



California Gaming Association

FACT SHEET

OPPOSE SB 549 (Newman)

SB 549 is a solution in search of a problem.

- Cardrooms are already subject to strict regulatory oversight. Businesses and personnel must obtain licenses and approvals from the California Gambling Control Commission (Commission) and the Bureau of Gambling Control (Bureau) within the Department of Justice. Extensive regulations govern their operations.
 - o The Bureau of Gambling Control, overseen by the Attorney General, approves the games the Tribes seek to challenge. Each of the last six Attorneys General, including Governor Jerry Brown and Vice President Kamala Harris, approved the games played in California's card rooms."
- The Bureau continuously monitors all licensees to confirm that the law is followed. California courts have consistently found this regulatory framework more than sufficient to ensure that card clubs do not violate the State's prohibition on casino-style gaming.
- The Legislature addressed the "banking" issue flagged in SB 549 more than two decades ago in Penal Code § 330.11, and the Bureau has taken a consistent position ever since.
- Court proceedings under SB 549 will generate significant confusion and expense but are unlikely to change anything.

SB 549 hands state agency authority over to commercial interests, and it disregards a deep tradition of deference to agency discretion.

- State agencies such as the Bureau are a building block of how the State of California exercises its sovereign law enforcement authority in pursuit of the public interest.
- Courts have long recognized that agencies such as the Bureau have near-absolute discretion over whether to undertake a particular enforcement action. That is good policy: Agencies must make priorities in how they supervise and prosecute regulated entities. They are better positioned than courts to decide how to use their resources, because they are both more familiar with the technical issues and are politically accountable for their actions. Letting expert regulators make decisions promotes the public interest through legal uniformity, predictability, and accountability.
- SB 549 ignores all those values, instead handing prosecutorial discretion over to Tribes with nothing more than their own commercial interests in mind. The bill would empower Tribes to force a judicial decision about issues *they* care about instead of issues the Bureau decides should be prioritized.
- Worse still, SB 549 would prohibit the court from giving any weight to the Bureau's expertise, by expressly overriding the abuse-of-discretion standard that courts traditionally apply to issues of agency discretion.

California voters have already rejected a handover of enforcement power to Tribes.

- Last November, voters overwhelmingly rejected Proposition 26, which contained a very similar special-interest private cause of action.
- Like SB 549, Proposition 26 would have enabled private parties to bring civil suits against card clubs and other entities that they believed were violating California gaming laws. Despite heavy tribal funding, the measure failed by a two-thirds margin.

- This renewed assault on the Bureau's authority is worse: Proposition 26 at least required private litigants to first give the Bureau an opportunity to pursue enforcement itself. Here, the Bureau isn't even involved in any way.
- The Legislature should not enact a policy that voters squarely refused just months ago.

Courts have already rejected a handover of enforcement power to Tribes.

- In 2019, California tribes brought a suit (*Yoche Dehe Wintun Nation v. Newsom*) alleging that the State was violating their gaming compacts by failing to adequately restrict cardroom operations, asking for a judicial takeover of the State's regulatory authority.
- The federal district court in Sacramento promptly dismissed the case, and the Ninth Circuit agreed. It held that the Tribes have no standing to interfere with the enforcement of state gambling laws, and that second-guessing the Bureau's enforcement priorities was a subject "particularly ill-suited to judicial review."
- And in 2021, in *Rincon Band of Luiseño Mission Indians v. Flynt*, the Court of Appeal concluded that Tribes lacked standing to complain about these issues under the Unfair Competition Law.
- These are reflections of sound policy, not flaws to be fixed. What these cases, and other rejected tribal efforts, all have in common is that they ensure responsibility for law enforcement rests with the designated law enforcement agency.

The court proceedings unleashed by SB 549 would be wasteful and impractical.

- SB 549 says almost nothing about how its unprecedented cause of action would work. But it would be a huge undertaking: Any Tribe can challenge any game operated by any cardroom. Every action under the statute—even those involving different games at different cardrooms—will be consolidated into one massive proceeding. Any and all members of the California gaming industry can then join the proceedings.
- Most cardrooms are small businesses, operating a single facility in one community. But SB 549 allows powerful and well-resourced tribal interests to drag cardrooms and others into court hundreds of miles from home.
- Such industry-wide proceedings could last years, consuming untold amounts of judicial time and resources. No court in the state is equipped to handle that kind of omnibus suit. Indeed, the California Assembly Committee on Judiciary has recognized that SB 549 would pose a "significant logistical challenge for the courts" and would likely require "diverting resources from handling the needs of everyday Californians."
- And yet the proceedings may never reach a conclusive result. If—as is likely—the Tribes don't get the answer they want, they'll keep shopping for another way to coopt state government for their commercial goals. Alternatively, any decision against the cardrooms will put everyone—the Tribes, the Bureau, the Commission, the cardroom industry—into uncharted territory. What happens when the Bureau has approved a game and a court has disapproved it without considering what the Bureau did? Creating two parallel universes for gaming regulation in this State is bad policy without precedent.

State courts are poorly equipped to accomplish what the Tribes seek

- If, on the one hand, the Tribes simply disagree with current gaming laws, then they should advocate for *different* laws and regulations, rather than asking the judiciary to second-guess the Legislature, expert agencies, and the democratic process.
- If, on the other hand, the Tribes want top-to-bottom review of all cardroom activity, then the proceedings will be complex, and the court's ongoing work would be endless: It would, in all practical terms, become a parallel regulator—preparing and implementing new regulatory policy, but without any involvement from the Bureau.
- Expert regulators from the Bureau and the Commission are undoubtedly better suited for such tasks. They know the industry and understand the practical consequences of different policies. They already have rulemaking authority. And they can respond to evolving events in ways that courts cannot. But SB 549 expressly cuts them out.

SB 549 could have serious implications for state commerce.

- California cardrooms spur more than \$5 billion of annual economic activity, employ tens of thousands of workers, and generate roughly \$500 million in tax revenue annually.
- The unpredictable SB 549 proceedings would lead to years of market uncertainty that could have major economic consequences. Will banks and others do business with card clubs dragged into SB 549 proceedings? How will cities that rely on tax revenue from cardrooms sustain their finances and make plans that require long-term investment?
- State regulators are obligated to consider such economic factors when they decide whether, when, and how to adopt or enforce regulations. But SB 549 would give Tribes the power to sow uncertainty, with no regard for the economic consequences.

Tribes should get their own gaming affairs in order before asking for more layers of cardroom supervision and regulation.

- For decades now, California Tribes have used every legal and political tool at their disposal to interfere with the operations of cardrooms—their main competitors.
- But because the Tribes are sovereign entities, their casinos operate bereft of the State's supervision. This has predictable results: The Bureau itself has identified illegal activity involving craps and roulette played at tribal casinos, but nothing can be done.
- The Tribes consistently refuse to expose their own operations to scrutiny. They should do so, before asking for cardroom oversight to grow from not just the Bureau, the Commission, and the Legislature, to also include the courts and Tribes themselves.

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