Case No: S_____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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.

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.

PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING EXHIBITS

REQUEST FOR EXPEDITED REVIEW OR STAY SEPTEMBER 2, 2022 BALLOT-PRINTING DEADLINE

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CERTIFICATE OF INTERESTED PARTIES OR PERSONS

In addition to the Petitioners, Respondent, and Real Parties in Interest identified in this Writ Petition, the following entities or persons have an ownership interest of 10% or more in a party or 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. Stockbridge HP Casino Holdings Company, LLC (100% owner of Petitioner HP Casino Company, LLC)
2. Stockbridge HP Holdings Co., LLC (100% owner of Stockbridge HP Casino Holdings Company, LLC)
3. Stockbridge Hollywood Park Co. Investors, LP (30.02% owner of HP Holdings Company, LLC)
4. Bay Meadows Land Co., LLC (34.99% owner of HP Holdings Company, LLC)
5. Park West Casinos, Inc. (100% owner of Petitioner Cal-Pac Rancho Cordova, LLC)
6. John H. Park Trust Under Declaration of Trust July 18, 2012 (100% owner of Park West Casinos, Inc.)
7. Pechanga Band of Luiseño Mission Indians
8. Barona Band of Mission Indians
9. Yocha Dehe Wintun Nation
10. Agua Caliente Band of Cahuilla Indians
11. Rincon Band of Luiseño Mission Indians
12. Santa Ynez Band of Chumash Mission Indians
13. Sycuan Band of the Kumeyaay Nation

14. Soboba Band of Luiseño Indians

15. San Manuel Band of Mission Indians

Date: December 21, 2021 Gibson, Dunn & Crutcher LLP

By: *Maurice Suh*
_____
Maurice M. Suh

Attorneys for Petitioners

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PETITION FOR WRIT OF MANDATE AND REQUEST FOR EXPEDITED REVIEW OR STAY IN ADVANCE OF BALLOT-PRINTING DEADLINE OF SEPTEMBER 2, 2022

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

By this verified petition, Petitioners allege as follows:

INTRODUCTION

This petition presents an election issue of great importance that should be resolved before the ballot-printing deadline of September 2, 2022, for the November 2022 ballot. Petitioners seek preelection review of the "California Sports Wagering Regulation and Unlawful Gambling Enforcement Act," Initiative 19-0029-A1 ("Initiative") because it violates the California Constitution's single-subject rule in multiple ways.

California's single-subject rule provides that ballot initiatives embracing more than one subject "may not be submitted to the electors." (Cal. Const., art. II, § 8, subd. (d).) In violation of this clear constitutional command, the California Indian Gaming Tribes[1] have crafted this Initiative, which unites

[1] The federally-recognized Indian Tribes in California who have contributed financially to the Coalition to Authorize Regulated Sports Wagering or whose Chairmen have signed on to the Initiative as a proponent in their individual capacities include: the Pechanga Band of Luiseño Mission Indians, the Barona Band of Mission Indians, the Yocha Dehe Wintun Nation, the Agua Caliente Band of Cahuilla Indians, the Rincon Band of Luiseño Mission Indians, the Santa Ynez Band of Chumash Mission Indians, the Sycuan Band of the Kumeyaay Nation, the Soboba Band of Luiseño Indians, and the San Manuel Band of Mission Indians (collectively, the "California Indian Gaming Tribes").

three distinct subjects. The vast majority of the Initiative concerns sports wagering, including its legalization, regulation, and taxation. However, this measure conceals two additional, disparate measures, both of which are designed for the Gaming Tribes' sole benefit and both of which Californians and their public officials have previously rejected. First, this sports-wagering Initiative would *also* eliminate California's longstanding constitutional ban on Las Vegas-style casinos (*id.*, art. IV, § 19, subd. (e)) by authorizing the Gaming Tribes to offer the full panoply of casino games available in Las Vegas by adding roulette and dice games to their existing exclusive right to offer slot machines and banked card games. Second, the Initiative would *also* enact a private-enforcement provision that would allow the Gaming Tribes to sue their private business competitors—the California Cardrooms—for alleged violations of the Penal Code, even though such suits cannot be brought against the Gaming Tribes and their agents. Each of these additional measures stand starkly apart from the authorization, taxation, and regulation of sports wagering.

The Gaming Tribes have repeatedly tried and failed to obtain these casino-gambling and private-enforcement rights through every available policy lever in government—from ballot initiatives, to state and federal lawsuits, to administrative rulemaking and enforcement processes, and others. Now, the Initiative's proponents seek to exploit the popular demand for legal sports wagering by hitching two unpopular wish-list measures to a sports-wagering Initiative. That gambit squarely

violates the single-subject rule, which was enacted to combat precisely this sort of "voter confusion and deception" (*Senate v. Jones* (1999) 21 Cal.4th 1142, 1160 (*Jones*); *Cal. Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 360) and "log-rolling" (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1098; *Chem. Specialties Mfrs. Assn. v. Deukmejian* (1991) 227 Cal.App.3d 663, 672).

The Court can, and should, address this clear violation of the single-subject rule before the ballot-printing deadline of September 22, 2022, and certainly before the November 2022 election, for three independent reasons:

First, preelection review of a single-subject challenge "not only is permissible but is expressly contemplated" by the California Constitution. (*Jones*, *supra*, 21 Cal.4th at p. 1153.) The California Constitution's single-subject rule provides that initiatives embracing more than one subject "may not be submitted to the electors." (Cal. Const., art. II, § 8, subd. (d).) That is because initiatives that embrace more than one subject irreparably and inherently harm the integrity and legitimacy of the election process simply by appearing on the ballot.

Second, preelection review is necessary in this particular instance because the appearance of an invalid measure on the ballot not only diverts resources and public attention to an unconstitutional initiative, but also will confuse voters who may be confronted during the same election with other measures addressing sports wagering. Specifically, the Initiative is just one of several qualified and active measures that voters may be

asked to decide during the November 2022 election. Postponing review until after the election would risk confusing voters about which measure to support, which would fundamentally undermine the initiative process and the election outcome as to the competing measures.

Third, postelection review would likely waste substantial governmental resources. If approved by voters, the Initiative would immediately trigger the renegotiation of dozens of existing compacts between the State and the Gaming Tribes to add roulette, dice games, and sports wagering and would produce a wave of civil litigation against the Cardrooms by the Gaming Tribes using the Initiative's new private-enforcement provision for the criminal gambling laws. This could be entirely avoided by a preelection declaration of the Initiative's invalidity.

Accordingly, this Court can, and should, exercise its original mandamus jurisdiction to award preelection relief. And to forestall further irreparable harm, this Court should set this matter for expedited consideration before the printing deadline or issue a stay prohibiting Respondent from placing the Initiative on the ballot pending a decision in this case. As explained below, voter confusion and related harms to election integrity will continue to accrue unless the Initiative is kept from the November 2022 ballot.

JURISDICTION

1. This Court has original mandamus jurisdiction to decide the constitutionality of ballot initiatives where, as here, the issues presented are of great public importance and must be

resolved promptly. (Cal. Const., art. VI, § 10; Code Civ. Proc., §§ 1085–1086; Cal. Rules of Court, Rule 8.486.)

2. This Court also has inherent authority to stay preparation of a ballot measure to preserve the status quo pending a final decision on the writ. (Code Civ. Proc., § 923; *People v. Town of Emeryville* (1968) 69 Cal.2d 533, 539.)

3. Petitioners seek review by this Court in the first instance because of the statewide importance of the issues presented, the irreparable harm to election integrity risked by this violation of the single-subject rule, and the need for prompt, authoritative resolution to avoid prejudice to all Californians and the uncertainty associated with multiple lawsuits and potentially conflicting decisions among the lower courts. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 500; *Perry v. Jordan* (1949) 34 Cal.2d 87, 90–91.)

4. Petitioners seek preelection review because an initiative "embracing more than one subject may not be submitted to the electors." (Cal. Const., art. II, § 8, subd. (d).) Preelection review "not only is permissible but is expressly contemplated" where, as here, there is a "strong likelihood that the initiative violates the single-subject rule." (*Jones*, *supra*, 21 Cal.4th at pp. 1153–1154; *Cal. Trial Lawyers, supra,* 200 Cal.App.3d at p. 357.)

5. Petitioners' prayer for relief is particularly timely because the Initiative will not go to the printer for over eight months and several alternative ballot measures have *recently* been filed with the Attorney General that would accomplish

similar ends as the instant Initiative. (See Initiative 21-0039-A1 (filed Dec. 13, 2021), Exh. 20, appen. at p. 253; Initiative 21-0017-A1 (filed Oct. 5, 2021), Exh. 18, appen. at p. 171; Initiative 21-0009-A1 (filed Sept. 15, 2021), Exh. 17, appen. at p. 160.) The impending placement of this unconstitutional Initiative on the same ballot prejudices the ability of these other initiatives to be approved by voters and even to qualify for the ballot by the certification deadline of June 30, 2022, because the presence of this Initiative will confuse voters about the need for those measures and undermine the initiative process overall.

6. Petitioners are entitled to a peremptory writ declaring the Initiative invalid and permanently enjoining Respondent from placing the Initiative on the ballot. (Code Civ. Proc., § 1085.)

7. Petitioners are entitled to a peremptory writ because there exists no other "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) Without action by this Court, Respondent will be required by law on June 30, 2022, to certify the Initiative for inclusion on the November 2022 election ballot and on September 2, 2022, to send the November 2022 election ballot to the printer. (Cal. Const., art. II, § 8, subd. (c).)

8. Petitioners request expedited review or a stay in advance of the ballot-printing deadline to forestall the harms inflicted by the ongoing campaign activities of the Initiative's supporters and by the potential presence of the Initiative on the ballot for the November 2022 election.

PARTIES

9. Petitioner HOLLYWOOD PARK CASINO COMPANY, LLC is a cardroom in Inglewood, California, licensed by the California Bureau of Gambling Control ("Bureau") to offer rotating player-dealer card games to the public. If enacted, the challenged Initiative would overturn existing judicial precedents that prevent the Gaming Tribes from suing HOLLYWOOD PARK and undermine HOLLYWOOD PARK's reliance on the rules and regulations issued pursuant to the exclusive authority of the Bureau to regulate lawful gaming outside Indian lands (since the Gaming Tribes take a different view of the law from the Bureau).

10. Petitioner CAL-PAC RANCHO CORDOVA, LLC, doing business as Parkwest Casino Cordova, is a cardroom in Sacramento County licensed by the Bureau to offer rotating player-dealer card games to the public.

11. Respondent SHIRLEY WEBER is the Secretary of State of the State of California. On May 27, 2021, WEBER determined that the Initiative's proponents had gathered enough verified signatures to demonstrate eligibility for final ballot certification on June 30, 2022. (Exh. 16, appen. at p. 156.) Unless this Court intervenes, WEBER will be required by law to certify the Initiative and to cause it to be printed on the November 2022 election ballot no later than September 2, 2022. (Cal. Const., art. II, § 8, subd. (c).)

12. Real Party in Interest COALITION TO AUTHORIZE REGULATED SPORTS WAGERING, a California corporation "sponsored by California Indian Gaming Tribes," is the primary

organization responsible for expenditures favoring the Initiative. To date, the COALITION has received at least $12.5 million in contributions from the treasuries of the Gaming Tribes and spent at least $12.2 million in support of the Initiative. (Exhs. 12, 19, appen. at pp. 123, 234.)

13. Real Party in Interest MARK MACARRO is the Chairman of the Pechanga Band of Luiseño Mission Indians and one of the proponents of the Initiative. The Pechanga Band owns and operates the Pechanga Resort and Casino in Riverside County.

14. Real Party in Interest EDWIN ROMERO is the Chairman of the Barona Band of Mission Indians and one of the proponents of the Initiative. The Barona Band owns and operates the Barona Resort and Casino in San Diego County.

15. Real Party in Interest ANTHONY ROBERTS is the Chairman of the Yocha Dehe Wintun Nation and one of the proponents of the Initiative. The Yocha Dehe Wintun Nation owns and operates the Cache Creek Casino Resort in Yolo County.

16. Real Party in Interest JEFF GRUBBE is the Chairman of the Agua Caliente Band of Cahuilla Indians and one of the proponents of the Initiative. The Agua Caliente Band owns and operates three casinos—the Agua Caliente Rancho Mirage, the Agua Caliente Palm Springs, and the Agua Caliente Cathedral City—in Riverside County.

ALLEGATIONS

I. Gaming, Gambling, And Wagering In California

17. "The State of California has permitted the operation of gambling establishments for more than 100 years." (Bus. & Prof. Code, § 19801, subd. (b).) California, however, has always regulated gambling through the exercise of its discretion and expertise by distinguishing among different types of games and types of gambling establishments.

18. Federally-recognized Indian Tribes have a favored position in California with respect to gaming. Under the California Constitution, they can enter into compacts with the Governor that allow them to offer slot machines, lottery games, and banked card games on Indian lands. (Cal. Const., art. IV, § 19, subd. (f).) The California Constitution, however, prohibits "casinos of the type currently operating in Nevada and New Jersey." (*Id.*, art. IV, § 19, subd. (e), added by initiative, Gen. Elec. (Nov. 6, 1984).) Accordingly, the Gaming Tribes to date have been unable to offer roulette and dice games, such as craps, because these games are not among the enumerated games that may be offered on Indian lands. (*Ibid.*; *Hotel Emps. & Restaurant Emps. Internat. Union v. Davis* (1999) 21 Cal.4th 585, 609 [classifying roulette and dice games as casino games].)

19. Cardrooms are another, competing, category of lawful gambling establishments in California. The Cardrooms offer "player-dealer" games such as poker and pai gow in which the dealer position rotates between players and there is no "bank" that enjoys the statistical advantage held by the "house" in Las

Vegas or Atlantic City. (See, e.g., Bureau of Gambling Control, Hollywood Park Casino Game Rules 97–116, 332–340 (Apr. 2020), Exh. 11, appen. at p. 87.) The Gambling Control Act specifically authorizes such games so long as the player-dealer position "continuously and systematically rotate[s] amongst each of the participants during the play of the game." (Pen. Code, § 330.11.) When the player assigned to deal declines to take up the role, the Cardroom may allow contracted third-party proposition players to step in as the "player-dealer." (See Hollywood Park Game Rules at 333, Exh. 11, appen. at p. 108; Bus. & Prof. Code, § 19984 [authorizing contracts with licensed third-party proposition players].)

20. California strictly regulates the Cardrooms by statute and through the California Gambling Control Commission ("Commission") and the California Department of Justice's Gambling Control Bureau ("Bureau"). Licenses must be renewed biennially by the Commission and cannot issue unless the Commission first determines that the Cardroom operator has and will continue to comply with applicable laws, regulations, and local ordinances. (Bus. & Prof. Code, §§ 19870–19879.) Player-dealer games are "controlled" and subject to prior approval by the Bureau, which also monitors Cardroom operations and initiates enforcement actions to penalize and prevent noncompliance. (*Id.*, §§ 19826, 19972; Pen. Code, § 337j.)

21. Under California law, the Commission and the Bureau are the final arbiters of the legality of controlled games offered by licensed Cardrooms. For example, private litigants

cannot obtain injunctive relief against the Commission or the Bureau without clear and convincing evidence that the agencies abused their discretion or exceeded their jurisdiction. (Bus. & Prof. Code, § 19804, subd. (a).) Bureau approval is an absolute defense even if a game offered by a Cardroom is later found to be unlawful, so long as the operator offered the game in compliance with the Bureau's rules. (*Id.*, § 19943.5.) As explained below, the Initiative threatens completely to undermine this structure.

II. The Gaming Tribes' Numerous Attempts To Expand Their Gambling Operations And Harm The Cardrooms

22. Notwithstanding their monopoly over most legal gambling under California law, the Gaming Tribes have consistently and over many years sought to exempt themselves from remaining state restrictions on Tribal Casinos and to restrict the limited market open to the Cardrooms, purely for business-competition reasons. Whereas many Tribal Casinos are located in geographically remote locations, many Cardrooms are located in large metropolitan areas. For years, the Gaming Tribes have sought to expand their own gambling operations while diminishing or making less attractive the games offered by the Cardrooms. Time and again, however, the Gaming Tribes' efforts to strengthen and expand their monopoly power have been rebuffed by voters and public officials.

23. *Ballot Initiatives*. The first major attempt to expand Tribal Casinos beyond their current limitations occurred in 2004. The Agua Caliente Band spent almost $14 million sponsoring Proposition 70, which would have authorized unlimited gambling

on Indian lands—including roulette and dice games—and would have required the Governor to execute ninety-nine-year compacts conferring unlimited and exclusive gambling rights on federally-recognized Indian Tribes. (Exh. 1, appen. at p. 21.) Proposition 70 was defeated at the polls by an overwhelming margin. (Exh. 2, appen. at p. 29.)

24. The Gaming Tribes have also sought to preserve and expand their monopoly power over gambling in California against all competitors, including not only the Cardrooms but also other Indian Tribes. For example, the Gaming Tribes spent almost $16 million on Proposition 48 in 2014 to override two compacts that would have introduced greater competition into the California gambling industry by authorizing a new Tribal Casino. (Exh. 5, appen. at p. 38.)

25. *Litigation*. The Gaming Tribes have also attempted, and repeatedly been unable, to use the judicial system to restrict competition from licensed Cardrooms. In 2014, members of the United Auburn Indian Community sued a Cardroom known as Casino Royale in the Superior Court for Sacramento County. They alleged that Casino Royale had violated California law by offering games in which the player-dealer position did not "continuously and systematically rotate[] amongst each of the participants … during the play of the game." (Compl. ¶ 52, *Whitehouse v. Sac. Casino Royale, LLC* (Super. Ct. Sac. County, Apr. 4, 2014, No. 34-2014-00161427), quoting Pen. Code, § 330.11.) The goals of the lawsuit were to shutter Casino Royale and to obtain a favorable ruling that would hamper the

commercial viability of Cardrooms throughout California. (*Id.* at ¶¶ 63–71.) Shortly before trial, however, Casino Royale ceased operations and the parties settled the case. (See Dkt. No. 616, *Whitehouse v. Sac. Casino Royale, LLC* (Super. Ct. Sac. County, Sept. 1, 2016, No. 34-2014-00161427).)

26. Undeterred, two prominent Gaming Tribes, the Rincon Band of Luiseño Mission Indians and the Santa Ynez Band of Chumash Mission Indians, along with several entities and individuals associated with those Tribes, attempted to bring similar claims against nearly every Cardroom in Southern California, including Hollywood Park. The tribal plaintiffs sought damages and injunctive relief under the public-nuisance statutes and the Unfair Competition Law ("UCL," Bus. & Prof. Code, § 17200 *et seq*.). The Superior Court for San Diego County dismissed the case for lack of standing, and the Court of Appeal affirmed. (*Rincon Band of Luiseño Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059, petition for review filed Dec. 6, 2021, No. S272136.) In a published opinion, the Fourth District unanimously held that the Rincon and Chumash Tribes were "sovereign governmental entities," not "persons," as is required to bring a private action for public nuisance or an action under the UCL. (*Id.* at pp. 1089–1090, 1100–1101.) Furthermore, the entities and individuals associated with these Tribes could not show that they had been harmed by the way the Cardrooms allegedly play their games and thus were not entitled to sue under the UCL or the public-nuisance statutes. (*Id.* at pp. 1097, 1102–1103.)

27. Several other Gaming Tribes also brought suit in federal court against the State of California for failing to protect their gambling monopoly vigorously enough. The Yocha Dehe Wintun Nation, Viejas Band of Kumeyaay Indians, and the Sycuan Band of the Kumeyaay Nation alleged that California violated state law and breached its compacts with the Gaming Tribes by failing to prevent the Cardrooms from offering games they believed to be illegal. (*Yocha Dehe Wintun Nation v. Newsom* (9th Cir. 2020) 830 F.App'x 549, 550.) The U.S. Court of Appeals for the Ninth Circuit affirmed dismissal for failure to state a claim after concluding that the Gaming Tribes could not dictate the terms of criminal law enforcement through a compact. (*Id.* at p. 551.)

28. *Regulation*. Concurrently with their litigation efforts, the Gaming Tribes have for over ten years unsuccessfully lobbied state regulators to enforce the Gaming Tribes' preferred (and erroneous) interpretation of existing gambling laws and to enact new regulations that would accrue solely to the benefit of Tribal Casinos. Despite relentless pressure from the Gaming Tribes, public officials have refused to enact gambling laws that embody the Tribes' incorrect view of the relevant law and have instead favored a more measured course.

29. Since at least April 2012, the Gaming Tribes have sought to pressure the California Department of Justice's Gambling Control Bureau ("Bureau") and the California Gambling Control Commission ("Commission") to bar the Cardrooms from contracting with third-party proposition players.

(See Letter from Marshall McKay and Leland Kinter to Lawrence Quint and Stephanie Shimazu (Oct. 25, 2012), Exh. 3, appen. at pp. 32–35.) In 2015 and 2016, the Gaming Tribes specifically lobbied the Commission to bar third-party proposition players on the theory that auditors could not guarantee that their activities complied with state law. (See Dave Palermo, *California Tribes Score Victory in War With Card Rooms*, Online Poker Report (Feb. 26, 2016), Exh. 6, appen. at p. 46.) The Commission consolidated and strengthened its reporting rules but did not adopt the Gaming Tribes' maximalist position, which conflicted with statutes that clearly authorize contracts with licensed third-party proposition players. (See Cal. Code Regs., tit. 4, §§ 12250–12292; Bus. & Prof. Code, § 19984.)

30. When efforts before the Commission failed, the Gaming Tribes launched a renewed campaign to force the Bureau to rescind authorization for specific games played at the Cardrooms, including "California-style Blackjack." (See Letter from Jeff Grubbe to Stephanie Shimazu (Feb. 5, 2021), Exh. 15, appen. at p. 152 [urging the Bureau to ban blackjack-style games]; Letter from Mark Macarro to Stephanie Shimazu (Feb. 5, 2021), Exh. 14, appen. at p. 150 [similar]; Letter from Anthony Roberts to Stephanie Shimazu (Feb. 2, 2021), Exh. 13, appen. at p. 148 [chiding the Bureau for inaction and urging immediate enforcement actions against the Cardrooms].) Although strong public reaction to a proposed rule adopting this position delayed the rulemaking process, the Gaming Tribes have continued to press the Bureau for strict regulation and immediate

enforcement all the same. (See Mike Duffy, *New State Gambling Rules Would Put Card Rooms 'Out of Business,' Advocates Fear*, ABC10 (Dec. 18, 2019), Exh. 10, appen. at p. 85.)

31. Unsatisfied with the Bureau's continuing refusal to outright ban the Cardrooms from offering legal games to their customers, the Gaming Tribes have also lobbied for restrictions on the Cardrooms' ability to market themselves to players. For example, the Gaming Tribes have pressured the Bureau to limit the circumstances in which Cardrooms may waive the flat fees customarily charged for each round of play. (See Pen. Code, § 337j, subd. (f) [permitting Cardrooms to "waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun"].) Beginning in 2014, the Gaming Tribes sought to ban the Cardrooms from handing out "free-play" tokens that allowed players to seek waiver by placing the token on the table after a hand had begun. (See Letter from Robert Smith to Wayne Quint (July 9, 2014), Exh. 4, appen. at p. 36 [proposing restrictive language].) The Bureau considered and rejected the proposed changes to the applicable regulation and did not adopt the Gaming Tribes' protectionist interpretation. (See Cal. Code Regs., tit. 11, § 2071.)

32. Stymied once again, the Gaming Tribes turned back to the Commission to seek a ban on any advertisement that even "*suggests* that a cardroom offers any version of the games of twenty-one, blackjack, or baccarat," even if the Cardrooms offer lawful, non-banked versions of those games. (See Letter from Ray Patterson to the Commission at 3 (Nov. 26, 2018), Exh. 7,

appen. at p. 52, italics added.) Ultimately the Commission proposed several regulatory options that would allow advertisements to use Bureau-approved game names as well as alternative names. (See Cal. Gambling Control Com., Description of Proposed Regulatory Action: Advertising (May 24, 2019), Exh. 8, appen. at pp. 63–65.)

III. The Legalization Of Sports Wagering And This Initiative

33. After repeated failures before (i) the electorate, (ii) the courts, and (iii) the executive branch, the Gaming Tribes have now found a new avenue to achieve their longstanding goals: sports wagering.

34. Beginning in 1992, federal law barred states from legalizing sports wagering. (28 U.S.C. § 3702.) That changed in 2018 when the U.S. Supreme Court declared the ban unconstitutional in *Murphy v. NCAA* (2018) 138 S.Ct. 1461.

35. The *Murphy* decision allowed states to legalize and tax in-person and online sports wagering. In just four years, popular support for the legalization of sports wagering jumped from 46% to 80% nationwide. (Exh. 9, appen. at p. 71.)

36. Seizing on these developments, the Gaming Tribes slipped their unrelated, preexisting goals—(1) authorization of roulette and dice games (e.g., craps) at tribal casinos, thereby eliminating the remaining constitutional impediment against the establishment of Las Vegas-style casinos on Indian lands, and (2) obtaining a permanent competitive advantage over licensed Cardrooms by allowing the Gaming Tribes to sue their

competitors without standing—into a ballot measure that otherwise concerns the popular issue of sports wagering.

37. The resulting Initiative combines three distinct and unrelated subjects. The Initiative would:

i. Legalize, tax, and regulate sports wagering on Indian lands and approved racetracks. (Exh. A, appen. at pp. 13–16, 18 [§§ 4, 5.1, 5.3].)

ii. Overturn the longstanding constitutional ban on Las Vegas-style casinos in California (Cal. Const., art. IV, § 19, subd. (e)) by authorizing roulette and dice games on Indian lands. (Exh. A, appen. at p. 13 [§ 4].)

iii. Enact a one-sided private-enforcement provision that enables the Gaming Tribes to sue licensed competitors for alleged misconduct while immunizing the Gaming Tribes from liability because they are not "person[s]" subject to suit. (Exh. A, appen. at pp. 16–17 [§ 5.2].)

A. The Initiative's Stated Purposes

38. The Initiative asserts two purposes: (1) to "regulate and tax sports wagering in California," and (2) to "strengthen California's gambling regulations and safeguards." (Exh. A, appen. at p. 11 [§ 3].)

39. The Initiative purports to accomplish these purposes by "[r]egulating and taxing sports wagering," "[p]ermitting tribal governments to offer sports wagering, *roulette, and games played with dice*," "[p]ermitting Approved Racetrack Operators to offer sports wagering," "[c]reating strict consumer protections" that

limit sports wagering to adults and certain types of athletic contests, and "[a]uditing" sports-wagering operators and associated tax revenues. (Exh. A, appen. at pp. 11–13 [§ 3, subds. (a)–(g), (j), italics added].)

40. The Initiative, however, never explains what the expansion of casino gambling to include roulette and dice games has to do with "regulat[ing] and tax[ing] sports wagering in California" or "strengthen[ing] California's gambling regulations and safeguards." Nor does the Initiative explain how a one-sided private-enforcement provision custom-tailored to allow the Gaming Tribes to sue the Cardrooms for anticompetitive reasons furthers its stated purposes.

B. The Initiative's Disparate Provisions

41. Notwithstanding its stated purposes, the Initiative not only legalizes, regulates, and taxes sports wagering, but also overrides once and for all the California Constitution's restrictions on the Gaming Tribes' casinos and enacts a private-enforcement provision that allows the Gaming Tribes to dictate the operations of their competitors, the licensed Cardrooms.

42. The vast majority of the Initiative is focused on legalizing sports wagering. Section 2 sets out general findings and declarations regarding the benefits of legalizing sports wagering in a limited and regulated manner. (Exh. A, appen. at pp. 9–11.) Section 3 articulates the Initiative's sports-wagering and gambling-regulation purposes. (*Id.* at pp. 11–13.) Section 4 would amend the California Constitution by allowing sports wagering on Indian lands, (*id.* at p. 13 [amending Cal. Const.,

art. IV, § 19, subds. (e)–(g)]), and would permit "Approved Racetrack Operators" to offer sports wagering, (*id.* at pp. 13–14 [adding Cal. Const., art. IV, § 19, subd. (h)]). Section 5.1 would add provisions to the Business and Professions Code that impose a ten percent tax on sports wagering, direct how the tax revenue will be spent, and impose a minimum age for placing sports wagers. (*Id.* at pp. 14–16 [enacting Bus. & Prof. Code, §§ 19670–19674].) New code provisions enacted by Section 5.2 would prohibit the advertising of sports wagering to minors and require auditing for sports-wagering providers. (*Id.* at pp. 17–18 [enacting Bus. & Prof. Code, §§ 19991–19992].) Section 5.3 would amend the Government Code to compensate the State for costs associated with amending gaming compacts to include sports wagering. (*Id.* at p. 18 [enacting Gov. Code, § 12012.101].) Finally, Sections 6 and 7 contain an amendment mechanism and a severability clause. (*Id.* at pp. 18–19.)

43. Nested within this sports-wagering Initiative, however, are two additional, unrelated subjects.

44. *First*, Section 4 would *also* add "roulette" and "games played with dice" to the list of activities on Indian lands exempt from the general ban on "casinos of the type currently operating in Nevada and New Jersey." (Exh. A, appen. at p. 13 [amending Cal. Const., art. IV, § 19, subd. (f)].)

45. *Second*, Section 5.2 would *also* amend the Business and Professions Code to include a private-enforcement provision that allows "any person or entity" to sue "any person" suspected of violating the criminal gambling laws for massive civil penalties

"of up to $10,000 per violation." (Exh. A, appen. at pp. 16–17 [enacting Bus. & Prof. Code, § 19990].)

46. By stating that "any person *or entity*" could sue under the proposed private-enforcement provision, the Gaming Tribes attempt to sidestep the standing problem recognized by the Court of Appeal's *Rincon Band* decision. But the Gaming Tribes notably did *not* allow for an "entity" to be sued—rather, the targets of the enforcement provision must be a "person." Given that Indian Tribes are not considered "persons" (*Rincon Band*, *supra*, 70 Cal.App.5th at pp. 1089–1090, 1100–1101), this appears to be an attempt to allow the Gaming Tribes to sue other gambling establishments, such as the Cardrooms, while assuring that their new provision does not enable others to sue *them*.

IV. The Initiative Violates The Single-Subject Rule

47. The Gaming Tribes are using this sports-wagering measure as bait to hook voters into approving unrelated special interest giveaways. This cynical strategy violates the single-subject rule.

48. The California Constitution protects the integrity of the initiative process by limiting ballot measures to a single subject. To prevent logrolling and to minimize voter confusion and deception, the single-subject rule provides that "measure[s] embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const., art. II, § 8, subd. (d).)

49. To satisfy the single-subject rule, an initiative's provisions must be "reasonably germane" both to one another and to the initiative's stated purpose. (*Jones*, *supra*, 21 Cal.4th at p.

1157.) Moreover, the single subject cannot be stated with "excessive generality" since that would frustrate the objectives of the single-subject rule. (*Harbor*, *supra*, 43 Cal.3d at p. 1099.)

50. The Initiative here violates the single-subject rule by combining two special-interest giveaways with an unrelated sports-wagering measure that enjoys substantial popularity.

51. Provisions legalizing and taxing sports wagering are not "reasonably germane" to a provision authorizing roulette and dice games on Indian lands.

52. Likewise, provisions legalizing and taxing sports wagering are not "reasonably germane" to a private-attorneys-general provision that allows the Gaming Tribes to sue their competitors under the criminal gambling laws. The enforcement provision is carefully drafted to overrule the holding in *Rincon Band* that the Gaming Tribes and their associated members and entities lack standing under the UCL and the public-nuisance statutes. (*Rincon Band*, *supra*, 70 Cal.App.5th at pp. 1090, 1096, 1098, 1100–1103.) The Initiative's private-enforcement provision explicitly allows "entities," regardless of harm, to sue "persons" like the Cardrooms.

53. Accordingly, the Initiative violates the single-subject rule because the casino-gaming and private-enforcement provisions are not "reasonably germane" to either of the Initiative's asserted purposes.

54. First, the Initiative's asserted purpose of "regulat[ing] and tax[ing] sports wagering" has no rational connection to the provision that dramatically expands casino

gambling by authorizing roulette and dice games or to the provision enacting a one-sided private-enforcement regime that targets unrelated conduct by the Gaming Tribes' Cardroom competitors.

55. Second, the Initiative's asserted purpose of "strengthen[ing] California's gambling regulations and safeguards" actively conflicts with the provision authorizing roulette and dice games because that provision *eliminates* California's strongest gambling restriction, *i.e.*, the constitutional ban on Vegas-style casinos in California. This purpose of strengthening gambling regulations is also unrelated to the private-enforcement provision because that measure does nothing to change California's substantive gambling regulations.

56. The Proponents cannot identify a legitimate single subject capable of rendering the Initiative's provisions and purposes germane to one another. "Gambling" encompasses too broad a swath of issues to constitute a single subject for purposes of the single-subject rule. (See *Jones*, *supra*, 21 Cal.4th at pp. 1158–1159 [reciting the holding in *Cal. Trial Lawyers* that regulation of "the insurance industry" is too general a subject under the single-subject rule].) As the Nebraska Supreme Court has explained, "a subject as broad as gambling" is too general to satisfy that state's similar single-subject rule. (*State ex rel. Loontjer v. Gale* (Neb. 2014) 853 N.W.2d 494, 514.)

57. The Initiative also risks "voter confusion and deception" by concealing casino expansion and private-enforcement provisions within a measure otherwise entirely

devoted to sports wagering. (*Jones*, *supra*, 21 Cal.4th at p. 1160; *Cal. Trial Lawyers*, *supra*, 200 Cal.App.3d at p. 360.)

58. Finally, the Initiative engages in "log-rolling" by forcing voters to accept or reject an all-or-nothing grab bag of disparate provisions. The Initiative ties a popular sports-wagering measure to unrelated, controversial measures that the Gaming Tribes have tried and failed to obtain by other means. This Hobson's Choice is a clear violation of the single-subject rule that this Court should not allow to be presented to the voters. (*Harbor*, *supra*, 43 Cal.3d at p. 1098; *Chem. Specialties*, *supra*, 227 Cal.App.3d at p. 672.)

AUTHENTICITY OF EXHIBITS

59. All exhibits appended to this Petition are true copies of the original documents referenced in this Petition, including of the Initiative (the original of which is filed with the Attorney General's Office). The exhibits accompanying this Petition are incorporated by reference and are what they purport to be.

WHEREFORE, PETITIONERS PRAY

1. That this Court issue an alternative writ of mandate ordering Respondent (a) not to place Initiative 19-0029-A1 on the ballot for the November 2022 election or any future election or (b) to show cause why a peremptory writ of mandate should not issue as set forth above;

2. That this Court decide the validity of Initiative 19-0029-A1 on an expedited basis before September 2, 2022, or else temporarily stay Respondent from placing it on the ballot pending a final decision on this writ petition;

3. That upon hearing and return, this Court issue its peremptory writ of mandate as set forth above;

4. That this Court award attorneys' fees and costs pursuant to Code of Civil Procedure Section 1021.5; and

5. That this Court order such other further relief as may be just and proper.

Date: December 21, 2021

Respectfully submitted,

Gibson, Dunn & Crutcher LLP
*Maurice M. Suh
Daniel M. Kolkey
Jeremy S. Smith

By: *Maurice Suh*
Maurice M. Suh

Attorneys for Petitioners

VERIFICATION

I, Deven Kumar, declare as follows:

I am the General Manager of Hollywood Park Casino and am authorized to make this verification on behalf of Petitioners Hollywood Park Casino Company, LLC and Cal-Pac Rancho Cordova, LLC.

I have read the foregoing Petition for Writ of Mandate and Request for Expedited Review or Stay and know its contents. The facts alleged therein are true based on my knowledge, except for those that are alleged on the basis of information and belief, which I reasonably believe to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed at Inglewood, California on December 21, 2021.

By: 
_____
Deven Kumar

MEMORANDUM OF POINTS AND AUTHORITIES

In democratic elections, "[t]he people are a sovereign whose vocabulary is limited to two words, 'Yes' and 'No.'" (E. E. Schattschneider, Party Government 52 (1942).) California's initiative process is "one of the most precious rights of our democratic power" because it allows citizens to determine for themselves which questions to answer at the ballot box. (*Assoc. Home Builders of Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) To safeguard the integrity of the initiative process from manipulation and abuse, the California Constitution requires that "[a]n initiative measure embracing more than one subject may not be submitted to the electors." (Cal. Const., art. II, § 8, subd. (d).)

California's single-subject rule "has the dual purpose of avoiding log-rolling and voter confusion." (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1098.) Initiatives that tie unpopular measures to popular ones engage in log-rolling by forcing voters to choose between saying "yes" to provisions they oppose or saying "no" to provisions they support. (*Chem. Specialties Mfrs. Assn. v. Deukmejian* (1991) 227 Cal.App.3d 663, 672.) And initiatives that combine multiple subjects "inevitably create voter confusion and obscure the electorate's intent with regard to each of the separate subjects included within the initiative." (*Senate v. Jones* (1999) 21 Cal.4th 1142, 1168 (*Jones*).)

The California Sports Wagering Regulation and Unlawful Gambling Enforcement Act ("Initiative") abuses the initiative process by secreting within a popular measure otherwise devoted

to legalizing sports wagering two unrelated provisions that have nothing to do with sports wagering. The first of these provisions would overrule the longstanding constitutional ban on Vegas-style casinos by authorizing the full panoply of roulette and dice games at Tribal Casinos. (Cal. Const., art. IV, § 19, subd. (e).) And the second would establish a private-enforcement scheme that allows sovereign nations, the California Indian Gaming Tribes, to sue their competitors under California's gambling laws while at the same preserving the Gaming Tribes' immunity from suit under that same right of action. To secure passage of these two controversial provisions on election day, the Gaming Tribes have slipped them into an Initiative that is otherwise devoted entirely to the popular subject of legalized sports wagering.

The Initiative is the latest in a long line of attempts by the Gaming Tribes to secure special advantages for their own gambling operations. For decades, the voters, the courts, and public officials have rebuffed efforts by the Gaming Tribes to override the constitutional ban on casinos and to restrict further the operations of their competitors, including the Cardrooms. (*Supra*, Petition at ¶¶ 22–32.) This time, the Gaming Tribes hope to ensure passage of their preferred policies by tying both measures to a popular sports-wagering initiative made possible by recent developments in federal law. Given how the Initiative is drafted, many voters will conclude that it deals exclusively with the subject of sports wagering. And those voters who are able to detect the Initiative's tripartite nature in the first place

face an unpalatable choice between either accepting or rejecting all three subjects, regardless of each one's individual merit.

To be sure, the Gaming Tribes can place the legalization of sports wagering before the electorate. They can also ask the electorate to reconsider the constitutional ban on Vegas-style casinos. And they can seek popular approval of a private-enforcement provision. But the Gaming Tribes cannot, consistent with the single-subject rule, mash these three subjects together and compel the people to say "yes" or "no" to all three choices at once. Because it embraces more than one subject, the Initiative is constitutionally invalid and may not be submitted to the electors or have any effect.

I. The Initiative Violates The Single-Subject Rule.

Voters adopted the California Constitution's single-subject rule for ballot initiatives "in apparent response to a lengthy, multifaceted initiative provision that recently had been the source of considerable controversy." (*Jones*, *supra*, 21 Cal.4th at p. 1156.) "The ballot argument in favor of the proposed single-subject amendment explained that the principal purpose of the amendment was to attempt to avoid confusion of either voters or petition signers and to prevent the subversion of the electorate's will." (*Ibid.*) To protect the right of the electorate to speak clearly at the ballot box, this Court has interpreted the single-subject rule to require that an initiative's provisions be "reasonably germane" (a) to one another and (b) to the measure's stated purposes. (*Id.* at p. 1157; *Chem. Specialties*, *supra*, 227 Cal.App.3d at p. 667.)

In enforcing the standard, this Court has hewed closely to two related objectives: (1) preventing log-rolling and (2) avoiding voter confusion and deception. (*Harbor*, *supra*, 43 Cal.3d at p. 1098.) Log-rolling occurs when an initiative "combin[es] several proposals" within a single measure to "obtain a majority for a measure which would not have been approved if divided[.]" (*Id.* at p. 1096.) Voter confusion occurs when "the potentially deceptive combinations of unrelated provisions" leave voters in the dark as to the effects of their choice at the ballot box. (*Cal. Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 360.)

By embracing more than one subject within a single measure, the Initiative confuses voters about the consequences of their decision. And by tying controversial provisions to a popular measure, the Initiative leaves those few voters who are able to detect the combination of multiple subjects with a Hobson's Choice between adopting three measures or adopting none. Because the Initiative contains three subjects that are not reasonably germane to one another or to any common purpose, it "may not be submitted to the electors or have any effect." (Cal. Const., art. II, § 8, subd. (d).)[2]

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[2] This Court adopted the "reasonably germane" standard for the ballot-initiative single-subject rule in 1949 by analogy to precedents interpreting the single-subject rule for legislation. (Cal. Const., art. IV, § 9; *Perry v. Jordan* (1949) 34 Cal.2d 87, 92, citing *Evans v. Sup. Court* (1932) 215 Cal. 58, 62.) The Initiative fails review under this standard for the reasons articulated herein. Were the Court so inclined, however, it could also revisit whether a more stringent standard is needed to enforce the California Constitution's single-subject

A. The Initiative's Sports-Wagering Provisions Are Not Reasonably Germane To Its Tribal Casino-Gambling Provision Or Its One-Sided Private-Enforcement Provision.

As noted, the "governing decisions" under the single-subject rule "establish that '[a]n initiative measure does not violate the single-subject requirement if … all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative.'" (*Jones*, *supra*, 21 Cal.4th at p. 1157, quoting *Legislature v. Eu* (1991) 54 Cal.3d 492, 512, internal quotation marks omitted.) As shown in this subsection, the tribal casino-gambling provision and the private-enforcement provision are not reasonably germane to the sports-wagering provision. Indeed, the vast majority of the Initiative is devoted to a single subject: sports wagering.

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guarantees. Over the years, several members of this Court have argued that the rule requires an initiative's text and purposes to be "functionally related" to one another. (*Harbor*, *supra*, 43 Cal.3d at p. 1100 [applying both tests]; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 273 (dis. opn. of Bird, C.J.); *Brosnahan v. Eu* (1982) 31 Cal.3d 1, 11 (dis. opn. of. Manuel, J.).) Several have argued that "the multisubject initiative presents greater dangers than a similar multisubject legislative bill" because of "voters' lesser ability to scrutinize [an initiative] and their total inability to propose modifications." (*Schmitz v. Younger* (1978) 21 Cal.3d 90, 98–100 (dis. opn. of Manuel, J.); see also *Manduley v. Sup. Court* (2002) 27 Cal.4th 537, 585–588 (conc. opn. of Moreno, J.) [arguing that the *Perry* Court erred by failing to develop a different test for the initiative single-subject rule].) More rigorous standards of enforcement have proven eminently workable in states with similar single-subject rule provisions. (See, e.g., *Fine v. Firestone* (Fla. 1984) 448 So.2d 984, 992.)

- Section 2 articulates the benefits of legalizing sports wagering.
- Section 3 lays out the Initiative's sports-wagering purposes.
- Section 4 amends the California Constitution to legalize sports wagering on Indian lands and approved racetracks.
- Subdivisions of Sections 3 and 5.1 define sports wagering to exclude minors and certain animal and amateur events.
- Section 5.1 imposes a tax on sports wagering and directs how the revenues will be spent.
- Section 5.3 provides for recouping the costs of amending gaming compacts to authorize sports wagering.

(Exh. A, appen. at pp. 9–18.) Nestled within this Initiative, however, are two *additional* subjects which the Gaming Tribes injected into a ballot measure otherwise devoted to the subject of sports wagering. These two additional subjects are not reasonably germane to the legalization, regulation, and taxation of sports wagering.

First, the Initiative contains a few words that are easy to miss but carry sweeping consequences: In addition to amending the California Constitution to legalize "sports wagering," the Initiative would allow the Gaming Tribes to offer "roulette" and "games played with dice." (Exh. A, appen. at p. 13 [proposed Cal. Const., art. IV, § 19, subd. (f)].) This change would have the

effect of eliminating the California Constitution's remaining restrictions on "casinos of the type currently operating in Nevada and New Jersey." (Cal. Const., art. IV, § 19, subd. (e).) Such Vegas-style casinos offer gambling in the form of "lotteries," "banking games," "percentage games," and "roulette, dice games, and slot machines." (*Hotel Emps. & Restaurant Emps. Internat. Union v. Davis* (1999) 21 Cal.4th 585, 599, 605–607.) California law already authorizes "slot machines, lottery games, and banking and percentage card games" on Indian lands. (Cal. Const., art. IV, § 19, subd. (f).) By authorizing "roulette" and "games played with dice," the Initiative eviscerates the constitutional ban on "casinos" as to Indian lands.

Expanding tribal gaming to include roulette and games played with dice, thereby overturning the constitutional ban on casinos in California, is a separate subject from, and not germane to, sports wagering. The law has long treated sports wagering differently from other forms of gambling while permitting the legalization of casino gambling. For over twenty-five years, federal law barred states from legalizing sports wagering. (28 U.S.C. § 3702.) This meant that the only places in the country in which anyone could wager on sporting events were casinos in Nevada. (*Murphy v. NCAA* (2018) 138 S.Ct. 1461, 1478.) Casino gambling, by contrast, was widely available. (*Id.* at pp. 1469–1471.)

California criminal law also has always regulated casino gambling and sports wagering separately. (Compare Pen. Code, §§ 330–336.5 [criminalizing "percentage games," "banking

game[s]," and their instrumentalities], with *id.*, §§ 337a–337k [separately criminalizing wagering on "sporting events"].) California administrative law, too, bifurcates the regulation of legal gambling and sports wagering into two distinct regulatory regimes. (Compare Bus. & Prof. Code, § 19800 *et seq.* [regulating controlled "player-dealer" games under the auspices of the Commission and the Bureau], with *id.*, § 19400 *et seq.* [establishing regulatory system for horse racing and pari-mutuel betting under the California Horse Racing Board].)

This differential treatment makes sense: Sports wagering raises unique concerns of corruption that can, and historically have, "seriously damaged the reputation of professional and amateur sports" dating back at least as far as the 1919 World Series "Black Sox" Scandal. (*Murphy*, *supra*, 138 S.Ct. at pp. 1469–1470 & n.17.) The regulatory structure and policy concerns raised by sports wagering thus stand separate and apart from those raised by casino gambling. They are two different subjects that cannot be placed in a single initiative without violating the single-subject rule.

Second, the Initiative would enact a private-enforcement provision that subjects the Gaming Tribes' competitors to punishing suits for civil penalties and injunctions brought by sovereign nations for alleged violations of California law that *have nothing to do with, and are not germane to, sports wagering*.

The Initiative's private-enforcement provision is a direct response to the Gaming Tribes' failure in the *Rincon Band* litigation. As described above, two of the Gaming Tribes and

their affiliated entities and tribal members attempted to put nearly every Cardroom in Southern California out of business by filing a lawsuit alleging that those Cardrooms offered games in an unlawful manner. The *Rincon Band* lawsuit, however, stumbled out of the gate because the plaintiffs lacked standing under the relevant statutes: The Gaming Tribes lacked standing because they were "unique sovereign governmental entities," rather than "persons" entitled to bring suit, and the entities and individuals associated with the Tribes lacked standing because they had not been harmed by the way the Cardrooms play their games. (*Rincon Band of Luiseño Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059, 1089–1090, 1100–1101, petition for review filed Dec. 6, 2021, No. S272136.) This result makes sense as a matter of law and public policy: The Commission and the Bureau—and not the Cardroom's business competitors—are the bodies responsible for interpreting and applying California's gambling laws in the first instance.

In an effort to seize that power for themselves, the Gaming Tribes' Initiative would amend the Gambling Control Act to authorize suit by "[a]ny person or entity" against "any person engaging in conduct made unlawful." (Exh. A, appen. at p. 17 [proposed Bus. & Prof. Code, § 19990, subd. (b)].) This wording casts aside longstanding precedents, forcefully reaffirmed in *Rincon Band*, by doing away with any standing requirement in existing jurisprudence. And it has absolutely nothing to do with sports wagering.

The private-enforcement provision also appears to be a one-way mechanism designed to allow the Gaming Tribes to sue their competitors (*i.e.*, the Cardrooms) while inoculating their own operations from suit. The Gaming Tribes drafted the Initiative to allow any "person *or entity*" to sue under the proposed private-enforcement provision—*i.e.*, themselves and their representatives—but also required that the target of the lawsuit be a "person." If this Initiative is enacted into law, there is little doubt that the Gaming Tribes will contend that this difference in language means that while they can bring suit, they cannot be sued because they are not a "person" but "unique sovereign governmental entities." (*Rincon Band*, *supra*, 70 Cal.App.5th at pp. 1089–1090, 1100–1101.)[3]

[3] The private-enforcement provision doubles-downs on the already substantial advantage conferred on the Gaming Tribes by the doctrine of tribal sovereign immunity. (*Michigan v. Bay Mills Indian Cmty.* (2014) 572 U.S. 782, 790 [states cannot exercise their criminal or civil jurisdiction over Indian Tribes pursuant to 18 U.S.C. § 1162 and 28 U.S.C. § 1360 absent waiver of sovereign immunity].) Federal law waives sovereign immunity for conduct on Indian lands that violates a gaming compact, to include conduct that violates state law. (*Id.* at p. 791, citing 25 U.S.C. § 2710, subd. (d)(7)(A)(ii).) But the Gaming Tribes have limited this waiver by compact to enforcement actions brought by *the State* and have refused to consent to suit by third parties. (See, e.g., Tribal-State Compact Between the State of California and the Agua Caliente Band of Cahuilla Indians, § 13.4, subd. (a) (Aug. 4, 2016); Gov. Code, § 12012.79.) By specifying that only "person[s]" may be sued, the Initiative's private-enforcement provision attempts to preclude the Cardrooms from even *arguing* that the Gaming Tribes consented to counterclaims under the same provision by going into state court as

The Gaming Tribes cannot claim that this provision is about enforcement of gambling laws, rather than achieving an anticompetitive advantage for themselves. Under the private-enforcement provision, successful plaintiffs must turn over *all* "amounts received as civil penalties or pursuant to a settlement" to the State. (Exh. A, appen. at p. 17 [proposed Bus. & Prof. Code, § 19990, subd. (c)].) The provision does not allow for actual or punitive damages and does not specifically provide for attorneys' fees or costs. As a result, even a prevailing plaintiff can expect to lose money from the litigation or, at best, to break even. Bringing an action to enforce California law under these circumstances makes sense only if the outcome benefits the plaintiff in some other way—namely, by allowing the Gaming Tribes as sovereign nations to restrict or eliminate their competitors and thereby to capture the $18 million in gaming revenue that the Gaming Tribes allege the Cardrooms earn from customers who would otherwise go to Tribal Casinos. (*Rincon Band*, *supra*, 70 Cal.App.5th at p. 1097.)

Including this private-enforcement provision in a ballot initiative about sports wagering is particularly egregious because *the Cardrooms do not compete at all in the sports-wagering market*. Neither the Gaming Tribes nor anyone else has alleged that the Cardrooms engage in illegal sports wagering. Nor would the Cardroom have a right to enter the sports-wagering business

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plaintiffs. (Cf. *Quinault Indian Nation v. Pearson for Estate of Comenout* (9th Cir. 2017) 868 F.3d 1093, 1097 [holding that Indian Tribes generally do not waive sovereign immunity as to counterclaims by bringing suit].)

even if the Initiative were enacted. The Initiative legalizes sports wagering for the Gaming Tribes and approved racetracks alone, leaving existing criminal prohibitions in place for everyone else. (Exh. A, appen. at pp. 13–14 [proposed Cal. Const., art. IV, § 19, subds. (f)–(h)]; see Pen. Code, § 337a [criminalizing "bookmaking, with or without writing, at any time or place"].) The private-enforcement provision is crafted to do exactly what the Gaming Tribes have wanted to do for decades: restrict the Cardrooms' ability to compete by chilling them from offering player-dealer games.

This scheme squarely violates California's single-subject rule. The Initiative's breadth is reminiscent of the measure at issue in *Jones*, in which this Court invalidated Proposition 24 for *both* transferring redistricting from the legislature to the courts *and* regulating legislators' pay. (*Supra*, 21 Cal.4th at p. 1151.) When "viewed from a realistic and commonsense perspective," the initiative "embrace[d] at least two distinct subjects—state officers' compensation and reapportionment." (*Id.* at p. 1161.) After accepting original jurisdiction, this Court rejected the argument that both subjects could be combined under the banner of "voter approval" because using the same *means* to address different problems—there, referenda for reapportionment and for legislators' compensation—did not bring different problems within the same subject. (*Id.* at p. 1162.) So too here, the Initiative embraces at least *three* subjects—sports wagering, casino-gaming expansion, and the private enforcement of criminal gambling laws.

The Initiative cannot be saved by reimagining all three of its component measures under the expansive umbrella of "gambling." Overbroad subjects of such "excessive generality" as "voter approval," "government," "public welfare," and "public disclosure" (*Jones*, *supra*, 21 Cal.4th at p. 1162; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253; *Chem. Specialties*, *supra*, 227 Cal.App.3d at pp. 667–668), "effectively read the single subject rule out of the [c]onstitution" by rendering an unlimited universe of provisions and purposes reasonably germane (*Harbor*, *supra*, 43 Cal.3d at p. 1101). For example, the California courts have held that regulation of "the insurance industry" is too general a subject to satisfy the single-subject rule; instead, the subject must be more specific, such as "controlling the cost of insurance." (*Jones*, *supra*, 21 Cal.4th at pp. 1158–1159, citing *Cal. Trial Lawyers*, *supra*, 200 Cal.App.3d at p. 360.) Similarly, the Nebraska Supreme Court recently held that "a subject as broad as gambling" was too general to satisfy that state's similar constitutional single-subject rule. (*State ex rel. Loontjer v. Gale* (Neb. 2014) 853 N.W.2d 494, 514.)

So too here, combining such disparate provisions under the broad awning of "gambling" stretches the single-subject rule to its breaking point. To allow a subject of such generality would "permit the joining of enactments so disparate" as, for example, the regulation of internal athletic-team practices, laws governing any establishments that offer lottery tickets, and rules regarding the manufacturers of playing cards, all in a single initiative. The result would "render the constitutional single-subject limitation

nugatory." (*Jones*, *supra*, 21 Cal.4th at p. 1159, quoting *Cal. Trial Lawyers*, *supra*, 200 Cal.App.3d at p. 360.)

B. The Initiative's Tribal Casino-Gambling And One-Sided Private-Enforcement Provisions Are Not Germane To The Initiative's Asserted Purposes.

For similar reasons, the Initiative's disparate casino-gaming and cardroom-enforcement provisions are not "reasonably germane" to its stated purposes of (1) legalizing sports wagering and (2) strengthening gambling regulations and safeguards. As noted earlier, all of an initiative's provisions must not only be "reasonably germane" to one another, but also reasonably germane to "the general purpose or object of the initiative." (*Jones*, *supra*, 21 Cal.4th at p. 1157, internal quotation marks and citations omitted.)

First, there is no reasonable connection between legalizing, regulating, and taxing sports wagering on the one hand, and authorizing the expansion of casinos on Indian lands by overriding a longstanding ban on roulette and dice games on the other. None of the Initiative's provisions related to sports wagering apply to roulette and dice games—they are not made available at approved racetracks, they are not subject to the new sports-wagering tax, and they are not subject to any of the Initiative's other regulatory restrictions. As noted above, sports wagering and casino gaming are distinct activities and are treated as such under state and federal law.

Second, there is no reasonable connection between sports wagering and a private-enforcement provision designed to allow

the Gaming Tribes to dictate which player-dealer card games licensed Cardrooms may offer to the public. There is no evidence, either presented in the Initiative or anywhere else, that this provision is needed to combat harms associated with unlawful sports wagering. This Court is not required to take the Initiative's vague and unsupported references to the threat of illegal gambling at face value or to assume that sports wagering entails the same risk as gaming and casino gambling (which it does not). (See *Jones*, *supra*, 21 Cal.4th at pp. 1163–1164 [rejecting argument that Proposition 24 embraced the single subject of "legislative self-interest" because legislators did not, in fact, control their own salaries]; *Hotel Emps.*, *supra*, 21 Cal.4th at pp. 609–610 [refusing to defer to an initiative's findings that amounted to legal conclusions].)

Third, there is no reasonable connection between increasing enforcement of California's gambling regulations and *eliminating* the constitutional ban on casinos, which stands as California's strongest remaining gambling safeguard as applied to Indian lands. (Cal. Const., art. IV, § 19, subd. (e).) Although the Initiative eliminates the remaining controls on Indian casinos by authorizing roulette and dice games, it offers not a word to justify this substantial change, and not a single protection is enacted to replace that constitutional safeguard. In short, the Initiative opens the floodgates for the largest expansion of casino gaming on Indian lands since 2000 without putting any new protections in place. That measure is not only unconnected to,

but directly conflicts with, the Initiative's stated purpose of strengthening the regulation of gambling operations.

Finally, there is no reasonable connection between strengthening gambling regulations and the one-sided private-enforcement provision here. The Initiative's private-enforcement provision does nothing more than transfer regulatory authority over licensed Cardrooms from publicly-accountable officials in the Bureau to the Gaming Tribes and their maximalist, anticompetitive legal positions.

C. The Initiative Conceals Wholesale And Unfair Revisions To California's Public Law-Enforcement Regime.

The Initiative must be removed from the ballot for the further reason that the unrelated casino-expansion and one-sided enforcement provisions are presented in a manner meant to conceal sweeping changes to California law. Evidence of "voter confusion and deception" is a strong indicator that an initiative embraces multiple subjects in violation of the single-subject rule. (*Cal. Trial Lawyers*, *supra*, 200 Cal.App.3d at p. 360, quoting *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231; *Ex Parte Liddell* (1892) 93 Cal. 633, 638 [decrying "attempt[s] to conceal the purpose or scope" of an act].)

First, the Initiative conceals the unprecedented expansion of casino gambling that would result from its enactment. The California Constitution's ban on casinos has centuries-old roots in statutory and constitutional law. (See *United Auburn Indian Cmty. of Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538,

549; *Hotel Emps.*, *supra*, 21 Cal.4th at pp. 591–594 [surveying relevant history].) Californians have repeatedly voted to retain aspects of the ban after extensive public debate. (Cal. Const., art. IV, § 19, subds. (b) [allowing horse-race wagering], (c) [allowing charitable bingo], (d) [allowing a state lottery], (e) [banning casinos], (f) [allowing slot machines, lotteries, and banking and percentage card games on Indian lands], (f) [allowing certain charitable games].) Just eighteen years ago, Californians rejected by an overwhelming 76% to 24% margin an Agua Caliente Band initiative that would have eliminated all state-law restrictions on Tribal Casinos. (Exhs. 1–2, appen. at pp. 21, 29.)

Yet the Initiative is nearly silent on the fact that it would revise the California Constitution to allow "roulette [and] games played with dice." The Initiative says nothing about casino expansion, the scope of state-law restrictions on casinos, or the merits of lifting them as to Indian lands. Instead, the Initiative devotes pages of discussion to the need for greater "regulations and safeguards," giving the impression that gambling will, if anything, be subjected to greater restrictions. (Exh. A, appen. at pp. 9–13 [§§ 2–3].) To understand that the Initiative authorizes dramatic casino expansions, a voter must (1) observe that the Initiative amends the constitution not only as to "sports wagering," but also as to "roulette [and] games played with dice," (2) know that these activities are currently prohibited by the California Constitution's ban on Las Vegas-style casinos, and that the ban becomes a nullity with their exclusion, and (3) know that the Gaming Tribes will seek to amend their compacts with

the State to secure the additional facilities and capacity required to install roulette and craps tables.

Concealment of this magnitude is fatal. In *California Trial Lawyers*, the Court of Appeal removed an initiative from the ballot that concealed a provision exempting insurance companies from campaign-finance regulations within a bevy of provisions meant to curb the increasing cost of insurance premiums. (*Supra*, 200 Cal.App.3d at p. 359.) The court took issue with the easy-to-miss placement of the campaign-finance provision, calling it "a paradigm of the potentially deceptive combinations of unrelated provisions at which the constitutional limitation on the scope of initiatives is aimed," given that it was located "near the middle of a 120 page document, and consists of two brief paragraphs which bear no connection to what precedes or follows." (*Ibid.*) Here, far from two paragraphs, the Gaming Tribes' longstanding goal of expanding Vegas-style casino gambling in California is effected through *five words*. It is "extremely unlikely that the average voter … would take the time to study the initiative in such detail as to discover this obscure" provision. (*Id.* at pp. 360–361.) As this Court explained in *Jones*, enforcing the objectives of the single-subject rule requires guarding the initiative process from manipulation and abuse by even a single deceptive provision. (*Supra*, 21 Cal.4th at pp. 1158–1159, 1168.)

Second, the Initiative conceals the breadth of the private-enforcement provision. That provision departs from fundamental principles of California law, and that fact is never presented to

the voters in a transparent manner. In California and elsewhere, enforcement of the criminal law is one of the most important and jealously-guarded responsibilities of public officials. (See Cal. Const., art. V, § 13 ["[T]he Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced."].) Schemes to privatize criminal law through injunctive relief and harsh civil penalties are viewed with suspicion because private persons may fail to account for constitutional rights and may act contrary to the public interest. (See *Rincon Band*, *supra*, 70 Cal.App.5th at p. 1109 [collecting cases barring the use of injunctive actions by private persons to enforce state criminal law]; cf. *Hudson v. United States* (1997) 522 U.S. 93, 99 [describing the line at which civil penalties become "so punitive either in purpose or effect" as to become criminal law].)

Additionally, the Initiative stands in contrast to other private-attorneys-general provisions in the California Code. For instance, the Private Attorneys General Act ("PAGA") limits standing to "aggrieved employee[s]" to ensure that plaintiffs have an individualized harm to vindicate through litigation. (Lab. Code, § 2699, subds. (a), (c).) The PAGA also incentivizes plaintiffs to sue by authorizing recovery of actual damages, attorneys' fees, and costs, and by reserving 25% of recovered civil penalty amounts for the successful plaintiff. (*Id.*, § 2699, subds. (g)(1), (i).) Finally, the PAGA entitles a defendant to notice and

an opportunity to cure in many situations. (*Id.*, § 2699.3, subd. (c)(2)(A).)

The Initiative runs counter to these principles by authorizing private parties to enforce the criminal provisions of the Gambling Control Act *even if* the Attorney General and the Bureau determine that the conduct in question is lawful or not worth prosecuting and *even if* no person was harmed by the alleged violation. (Exh. A, appen. at p. 17 [proposed Bus. & Prof. Code, § 19990, subd. (b)].) In contrast to the PAGA, which offers plaintiffs a bounty and provides for attorneys' fees and costs, the Initiative provides no incentive to successful plaintiffs and instead requires them to pocket litigation expenses and to turn over all civil penalties obtained. (*Ibid.* [proposed Bus. & Prof. Code, § 19990, subd. (c)].) Thus, the Initiative's enforcement provision is structured to be useful only to well-financed plaintiffs with an interest in undermining their business competitors—*i.e.*, only to the Gaming Tribes. Rather than adopting the PAGA's provisions regarding notice and an opportunity to cure, the Initiative places defendants on the hook for massive civil penalties per violation *even if* they quickly disclaim the challenged practice. (*Id.* at p. 16 [proposed Bus. & Prof. Code, § 19990, subd. (a)].) By design, the Initiative's one-sided private-enforcement provision is laser-focused on overturning the result in the *Rincon Band* litigation by authorizing the Gaming Tribes, as entities unable to show any individualized harm, to sue licensed Cardrooms like Hollywood Park and Parkwest Casino Cordova.

What is more, the Initiative is silent regarding the significant transfer of authority from the Bureau to the Gaming Tribes that its enactment would accomplish. Under existing law, the Bureau has broad discretion to issue regulations and to determine which controlled gaming activities are legal or illegal. (See Bus. & Prof. Code, §§ 19804 [challenges to Bureau orders must demonstrate an abuse of discretion through clear and convincing evidence], 19943.5 [good-faith reliance on a Bureau determination is an absolute defense to liability].) Voters have no way of knowing whether and how the Initiative would alter this longstanding regulatory arrangement because the Initiative conceals the change it seeks to accomplish.

To be sure, the Attorney General's draft summary of the Initiative *mentions* the gaming expansion and the private-enforcement provisions. (Exh. B, appen. at p. 20 [referencing "roulette [and] dice games" and "private lawsuits to enforce other gambling provisions"].) But the text of the Initiative itself buries both measures under an avalanche of sports-wagering-related provisions and nearly omits them from its findings and purposes, the result of which is to hide both unrelated subjects from voters.

As a matter of law, the draft summary proposed by the Attorney General cannot fix what is wrong in the text of the Initiative itself. The California courts have held that the Attorney General's failure to refer to a particular provision in the title and summary can "*heighten*[]" a single-subject violation," (*Cal. Trial Lawyers*, *supra*, 200 Cal.App.3d at p. 361, italics added), and that the Attorney General's summary is subject to

independent challenge for accuracy (*Amador Valley*, *supra*, 22 Cal.3d at p. 243; *Perry v. Jordan* (1949) 34 Cal.2d 87, 94). But no court has held that the Attorney General can remedy an Initiative's constitutional invalidity by summary alone. And of course not: There is no guarantee that the Attorney General's summary will stay the same when added to the ballot materials after the final certification deadline of June 30, 2022, nor that more than a *de minimis* number of voters will read it rather than relying on the Gaming Tribes' campaign materials.[4]

The Initiative as written gives the voters no indication of the novelty, severity, and one-sided nature of the enforcement provision they are asked to approve. The Initiative violates the single-subject rule because the misleading and confusing presentation of its asymmetric enforcement provision indicates that it is not "reasonably germane" to the measure's sports-wagering provisions or stated purposes.

D. The Initiative Strategically Forces Voters Either To Accept Special-Interest Giveaways Or To Reject Sports Wagering.

Finally, the Initiative violates the single-subject rule because its Proponents combined a popular sports-wagering measure they are confident will pass with two controversial measures that they have tried and failed to secure previously.

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[4] Indeed, the Attorney General must draft a title and summary for *any* proposed ballot initiative *regardless* of its validity. (See Cal. Const., art. IV, § 1; *Schmitz*, *supra*, 21 Cal.3d at p. 93 ["[T]he Attorney General may not urge violation of the single subject requirement to justify refusal to title and prepare summary of a proposed measure."].)

Even if voters are able to detect and understand the casino expansion and one-sided enforcement measures, they face an all-or-nothing choice that perverts the ballot-initiative process. "[L]ogrolling" of this magnitude is strong evidence that the provisions of an Initiative are not "reasonably germane" to one another or to a shared purpose. (*Chem. Specialties*, *supra*, 227 Cal.App.3d at p. 672; *Liddell*, *supra*, 93 Cal. at p. 638 [disavowing attempts "to blend diverse and independent subjects"].)

Sports wagering is "immensely popular." (*Murphy*, *supra*, 138 S.Ct. at p. 1469.) In February 2017, 46% of the country supported legal sports betting; by October 2019, that number had jumped to 80%. (Michael Ricciardelli, *Nat'l Poll: 80% of Americans Support Legalized Sports Betting*, The Seton Hall Sports Poll (Oct. 10, 2019), Exh. 9, appen. at p. 71.)

The Gaming Tribes' other measures have not enjoyed such popularity. Voters overwhelmingly rejected the last ambitious attempt at casino expansion and deregulation in 2004. (Exhs. 1–2, appen. at pp. 21, 29.) Also in 2004, Californians voted to restrict burdensome lawsuits under private rights of action by amending the UCL to require that plaintiffs show standing, and thus an individualized stake, in the outcome. (See Bus. & Prof. Code, § 17204 [requiring that private plaintiffs under the UCL demonstrate standing].)

Combining one popular measure with one or more unpopular measures to force voters to approve all or none is a classic case of log-rolling. (See *Chem. Specialties*, *supra*, 227 Cal.App.3d at p. 672 [finding "additional support" for single-

subject rule violation where initiative's proponents repackaged bills that failed individually before the legislature].) Courts from numerous jurisdictions have agreed that offering the voters this sort of "take-it-or-leave-it proposition … is at the heart of the [single-subject rule's] prohibition against logrolling." (*Loontjer*, *supra*, 853 N.W.2d at p. 515; see also *In re Title & Ballot Title & Submission Clause for 2005-2006 #55* (Colo. 2006) 138 P.3d 273, 282 ["The prohibition against multiple subjects … discourages placing voters in the position of voting for some matter they do not support to enact that which they do support."]; *Johnson v. Edgar* (Ill. 1997) 680 N.E.2d 1372, 1379 ["[O]ne reason for the single subject rule is to prevent legislation from being passed which, standing alone, could not muster the necessary votes for passage."]; *In re Initiative Petition No. 382* (Okla. 2006) 142 P.3d 400, 408 ["[T]he issue is … whether it appears that either the proposal is misleading or provisions in the proposal are so unrelated that many of those voting on the law would be faced with an unpalatable all-or-nothing choice."].) The Hobson's Choice that the Initiative puts before voters is a classic example of a single-subject violation.

II. This Court Should Grant Preelection Review.

A. This Court Should Exercise Its Original Mandamus Jurisdiction.

The statewide importance of this constitutional issue makes this one of the exceptional cases warranting direct review under the Court's original jurisdiction. (Cal. Const., art. VI, § 10; Code Civ. Proc., §§ 1085–1086; Cal. Rules of Court, Rule 8.486.)

There can be no doubt that the need for a timely, uniform, and final resolution of the question presented here outweighs the prudential advantages of referral to the lower courts. This Court has consistently and repeatedly granted review under similar circumstances because ballot measures proposing to amend the California Constitution "are of great public importance and should be resolved promptly." (*Legislature v. Eu*, *supra*, 54 Cal.3d at p. 500, quoting *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 340; accord *Jones*, *supra*, 21 Cal.4th at p. 1145; *Hotel Emps.*, *supra*, 21 Cal.4th at p. 590; *Amador Valley*, *supra*, 22 Cal.3d at p. 219; *Perry*, *supra*, 34 Cal.2d at pp. 90–91.)

B. Preelection Review Is Warranted Because Of The Strong Likelihood That The Initiative Embraces Multiple Subjects.

Preelection review is warranted here because the harms inflicted by putting an invalid measure before the electorate cannot be remedied after the fact, particularly given the likelihood that other, legitimate initiatives dealing with sports wagering will qualify for the November 2022 election ballot. "The single subject rule as applied to the initiative has the dual purpose of avoiding log-rolling and voter confusion." (*Harbor*, *supra*, 43 Cal.3d at p. 1098.) These harms can be remedied before the election by removing the offending measure from the ballot. Once a measure is adopted, however, the Court cannot determine the impact the violation had on the electorate and complete relief becomes impossible, particularly where there are other measures addressing the sports-wagering subject in this Initiative.

For this reason, the adopters of the constitutional single-subject rule provided that an initiative embracing multiple subjects "*may not be submitted to the electors*." (Cal Const., art. II, § 8, subd. (d), italics added.) In short, preelection review "not only is permissible but is expressly contemplated" where there is a "strong likelihood that the initiative violates the single-subject rule." (*Jones*, *supra*, 21 Cal.4th at pp. 1153–1154.) Here, the strategic calculation and voter confusion involved in tacking a casino-expansion measure and an anticompetitive private-enforcement measure onto a popular measure to legalize sports wagering create a "strong likelihood" that this Initiative violates the single-subject rule. (*Id.* at p. 1154.)

Finally, delaying review of the Initiative prejudices California voters because:

> The presence of an invalid measure on the ballot steals attention, time and money from numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.

(*Am. Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697.)

Under these circumstances, this is an initiative that cries out for preelection review. Respondent lacks constitutional authority to place the Initiative on the ballot, and the voters lack the authority to approve it, because initiatives embracing more than one subject may not be submitted to the electors. The Court should make that determination now.

C. Mandamus Relief Is Necessary.

A peremptory writ of mandate is necessary here because there is no other "plain, speedy, and adequate remedy, in the ordinary course of law" (Code Civ. Proc., § 1086), particularly in light of the time constraints associated with preelection review and the California Constitution's admonition that an initiative measure embracing more than one subject "may not be submitted to the electors," (Cal. Const., art. II, § 8, subd. (d)). Without prompt action by this Court, Respondent will be obligated to place the Initiative on the ballot for the November 2022 election. (Cal. Const., art. II, § 8, subd. (c) ["The Secretary of State shall then submit the measure at the next general election held at least 131 days after [the measure] qualifies…."].)

D. This Challenge Requires Expedited Consideration Or A Stay In Advance Of The Ballot-Printing Deadline.

Expedited review is necessary here because harms to the integrity and legitimacy of the initiative process will accrue if the Initiative appears on the ballot, and indeed will continue to accrue until this Court decides the Initiative's constitutionality. Regarding the latter point, the Gaming Tribes have expended millions of dollars to persuade voters to approve the Initiative and are actively preparing ballot arguments for publication. (Exhs. 12, 19, appen. at pp. 123, 234.) Every day that campaign activity continues will increase the confusion inflicted by this violation of the single-subject rule, particularly as to competing ballot measures that seek qualification before the verification deadline of June 30, 2022. The ongoing diversion of time,

attention, and money to an invalid measure prejudices other measures currently on the ballot and those that may attempt to qualify before the signature-verification deadline of June 30, 2022. Moreover, the administrative costs of preparing this measure for the ballot will continue to accrue in advance of the ballot-printing deadline of September 2, 2022. If this challenge cannot be decided before September 2, 2022, this Court should, at a minimum, temporarily stay Respondent from placing the Initiative on the November 2022 ballot until such time as the case is resolved.

CONCLUSION

The Initiative violates the single-subject rule because it contains three distinct subjects: (1) the legalization, regulation, and taxation of sports wagering, (2) the expansion of tribal casino gambling into roulette and dice games, and (3) a private-enforcement provision by entities and persons without any traditional standing. Because preelection review of a single-subject challenge "not only is permissible but is expressly contemplated" by the California Constitution (*Jones*, *supra*, 21 Cal.4th at p. 1153), this Court should (1) issue an alternative writ ordering Respondent to show cause as to why Initiative No. 19-0029-A1 should not be barred from the ballot; (2) issue a peremptory writ, following full briefing and a hearing, enjoining Respondent from submitting the Initiative to the electors; and (3) temporarily stay placement of the measure on the November 2022 election ballot if this case cannot be decided before the ballot-printing deadline of September 2, 2022.

Date: December 21, 2021

Respectfully submitted,

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By: *Maurice Suh*
_____
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Attorneys for Petitioners

CERTIFICATE OF WORD COUNT

Pursuant to Rules 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, I certify that this Petition for Writ of Mandate and Request for Expedited Review or a Stay and Memorandum in Support was produced using Century Schoolbook 13-point font and contains 12,810 words, excluding the cover information, the certificate of interested parties, the tables, the verification, this certificate, and the certificate of service, according to the word count of the computer program used to prepare the Petition and Memorandum.

Date: December 21, 2021 Gibson, Dunn & Crutcher LLP

By: *Maurice Suh*
Maurice M. Suh

Attorneys for Petitioners

CERTIFICATE 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 333 South Grand Avenue, Los Angeles, CA 90071.

On December 21, 2021, I caused to be served a true copy of the following document(s):

PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING EXHIBITS

on the parties stated below, by the following means of service:

☑ **BY PERSONAL SERVICE**: I caused a true copy to be placed in a sealed envelope addressed to the person[s] named at the address[es] shown below and caused the same to be sent out via messenger for personal service before 5:00 p.m. on the above-noted date.

☐ **BY UNITED STATES MAIL**: I caused a true copy to be placed in a sealed envelope or package addressed to the persons as indicated below, on the above-noted date, and caused the envelope to be placed for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

☑ **BY OVERNIGHT DELIVERY**: On the above-noted date, I caused the documents to be enclosed in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses shown below. I caused the envelope or package to be placed for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier with delivery fees paid or provided for.

☑ **BY ELECTRONIC SERVICE**: On the above-noted date, I caused the documents to be sent to the persons at the electronic notification addresses as shown below.

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 21, 2021, in Los Angeles, California.

By: Jeremy S. Smith
_____
Jeremy S. Smith