

Ballot measure analysis: Proposition 26 and 27

Overview

This article provides a pro/con analysis of Proposition 26, “California Sports Wagering Regulation and Unlawful Gambling Enforcement Act,” and Proposition 27, “California Solutions to Homelessness and Mental Health Support Act,” on the November 2022 ballot. Both measures legalize sports gambling but take different forms. The main difference: Proposition 27 would allow online sports betting everywhere, while Proposition 26 would only allow gamblers to place bets in person at Native American tribal casinos and four horse racing tracks. Both propositions attempt to safeguard against underage gambling and prohibit gambling on youth sports, but only Proposition 26 makes it illegal to bet on any collegiate game involving a team from a California school.

If it passes, Proposition 26 allows racetracks to offer sports betting to people 21 years of age and older. All bets must be made in-person at the track, with racetracks paying the state 10% of sports bets made each day. These payments would go into a new California Sports Wagering Fund. Proposition 26 would allow roulette and games played with dice at tribal casinos, both of which are currently illegal.

Proposition 27, on the other hand, would allow online sports gambling. A person could place a bet from any connected device. Proposition 27 also pays 10% to the government, but the money goes to a newly created “California Online Sports Betting Trust Fund.”

Supporting and opposing views summarized

Proposition 26

Proposition 26 is backed by the “Coalition for Safe, Responsible Gaming,” which includes over 20 Native American Tribes, the San Diego Police and Sheriff’s union, and over 15 other organizations ranging from the Baptist Ministers Conference of Los Angeles and Southern California to California Young Democrats. It is a unique

coalition, with diverse interest groups arguing that Californians should be allowed to participate in sports gambling in a regulated and transparent manner. Steve Stallings, chairman of the California Nations Indian Gaming Association, says: “A strong, well-regulated gaming industry is of utmost importance to California’s tribal governments and the public. This initiative allows sports wagering in a responsible manner and provides for transparency and strict regulation.”

Opponents argue that Proposition 26 only advances the interests of tribal casinos and will have negative effects on local government and city revenues. Leonard Mendoza, mayor of the City of Commerce, argues: “During the pandemic, California cities that depend on the revenues generated through legal gaming at cardrooms have seen the devastating impacts cardroom closures have had on municipal budgets and the vital services they fund.”

Proposition 27

A coalition of online sportsbooks, such as FanDuel and Draftkings, along with Las Vegas casinos are bankrolling Proposition 27. So far, these online gaming companies have contributed almost \$135 million. Other top supporters include the mayors of Fresno, Long Beach, Oakland, and Sacramento along with a handful of Native American tribes. The main corporation in support is Major League Baseball, which announced: “As legalized sports betting continues to expand across the country, Major League Baseball remains committed to protecting the integrity of its games and creating a safe experience for fans who wish to wager on those games. Proposition 27 — the only measure on California’s upcoming ballot that would authorize and regulate online sports betting — includes strong integrity provisions designed to help MLB carry out those commitments.”

Those in opposition point to the windfall online sports gambling companies will receive if Proposition 27 passes. Opponents attack Proposition 27 from both sides of the aisle, as the California Democratic Party, the Senate Minority Leader Scott Wilk (R), and Assembly Minority Leader James Gallagher (R) have all spoken out against the ballot measure. Further opposition includes five Native American tribes, the California Teachers Association, and numerous other organizations such as the California Asian Pacific Chamber of Commerce, who said: “The Corporate Online

Gambling Proposition was written for the sole benefit of out-of-state gambling corporations. This measure would give online gambling corporations near total control over the sports wagering market, effectively hijacking any local economic benefits for our small businesses, while sending 90% of profits from sports gambling out-of-state and even out of country.”

Analysis

Proposition 26 and 27 both require changing the California constitution to allow gambling outside of card rooms. Proposition 26 is narrower than Proposition 27, but Californians should consider whether *any* form of sports gambling is good for the state. Adopting either of these propositions will increase gambling in California. Adopting Proposition 27 will increase gambling *more* than adopting Proposition 26. Adopting both with *greatly* increase gambling in California.

Addiction concerns

Legal gambling is expanding in the United States at a rate never seen in the nation’s history. That’s because in 2018, the U.S. Supreme Court struck down the federal ban on state authorization of sports betting in *Murphy v. National Collegiate Athletic Association*. The Court held that the federal prohibition on sports betting violated the anti-commandeering doctrine of the federal constitution, which prevents the federal government from commanding the states to undertake a specific act or refrain from undertaking a specific act.^[1]

Sports betting surged after *Murphy* made it a state-by-state decision. Within just six months, seven states added sports betting markets: Nevada, Delaware, New Jersey, Mississippi, West Virginia, Pennsylvania, Rhode Island, and New Mexico. In 2020 legal sports betting became available in five states and Washington, D.C., bringing the total number of sports betting states to 21. This occurred at the same time as the Covid-19 pandemic sparked a sharp rise in online gambling of all forms as casinos closed and Americans were confined to their homes. More recently, the American Gaming Association map shows that 31 states plus the District of Columbia have live and legal sports betting, five states have legal-but-not-yet-operational sports betting, and California has two measures on the ballot.

There are concerns about the proliferation of online gambling. Large sums of money can be lost with a few clicks on a cell phone, yet federal and state governments still devote few resources to tracking and treating people with gambling problems. Researchers are just beginning to explore the problems related to sports betting, yet they are already finding that it may be worse than traditional casino and cards gaming. This is because many people betting on sports are fans of the team, which this leads them to believe they have an edge. A study in the Addictive Behaviors journal found: "Sports betting, relative to non-sports betting, has been more strongly linked to gambling problems and cognitive distortions related to illusion of control, probability control and interpretive control." This combines a more addictive type of gambling with the most addictive piece of technology ever created.

Another concern stems from the fact that age groups differ in their addiction risks: young adults between 18 and 24 are more likely to engage in risky gambling behavior. Teenagers are less likely to see gambling as an activity that can lead to a problem. Part of this is purely biological — adolescent brains are still in development until the age of 24 or 25 years, so emotion and logic are not fully realized. That makes good decision-making more difficult. Consequently, young adults are more apt to be risk takers or to act impulsively.^[2] Children and young adults with an early addiction to gambling may never learn how to cope with relationships or manage conflicts because of the intense focus on the addiction during important developmental years.^[3]

The questions for voters are whether either proposition adequately addresses these addiction concerns, and whether the distinction between in-person and online sports gambling is significant in the addiction context.

Proposition 26 limits sports gambling to those over 21 and requires making bets in person at one of the approved locations. The 10% of sports bets made each day goes into the California Sports Wagering Fund, which is then used to meet the state's required spending level on education. Any remaining money is divided: 15% for gambling addiction and mental health programs and grants, 15% for sports betting and gambling enforcement costs, and 70% to the state general fund. So while 15% of the money is designated to address gambling, that money is not guaranteed. The

gambling addiction and mental health programs would only receive that money *if* a surplus exists after spending on education.

Proposition 27 greatly expands access to sports betting but also designates significantly more money to address the likely increase in gambling addiction. Proposition 27 pays 10% to the state: the money first goes to address regulatory costs, then is divided with 85% going to address homelessness and gambling addiction programs and 15% for tribes that are not involved in online sports betting. Unlike Proposition 26, Proposition 27 exempts its revenues from the state spending limit and minimum education requirement. The upshot is that although anyone with a smartphone is vulnerable to gambling addiction, at least there is guaranteed money to help their future problems.

Due to its wider and easier availability, online gambling is more concerning than in-person gambling. Purported guardrails such as the age requirement should be closely examined: how effective are existing app-based age controls at preventing children from evading those restrictions? Common sense says that voters must accept that *some* persons under 21 will be placing online sports bets if Proposition 27 passes.

Yet there are some benefits to online sports betting. First, a betting site can easily and quickly shut a person down from using the site. The app can track a person's usage and betting habits to evaluate potentially addictive or problematic behavior. A company thus could identify and stop a person before their gambling becomes problematic. The company can also share the information with other sites to stop the individual from gambling. Whether for-profit companies will implement such controls effectively is a major unknown here.

Revenue impact concerns

As it becomes legal, the money follows. Sports betting in the U.S. generated record revenue of \$1.5 billion in 2020, up 69% from the previous year. In the first quarter of 2022 alone, sports betting revenues have increased 270% over the previous year. The Legislative Analyst's Office predicts that Proposition 26 could raise tens of millions of dollars annually. That report argued that Proposition 26 would likely result in a higher minimum amount of spending on K-12 schools and community

colleges than required, leaving surplus funds to tackle the other goals. Under Proposition 27, tribes and gaming companies alike would be required to pay taxes to California for online sports bets. An analysis conducted by state officials estimated that taxes and fees from Proposition 27 could generate hundreds of millions of dollars in new state revenue each year.

Either proposition will generate significant new state revenue. California's total projected revenue forecast for 2022-23 is nearly \$181 billion. An increase of \$500 million would increase revenue by .3% — at a time where California is experiencing dips in personal income tax collection (which constitutes 65.9% of California's state revenues).^[4] Personal income tax revenues missed the revenue forecast by 11% so far this year. The extra money could arrive at just the right time.

Current state revenue projections do not account for the potential losses if California maintains its current stance on sports betting. Over half the states already offer legal sports betting through retail or online sportsbooks — including every state that borders California. An argument in favor here is that not only would California be sacrificing revenues from taxing bets, but California would also be losing the job and economic opportunities made available by the expansion of the sports betting industry.

Lastly, proponents argue that a regulated industry helps protect gamblers. Millions of Americans (including some Californians) gamble outside of legal settings without government protection. Illegal gamblers are vulnerable, so legality will reduce their risks of being scammed or harmed. By making gambling legal, California can work to protect gamblers *and* reap the benefits of the increased revenue. This is the classic “legalize-and-tax-it” argument that is succeeding with marijuana and has historically failed with prostitution.

Yet an important factor in the potential revenue from each of the ballot measures is *who* will be paying the taxes. A 2005 Brookings Institution paper found that “on average, state lottery products are disproportionately consumed by the poor.” And a 2014 study found that problem gambling was twice as likely in neighborhoods with the highest levels of concentrated poverty compared to neighborhoods with the lowest poverty levels. And those from low-income backgrounds that do gamble are

more likely to have serious problems related to their gambling. So although sports betting can generate hundreds of millions of dollars, voters should recognize who will be paying this tax.

Conclusion

Proposition 26 allows in-person sports betting at certain casinos and cardrooms. Proposition 27 expands sports betting to anyone with a smartphone. Both forms of betting pose serious concerns for gambling addiction, and in that respect Proposition 27 presents the greater danger. Both will generate significant new state tax revenue; Proposition 26 will generate less revenue and guarantee less money to addressing gambling addiction than Proposition 27. Voters must decide which ballot measure's benefits outweigh their harms, or whether they both present great threats to California.

—o0o—

Chloe Amarilla is a research fellow at the California Constitution Center. This article provides only informational analysis and does not advocate for a vote for or against the measure.

1. See Matthew J. Stanford and David A. Carrillo, *Judicial Resistance to Mandatory Arbitration as Federal Commandeering* (2019) 71 Fla. L. Rev. 1397. ↑
2. One report in the United Kingdom (where sports betting has long been available) found 55,000 “problem” gamblers between ages 11 and 16. Although the legal age for gambling ranges from 18 to 21 depending on the state, between 60% and 80% of high school students report having gambled for money in the past year, according to the National Council on Problem Gambling. ↑
3. For example, psychologist Liz Karter says: “The real risk of children and young people developing any addiction is not losing money, but stunting their own development to the point that they will struggle to function in adult life.” ↑
4. See Chloe Amarilla, Ballot measure analysis: Proposition 30, SCOCAblog October 17, 2022. ↑