejected the extremely narrow approach advocated by Petitioners. In fact, the single-subject rule does not require a court to predict whether each section actually will further the Initiative's purpose. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 841-842 [rejecting argument that Proposition 103's provisions on prohibiting rebates and banks involved different

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[5] Petitioners' only support for this notion is dicta in a Nebraska Supreme Court case which has neither precedential force nor persuasive value. (*Doe v. Occidental College* (2019) 37 Cal.App.5th 1003, 1018, fn. 2 ["California courts are not bound by out-of-state cases"]; *Michels v. Watson* (1964) 229 Cal.App.2d 404, 405-406 [out-of-state cases have hardly any persuasive value where there is longstanding and controlling authority by California courts].) The Nebraska Supreme Court held that an initiative that legalized a new form of wagering and allocated gambling revenue generated partially by the new wagering violated the single-subject rule. (*State ex rel. Loontjer v. Gale* (2014) 288 Neb. 973, 1003-1004.) This decision is out of step with California's single-subject rule, which permits initiatives to authorize a tax and then allocate the revenue to specific purposes. (*E.g.*, *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 254-255; *California Assn. of Retail Tobacconists v. California* (2003) 109 Cal.App.4th 792, 811-812.)

"subjects" than the balance of the initiative because they may not have furthered the initiative's purpose of lowering insurance costs].) Instead, the inquiry centers only on whether the provisions are reasonably germane to the general purpose or objective of the measure. (*Id.*) Prior to this Petition, it would have been unthinkable that a gaming enforcement provision was not "germane" to expanded gaming.

Petitioners strain to pigeonhole this Initiative into the Court's holding in *Jones*, *supra*, 21 Cal.4th 1142, by arguing that regulation of "gaming" is an excessively general topic in much the same way that the *Jones* Court found "voter approval" excessively general. The proposed initiative in *Jones* would have changed several areas of law involving the state budget, legislative pay, and redistricting. The analogy is inapt. This Initiative focuses on one area only: Gaming. And its statements of Findings and Purposes further make clear that the Initiative's focus is on expanding gaming while enhancing public safety. The *Jones* Court reaffirmed that "[t]he single-subject requirement should not be interpreted in an unduly narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Id.* at p. 1157.)

Contrary to Petitioners' novel arguments, the single-subject case law is replete with decisions approving initiatives which include "broad-based" changes in a particular area of public concern. In *Fair Political Practices Commission v. Superior Court* (1979) 25 Cal.3d 33, 41-42 ("*FPPC*"), this Court rejected a

single-subject challenge to the Political Reform Act of 1974. The Political Reform Act contained more than 20,000 words addressing subjects such as establishment of a Fair Political Practices Commission, disclosure of candidate financial support, limitations on campaign spending, lobbyist activities, conflicts of interest, voter pamphlets, candidate ballot statements, and auditing. (*Id.* at pp. 37, 40.) The Court held all of these topics are reasonably germane to the single subject of "political practices," which the Court considered not so overly broad as to require invalidation under the single-subject rule. (*Id.* at p. 43.)

In *Brosnahan*, *supra,* 32 Cal.3d at pp. 245-253, the Court upheld Proposition 8, the "Victims' Bill of Rights," despite the wide variety of topics covered in the initiative, including sections relating to victim restitution, safe schools, admissibility of evidence, bail, prior convictions, insanity and diminished capacity defenses, habitual criminals, the right of victims to appear and express views regarding the crime and the defendant, plea bargaining, and the sentencing of youthful offenders. (*Id.* at pp. 242-245.) All of these topics were viewed as included within the single subject of "promoting the rights of actual or potential crime victims." (*Id.* at p. 247.)

In *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 346-349, the Court considered another expansive criminal justice initiative, Proposition 115, the "Crime Victims Justice Reform Act." As with Proposition 8, Proposition 115 contained provisions relating to various topics, including post-indictment preliminary hearings, constitutional construction, the right of the prosecution to a

speedy trial, joinder and severance, hearsay evidence in preliminary hearings, discovery in criminal proceedings, voir dire, felony murder and special circumstance murder, the new crime of torture, appointed counsel, and continuances. (*Id.* at pp. 342-345.) Relying on *Brosnahan*, this Court again found the varied provisions united to the single subject of promoting the rights of actual and potential crime victims. (*Id.* at p. 347.) As this Court has repeated, "the voters may not be limited to brief general statements but may deal comprehensively and in detail with an area of law." (*FPPC*, *supra*, 25 Cal.3d at p. 41.)

In contrast to the numerous multifaceted measures pertaining to subjects as broad as politics and the criminal justice system, this Initiative constitutes a much more focused measure focused on a limited expansion of gaming in California with increased protections for the public. The Initiative's provisions work together toward this common theme. While the Initiative proposes to allow additional types of gaming through an amendment to the Constitution regulating gambling, it also increases regulation and oversight over the industry, understanding that responsible gambling requires oversight to protect minors, public health, and public safety.

Petitioners attempt to limit the subject of the Initiative to legalizing sports wagering only and argue that the measure "conceals" a proposed expansion of other games of chance on tribal lands and the addition of a civil enforcement tool for violations of certain state gaming laws. Quite the opposite. These provisions are hardly hidden. They are first spelled out in

the Initiative's Findings and its Statement of Purposes. Subdivision (b) of the Purposes and Intent section describes how the Initiative "permit[s] tribal governments to offer *sports wagering, roulette, and games played with dice* ... as tribal governments have an expertise in gaming operations and possess the financial resources to responsibly operate sports wagering." (Pet'rs' Exh. A at p. 11, emphasis added.) Subdivision (l) of the Findings and Declarations describes how "Californians should be able to report and enforce violations of California laws against illegal gambling activities." (*Id.* at p. 10.) And, subdivision (i) of the Purposes and Intent states that one purpose is to "[i]ncrease[] enforcement of existing gambling rules to ensure that all establishments that offer gambling opportunities play by the rules and follow the law." (*Id.* at p. 12.)

The substantive provisions that follow are equally clear. The provisions to amend the State Constitution to expand gaming are literally the first substantive provisions and would be understandable to any voter. (*Id.* at p. 13.) Its enforcement provisions are also set forth in a separate section titled "Enforcement Against Unlawful Gambling Activities." (*Id.* at p. 16-17.) Far from hidden, these provisions are explicit and clear in the text of the Initiative. And courts will not lightly assume voters will be misled by proposed legislation if they are given the full text. (*Brosnahan*, *supra*, 32 Cal.3d at p. 252; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243.)

In addition, the provisions complained of are addressed in the Attorney General's circulating title and summary and the Legislative Analyst's fiscal analysis, both of which describe the expansion of gaming on tribal lands and the private civil action against illegal gaming. (Pet'rs' Exh. B, at p. 20 [Cal. Attorney General, Title and Summary Issued on January 21, 2020 for Initiative no. 19-0029A1]; Legislative Analyst, Fiscal Estimate of Initiative no. 19-0029A1. [6]) As a result, the top of the first page and each and every signature page of the petition for this Initiative – which must include the circulating title and summary – presented these so called "concealed" provisions to each signer. (Elec. Code, § 9009 [requiring the heading of an initiative petition to include the circulating title and summary].) Thus, the almost 1.5 million voters who signed this Initiative petition saw, on the first page of the petition and/or on each signature page, that the Initiative "[a]llows federally recognized Native American tribes to operate roulette, dice games, and sports wagering on tribal lands, subject to compacts negotiated by the Governor and ratified by the Legislature" and "[a]uthorizes private lawsuits to enforce other gambling laws." (Pet'rs' Exh. B, at p. 20.)

Petitioners cite to *California Trial Lawyers Association v. Eu* (1988) 200 Cal.App.3d 351 ("*CTLA*"), to argue that the expansion of gaming to include roulette and dice games violates the single-subject rule as it is "concealed" because it consists of only five words in the Initiative. The *CTLA* Court's reasoning is inapplicable here. There, a single provision lifting campaign

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[6] Found at: https://lao.ca.gov/ballot/2019/190661.pdf.

contribution limits on insurers was included at page 52 in a 120-page initiative measure addressed to controlling costs in the insurance industry. (*Id.* at pp. 359-360.) Here, the Initiative is relatively short and the provisions complained of are addressed prominently in the statement of Findings, the statement of Purposes, and the text. Moreover, they were highlighted for voter in summaries prepared by the Attorney General and the Legislative Analyst. There is simply no comparison to *CTLA*.

Finally, Petitioners argue that the Initiative is impermissible because it bundles popular provisions with "controversial" provisions. (Pet. at p. 57.) There is no constitutional basis for a separate claim of "logrolling;" a measure is allowed to combine various provisions so long as it does not run afoul of the single-subject rule. (*Kennedy Wholesale, Inc.*, *supra*, 53 Cal.3d at p. 255.) Nor does the single-subject rule require a showing that each one of a measure's provisions are capable of gaining voter approval independently. (*Id.*; *see also*, *Raven*, *supra*, 52 Cal.3d at p. 349*; Brosnahan*, *supra*, 32 Cal.3d at p. 251; *FPPC*, *supra*, 25 Cal.3d at p. 42.)

Petitioners devote many pages attempting to selectively parse out particular phrases from the Initiative in order to highlight supposed distinctions or differences. At the end of the day, however, this is an Initiative that amends the state Constitution in a straightforward manner in order to expand gaming in certain highly regulated facilities, accompanied by statutory provisions that enhance regulation of the industry.

There is nothing "disparate" about these provisions and nothing that comes close to violating the single-subject rule.

## III. PETITIONERS' CLAIMS REFLECT A DISINGENUOUS ATTEMPT TO REMOVE POLITICAL COMPETITION

The weakness of Petitioners' claims suggest that the real motivation is to eliminate a measure that competes with their preferred gaming measure. As noted above, there are multiple gaming initiatives currently in circulation for November 2022. The Cardroom-supported measure, which at least one Petitioner has supported to the tune of $150,000, would (1) authorize roulette, craps, and games played with dice at tribal casinos, (2) authorize Cardrooms to offer games played with cards or tiles, including blackjack and baccarat, as long as they are not banked games, (3) authorize sports wagering offered by Cardrooms, horse racing tracks, and tribes with tribal-state compacts as well as professional sports teams from certain leagues and finally (4) prohibit private civil actions to enforce certain gaming laws and specify that the state is solely responsible for enforcement. (Pet'rs' Exh. 17, at pp. 158-168 [Initiative 21-009-A1].) In other words, the Cardroom-supported initiative would not only expand gaming on tribal lands and casino-style gambling in Cardrooms, but would also allow sports wagering, and would change the rules for enforcing certain gambling laws – the very subjects which the Petitioners claim to be multiple, disparate subjects. According to Petitioners' own novel single-subject theory, each of these topics is a subject unto itself under the single-subject rule and therefore cannot be combined with others in a single measure. Apparently,

Petitioners believe the Initiative challenged in this case violates the single-subject rule, while the initiative Petitioners support as an alternative does not. Both cannot be true. Petitioners' challenge to this Initiative while supporting another measure that has the same combination of provisions –albeit tailored to the interests of the Cardrooms – is not only hypocritical, but further demonstrates that this Petition represents a veiled political attempt to gain an advantage for an alternative ballot measure.

The confluence of competing gaming initiatives weighs against Petitioners' claims and reinforces the strong presumption against pre-election review. The Petition seeks to involve the Court in a choice better left to the voters. As this Court has affirmed, pre-election review is disfavored because these claims are just as susceptible to resolution after an election. (*Indep. Energy Producers Ass'n*, *supra*, 38 Cal.4th at p. 1030.) This is just as true for challenges based on the single-subject rule as it is of other types of challenges. (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4-5 [rejecting single-subject challenge to Victim's Bill of Rights, because "it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process"].) Rather than disrupting the electoral process by preventing the exercise of the people's franchise, the Court should decline to exercise its original jurisdiction.

## CONCLUSION

For the reasons set forth above, Real Parties in Interest respectfully request that the Court summarily deny the Petition.

Dated: December 29, 2021

Respectfully submitted,

OLSON REMCHO, LLP

By: /s/ Lance H. Olson
Lance H. Olson

Attorneys for Real Parties in Interest Coalition To Authorize Regulated Sports Wagering, Sponsored By California Indian Games Tribes, a California corporation, and Mark Macarro, Edwin Romero, Anthony Roberts, and Jeff Grubbe

**BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 4,916 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: December 29, 2021

/s/ Lance H. Olson
Lance H. Olson

## PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 555 Capitol Mall, Suite 400, Sacramento, California 95814.

On December 29, 2021, I served a true copy of the following document(s):

**REAL PARTIES IN INTEREST'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE**

on the following party(ies) in said action:

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☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

- ☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Oakland, California, in a sealed envelope with postage fully prepaid.

☒ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 29, 2021, in Sacramento, California.

/s/ Holly M. Mills
Holly M. Mills