

Op-Ed/Editorials - In California

The Fight Will Continue

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Although California voters rejected two gaming initiatives on November 2, 2004, the political battles are far from over.

Prop. 68 would have required tribes to agree to share their gaming revenue to keep their monopoly on casinos. Under compacts signed by former Gov. Gray Davis, which have another 16 years to go, there are now at least 54 tribal casinos in the state, limited to 2,000 slot machines each. If Prop. 68 had passed and even one tribe had refused to give the state 25% of its casino income, some racetracks and card clubs would have been permitted to also have a limited number of slot machines, taxed at 33%.

Prop. 70 was the opposite in many ways. It would have locked in the tribes' casino monopoly for 99 years and there would have been no limit on the number of slot machines. Instead of paying 25% or 33%, tribes would have had to share 8.84% of their net gaming revenue with the state.

Both were opposed by Gov. Arnold Schwarzenegger and both lost by wide margins. But even in losing, the two campaigns were completely different.

The backers of both Prop. 68 and Prop. 70 originally raised around \$25 million each. But when polls showed that less than one-third of the voters supported Prop. 68 a few weeks before the election, the racetracks and card clubs pulled the plug. (I was a legal consultant to Prop. 68, but had nothing to do with the decision to end the campaign early.) Political observers could not remember another time when initiative supporters had cut their losses after putting up such a fierce battle for months. Maybe it's because gamblers understand odds. These political

players were not willing to chase their money. And they locked away millions of dollars they can use in upcoming fights.

Prop. 70 was a more typical political campaign. Even though the same polls showed Prop. 70 faring as poorly as Prop. 68, the gaming tribes behind the measure refused to give up. They put in another \$10 million. One tribe, the San Manuel, even paid former Governor and wrestler Jesse Ventura to fly out from Minnesota for TV commercials broadcast right up to election day.

This is understandable. After putting your heart, soul and pocketbook into a race, you never want to admit that you are going to lose.

Maybe a little, or a lot, more money will change people's minds. It almost never does.

So what will happen now?

The San Manuel are still running Jesse Ventura ads, even though Prop. 70 was clobbered. It is probably a smart idea: Tribes are rebuilding their image and trying to counter Gov. Schwarzenegger's gloating about his victories.

Tribes know Gov. Schwarzenegger will now push even harder and be more demanding in renegotiating their compacts. He wants environmental controls and a far larger share of tribal casino revenue. Some tribes have reached the 2,000 limit on slot machines, and the California Gambling Control Commission is now saying all tribes have hit the statewide limit of about 65,000 slots. Many tribes will continue to fight, bringing in bingo and lottery machines, and trying another initiative.

One party that is conspicuously absent is the Nevada gaming industry. Nevada casinos used to be important players in California politics. But they were devastated and demoralized by the tribes' first major campaign victory, Prop. 5 in 1998. And some Nevada casinos are now in favor of Indian casinos.

Card clubs and racetracks will continue to push for changes in the law in the State Legislature, with their own regulators and at the ballot box. They may not get slot machines, but they ought to win some of their smaller goals.

For example, an 1885 statute prevents California card clubs from playing 21, even when it is not a house-banked game. So they offer variations on 22. Legislators will probably approve letting the clubs have player-banked 21, since tribes can

have house-banked blackjack.

Similarly, tribal casinos in California may be, and are, run by giant multinational casino companies like Harrah's. But these licensed Nevada casinos, the most competent and experienced gaming operators, cannot be involved in California's card clubs and racetracks.

Tracks and card clubs will continue their fight against tribal casinos in the courts. The latest compacts signed by Gov. Schwarzenegger are being challenged for violating an obscure provision in the California State Constitution. The State Legislature is expressly prohibited from enacting emergency legislation granting special privileges. The tribes will probably lose this one. The compacts were passed as emergency legislation by the Legislature, and they give only these few tribes unlimited slot machines.

The real issue is that emergency legislation cannot be challenged at the ballot box. And every party involved with gaming in California intends to keep bringing proposals before the voters, because it is so easy to do.

California allows its Constitution to be amended by a simple majority vote. All that's needed is to gather 600,000 signatures on petitions to get the proposal on the ballot.

Getting 600,000 people to sign an initiative is not that difficult. State law allows campaigns to pay signature-gatherers. At the current rate of about \$2 - \$3 per signature, anyone with \$2 to \$3 million can get a proposed Constitutional amendment on the ballot.

Of course, as the backers of Prop. 68 and Prop. 70 found out, getting an initiative on the ballot is one thing, winning a campaign is something else.

What do you think? You can address comments to Prof. I. Nelson Rose.

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