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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

COMPLEX CIVIL-TRIBAL NATIONS ACCESS TO JUSTICE ACT (SB549)

AGUA CALIENTE BAND OF CAHUILLA INDIANS et al.,

Plaintiffs,

vs.

PARKWEST BICYCLE CASINO, LLC et al.,

Defendants.

RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, CALIFORNIA et al.,

Plaintiffs,

vs.

PARKWEST BICYCLE CASINO, LLC et al.,

Defendants.

Case Nos. 25CV000001, 25CV007594

DEFENDANT ARTICHOKE JOE'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER TO AGUA CALIENTE FIRST AMENDED COMPLAINT AND RINCON BAND COMPLAINT

Judge:	Hon. Lauri A. Damrell
Date:	August 8, 2025
Time:	9:00 am
Dept.:	22
Action Filed:	January 2, 2025
Trial Date:	None set

[Filed concurrently with Artichoke Joe's Notice of Demurrer and Demurrer; Request for Judicial Notice and Declaration of Steven J. Adamski; Declaration of James M. Wagstaffe]

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

The genesis of these related statutory actions can be traced directly to two concerted, prior, unsuccessful efforts by Indian Tribes (hereafter "the Tribes") to authorize their pursuit of legal remedies per California's Unfair Competition Laws, *Bus. & Prof. Code* §17200, *et, seq,* ("UCL") challenging the gaming activities of card clubs throughout the state. As will be described below, the first such effort was a suit that sought to assert UCL challenges to the legality of card room games – an effort that was rejected because the Tribes are not "persons" with standing to sue under the UCL. (*Rincon Band of Luiseno Mission Indians etc. v. Flynt* (2021) 70 Cal.App.5th 1059, 1089-91.) Undeterred, in 2022 the Tribes sought voter approval of Proposition 26 to include a "bounty hunter" provision allowing *any person or entity* (presumably including Tribes but certainly including Tribal members) to sue any cardroom in the state to challenge the legalities of any card room game, with no requirement that there be standing to pursue such relief. This initiative effort also was unsuccessful as the voters rejected it by a 2-1 margin.

Seeking to rise like a phoenix following these two unsuccessful efforts, the Tribes then convinced the California Legislature (but not the voters via initiative) to enact SB 549 to add Section 98020 to the Government Code (relating to gaming)—accomplishing an end run around the *Rincon* decision and the defeat of Proposition 26. SB 549 amended existing law to allow even a single Tribe – otherwise prohibited from bringing a standalone attack on the gaming activities of such card rooms – to proceed with a one-time UCL-type challenge to the legality of the games played at every card room in the State.

As will be shown below, SB 549 is an unconstitutional and void effort to amend the UCL to allow any Tribe, even in the absence of required Article III-like standing, to pursue such an action. Since California voters' 2004 passage of Proposition 64 ("Proposition 64"), any such action authorizing persons to pursue such relief requires that the plaintiff(s) must have individual standing to sue, *i.e.,* an injury in fact in the form of lost money or property as a result of such illegal acts. (*See, e.g., Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227; *Rincon, supra,* 70 Cal.App.5th at p. 1097.) Notwithstanding Proposition 64's express standing requirement, the Legislature in SB 549 purported statutorily to delete the requirement of

standing by allowing *any* individual Tribe anywhere in the State to file a one-time lawsuit against *any* card room anywhere in the State challenging *any* game, whether or not the Tribe has suffered any injury in fact. The California Constitution, however, could not be clearer: an initiative like Proposition 64 can only be amended or repealed by the State Legislature *if the proposed amendment/repeal is itself approved by the electorate.* (Cal. Const. Art. II, Sect. 10(c).)[1] Because the purported amendment at issue here was not approved by the electorate, it is not legally enforceable, and any action based on the invalid statute must be dismissed. Simply put, because SB 549 takes away the restrictions on such relief imposed by Proposition 64, the court must find SB 549 is void *ab initio.*[2]

II. BACKGROUND.

A. STANDING TO PURSUE UCL ACTIONS BEFORE AND AFTER PROPOSITION 64.

The story ending with the Tribes' SB 540 lawsuits begins with the law regarding standing to bring an action under the UCL in California.

Generally, in assessing standing, California courts are not bound by the U.S. Constitution's Article III "case or controversy" requirement, which is applicable in federal court. Article III requires plaintiffs in federal court to plead and prove the "irreducible constitutional minimum" that they have "suffered an injury in fact" that is "fairly traceable to the challenged conduct of the defendant." (*Spokeo, Inc. v. Robins* (2016) 578 U.S. 330, 338 [quoting *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560]), in California courts, absent specific requirements for a statutory cause of action, standing in civil cases is governed by the "general

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[1] Art. II, Sect. 10(c) does say that the Legislature acting alone may amend or repeal a successful initiative but only if "the initiative statute permits amendment or repeal without the elector's approval." Proposition 64 contained no such language. *See* Artichoke Joe's Request for Judicial Notice, Exh. 1.

[2] Per CCP §430.41, in advance of this filing, Artichoke Joe's counsel met and conferred with both sets of Plaintiffs' counsel. Declaration of James M. Wagstaffe, submitted herewith. The parties were unable to resolve their positions regarding this demurrer. *Id.*

standing requirements under [Code of Civil Procedure] section 367." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1249.)

Because standing under Article III requires a showing of injury in fact, federal statutes cannot confer such standing, even when statutory violations have occurred, absent pleading and proof of an injury in fact. (See, e.g., *Spokeo, Inc. v. Robins* (2016) 578 U.S. 330 (mere violation of statute without injury insufficient for Article III standing); *McGee v. S-L Snacks National* (9th Cir. 2020) 982 F.3d 700 (no standing when Plaintiff suffered no economic or physical injuries by consuming trans-fat from Defendant's popcorn).

In contrast, in California state courts standing is generally determined by reviewing the statute at issue, including "the provision's language, its underlying purpose, and the legislative intent." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 83.) Accordingly, California courts have repeatedly held that, if a statutory scheme so authorizes it, plaintiffs may bring such claims whether injured or not—a type of standing sometimes referred to as "unaffected plaintiff" standing.

Such was the state of the law for actions brought under the UCL as of 2004. Specifically, prior to 2004, the UCL provided that private parties, even if they were unaffected by the unlawful conduct under consideration, had standing to bring a UCL claim, *i.e.,* to bring suit as an "unaffected plaintiff." (See *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227.) ("California law previously authorized any person acting for the general public to sue for relief from unfair competition"). As described in *Stern, Business & Professions Code Section 17200 Practice, Ch. 7-A, ¶ 7.12* (The Rutter Group 2023), prior to Proposition 64:

> a complete stranger to the transaction could sue and obtain all of the remedies available under section 17203. That was because the statute provided that "any person" could sue on behalf of himself or herself individually, or on behalf of the general public, to redress violations of §§ 17200 and 17500. [See former Bus. & Prof. C. §§ 17204, 17535] The courts had construed those two words—any person—literally. As the California Supreme Court noted, the Legislature intended to permit suit to be brought even by someone completely unaffected by the business practice, and even someone who suffered no harm

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as a result of it. [*Stop Youth Addiction, Inc. v. Lucky Stores, Inc* (1998) 17 Cal.4th 553, 561-567, 71 CR2d 731, 735-740][3]

In 2004, however, all of that changed. That year, voters approved Proposition 64, which declared that "[i]t is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution." (Proposition 64, § 1(e) ["Findings and Declarations of Purpose"]; *Chai v. Velocity Invs., LLC* (2025) 108 Cal.App.5th 1030, 1040-41.) Proposition 64 accomplished that goal by "amend[ing] section 17204, which prescribes who may sue to enforce the UCL, by deleting the language that had formerly authorized suits by any person 'acting for the interests of itself, its members or the general public,' and by replacing it with the phrase, 'who has suffered injury in fact and has lost money or property as a result of unfair competition.'" (*Californians for Disability Rights, supra*, 39 Cal.4th at p. 228.)

By borrowing the Article III standing requirement from federal constitutional law, Proposition 64 thus required private plaintiffs suing under the UCL to allege the kind of "injury in fact" that is required in federal court. (See *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322–323 & fn. 5 [asking whether the plaintiff has suffered "economic injury ... caused by ... the unfair ... practice ... that is the gravamen of the claim."].) Indeed, Proposition 64 actually "renders standing under section 17204 substantially narrower than federal standing," as the economic injury that the new section 17204 requires "is but one among many types of injury in fact" that can support standing in federal court. (*Kwikset, supra*, 51 Cal.4th at p. 324.)

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[3] The pre-Proposition 64 UCL is not the only example of statutory unaffected plaintiff standing. Most recently, in *Chai v. Velocity Invs., LLC* (2025) 108 Cal.App.5th 1030, 1039-1040, the court held there was no requirement of actual damages for standing to sue for a violation of informational rights under the Fair Debt Buying Practices Act, Civ. Code, § 1788.50 et seq. In reaching this conclusion, the *Chai* court noted that this was not a "novel" result and pointed to several other statutes which provided a plaintiff the right to sue without having incurred any actual monetary injury or harm. (*Id.,* at p. 1040.)

B. PRIOR UNSUCCESSFUL EFFORTS OF THE TRIBES TO PURSUE UCL CHALLENGE TO CARD ROOM GAMING ACTIVITIES.

The amended UCL played a critical role in the genesis of SB 549 and this lawsuit. Although the games targeted in this lawsuit have long been played consistent with court rulings, statutory amendments, and over 20 years of regulatory approval, a few years ago, Indian Tribes turned to the courts in an effort to generate governmental action to change all that. Specifically, in *Rincon Band of Luiseno Mission Indians*, *supra,* 70 Cal.App.5th 1059, two of the Tribes in this action along with other Tribal-related plaintiffs sued cardrooms and third-party proposition players challenging the games at issue here.

Applying the UCL as amended by Proposition 64, however, the court flatly rejected these efforts. First, the court held that the Tribes are not "persons" with standing to sue under the UCL. (*Id.* at pp. 1089-91.) Further, the court explained that UCL claims raised by the other plaintiffs identified as "Tribal Entities" or "Tribal Members"[4] failed because they had not pleaded economic injury in fact as required by Proposition 64. (*Id.* at p. 1096.) As the court underscored, although the UCL "previously authorized any person acting for the general public to sue for relief from unfair competition," Proposition 64 "'materially curtail[ed] the universe of those who may enforce' the UCL in a private action." (*Id.* at p. 1097 [quoting *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320-21].) Proposition 64 accomplished that goal, the court continued, by "confin[ing] standing to those *actually injured* by a defendant's business practices," requiring a party seeking to enforce the UCL to show both actual injury and causation. (*Id.* [italics added; quoting *Kwikset, supra*, 51 Cal.4th at pp. 320-21]; *see Id.* ["Thus, 'in sharp contrast to the state of the law before passage of Proposition 64, a private plaintiff filing suit now must establish that he or she has personally suffered' economic injury in fact caused by the alleged unfair competition."].)

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[4] The plaintiffs identified in the opinion as "Tribal Entities" were "business entities 'affiliat[ed] with or…operated by members of' the Tribes." (*Id., at* p. 1074.) The plaintiffs identified as Tribal "Members include the chairperson and a member of the Tribal Council who reside on the Rincon Band reservation and 10 other individual members of the Rincon Band." (*Id*.)

Responding to this ruling, in 2022 several Tribes—including those named as Plaintiffs here—sought the electorate's approval of Proposition 26. *See* Artichoke Joe's Request for Judicial Notice ("RJN"), Exh. 2. This next step made sense, as the only way the Tribes could undo Proposition 64's standing requirement, which was adopted through voter initiative, would be through another voter initiative. (Article II, Section 10(c) of the California Constitution, discussed in Section III (A), *infra*.) Proposition 26 included a "bounty hunter" provision that would have specifically allowed "any person or entity" to bring suit challenging the legality of any card room game for "civil penalties and injunctive relief." *See* RJN, Exh. 2, Art. 18(b)—*Unlawful Gambling Enforcement*. The voters overwhelmingly rejected Proposition 26. RJN, Exh. 3, p. 2.

C. THE TRIBES' NEXT STRATEGY: OBTAIN LEGISLATION IN THE FORM OF SB 549 TO ALLOW SUCH SUITS WITH NO STANDING REQUIREMENT.

Undeterred by their loss in *Rincon* and the defeat of Proposition 26, the Tribes turned to the California Legislature to give them what they had been unable to obtain through litigation or the initiative process, namely, the right to bring a UCL claim against card rooms *without* having to satisfy any standing requirement. Following significant lobbying by the Tribes, the Legislature gave them exactly what they wanted.

As conceded in the *Agua Caliente Band of Cahuilla Indians First Amended Complaint* ("*Agua Caliente FAC*"), the State Legislature's intent in passing SB 549 was to allow "California's Native American gaming tribes to ask the judiciary to resolve the longstanding dispute over whether certain controlled games operated by California card clubs are illegal banking card games and whether they infringe upon tribal gaming rights." (*Agua Caliente FAC* ¶13*, quoting* Assem. Com. on Appropriations, Analysis of Sen. Bill 549 (2023-2024 Reg. Sess.), Aug. 7, 2024, p. 2. *See* RJN, Exh. 4, p. 2.)

In discussing this "longstanding dispute," the related Senate Third Reading Report addressing SB 549 stated that "[a]s with any business competitors, the card rooms and tribal casinos seek competitive advantages over others." Senate Third Reading SB 549 (2023-2024

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Reg. Sess.), Aug. 19, 2024, p. 3. *See* RJN, Exh. 5, p. 3. Indeed, the Senate Report expressly relied on the same litigation history set forth above to support passage of SB 549:

> Seeking to gain greater legal clarity on the topic, in 2018, several tribes that operate casinos sued several rival cardrooms claiming that the "player-dealer" model violated state law utilizing an action under the Unfair Competition Law. However, both a trial and appellate [courts] denied the tribes standing. (*Rincon Band of Luiseño Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059.). *Id.*

The Senate Report went on to state that:

> Following that defeat, several tribes added a provision to the ill-fated Proposition 26 (2022) that was primarily related to sports betting which would have conferred such standing. Although that provision was largely lost in the costly debate over sports betting, it failed along with the broader Proposition. *Id.*

The Senate Report also included excerpts from a letter in support of SB 549, signed by almost two dozen Tribes, which noted their frustration with these setbacks and observed that "SB 549 will provide Indian tribes clear standing to bring a legal action and finally secure a judicial decision on the merits on this important legal question concerning the interpretation of California law." *Id.*, p. 5.

That the purpose of SB 549 was to provide Tribes with a cause of action that the litigation and initiative process to date had denied is confirmed by the text of the statute itself. SB 549 expressly states that its purpose is to serve as a means "to determine whether certain controlled games operated by California card clubs are illegal banking card games or legal controlled games, thereby resolving a decade-long dispute between California tribes and California card clubs concerning the legality of those controlled games…." RJN, Exh. 6, p.2, Sect. 2. SB 549 does so by providing that any "California Indian tribe that is a party to a current ratified tribal-state compact, or that is party to current secretarial procedures pursuant to Chapter 29 of Title 25 of the United States Code" can seek declaratory and injunctive relief as to the legality of any "controlled game" operated by any "licensed gambling enterprise[] and third-party provider[] of proposition player services." RJN, Exh. 6, p. 2, Sect. 4.

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Critically, moreover, SB 549 does not require as a condition of such suit that a Tribe plead or prove either injury in fact or the actual loss of any money or property. Rather, its language expressly provides that it was designed to alter "[e]xisting law [that] generally specifies the persons or entities that may bring a civil action as prescribed for relief." RJN, Exh. 6, p. 1 (Legislative Counsel's Digest to SB 549). In other words, SB 549 by its own terms purports to undo the standing requirement that the voters added to the UCL in Proposition 64, thereby permitting even a single Tribe to seek a declaration and injunction "as to whether a controlled game operated by a licensed California card club and banked by a third-party proposition player services provider constitutes a banking card game that violates state law …." RJN, Ex. 6, p. 2, Sect. 2.

D. THE PRESENT SB 549 LAWSUITS.

Having convinced the Legislature to provide them with a right to sue notwithstanding the voters' restrictions on UCL claims embodied in Proposition 64, the Tribes brought these two consolidated actions asserting only SB 549 claims. As the Court is well aware, the present lawsuits have been brought by several Indian Tribes against over ninety card rooms and third-party providers of proposition player services ("TPPPP") disbursed throughout the State of California. *Agua Caliente FAC* pp. 1-2; *Rincon Ban of Luiseno Mission Indians of the Rincon Reservation, California Complaint* ("*Rincon Complaint*"), pp. 1-6). The distance between these parties extends the full length of the state, where it is indisputable that the actions of a card club, say in far Northern California, could not conceivably have any cognizable effect on a tribal casino located hundreds of miles away. For example, Plaintiff Barona Band of Mission Indians located in Lakeside, California (*see Agua Caliente FAC* ¶17) is some 677 miles by road from Defendant Casino Club, Inc. in Redding, California. *See Agua Caliente FAC* ¶34; RJN, Exh. 7. Plaintiff Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California, located in Valley Center, San Diego County is some 647 miles by road from Defendant Casino Club in Redding, California. *See Rincon Complaint,* ¶¶16, 29; RJN, Exh. 8.

In particular, the Tribes who have chosen to pursue these two actions rely exclusively on SB 549. As shown above, this legislation – designed as it was to avoid the UCL and standing

strictures of the prior unsuccessful litigation and voter-rejected initiative – emanated solely from the Legislature, contained no express standing requirement, and was passed without submission to the voters of this State for approval. Rather, SB 549 purports to vest the high-stakes review of the legalities of regulated card rooms in the hands of the judicial branch.

III. DISCUSSION.[5]

A. PROPOSITION 64 CAN ONLY BE AMENDED BY THE LEGISLATURE WITH THE APPROVAL OF THE ELECTORATE.

Pursuant to Article II, Section 10(c) of the California Constitution, "a statute enacted through a voter initiative is afforded special protection that limits the Legislature's ability to modify it." (*People v. Cruz* (2020) 46 Cal.App.5th 740, 748.) The purpose of this constitutional limitation on the Legislature's power to amend initiative statutes is to "'protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.'" (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025, quoting with approval *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484.) This limitation is a "strict bar" on the Legislature's power to amend initiative statutes":

> In this vein, decisions frequently have asserted that courts have a duty to "jealously guard" the people's initiative power, and hence to "apply a liberal construction to this power wherever it is challenged in order that the right" to resort to the initiative process "be not improperly annulled" by a legislative body. (*Id.* [internal quotation marks omitted].) *People v. Kelly*, *supra,* 47 Cal.4th at 1025-1026.[6]

Moreover, in light of this strict bar, "[a]ny doubts should be resolved in favor of the initiative and referendum power, and amendments which may conflict with the subject matter of initiative measures must be accomplished by popular vote, as opposed to legislatively enacted

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[5] To avoid repetition, this brief adopts Section III of the accompanying "DEFENDANTS' NOTICE OF DEMURRER AND DEMURRER TO AGUA CALIENTE FIRST AMENDED COMPLAINT AND RINCON BAND FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS & AUTHORITIES" regarding the legal standard applicable for demurrers challenging statutory validity.

[6] The *Kelly* decision contains a detailed analysis of the importance, purpose and history of Art. II Sect. 10(c). (See *People v. Kelly, supra,* 47 Cal.4th at p. 1030-1041.)

ordinances, where the original initiative does not provide otherwise." (*Proposition 103 Enforcement Project, supra,* 64 Cal.App.4th at p. 1486; *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 750.)

As to what constitutes an amendment for purposes of Art. II, Sect. 10(c), the *Kelly* Court stated "[i]t is sufficient to observe that…an amendment includes a legislative act that changes an existing initiative statute by taking away from it." (*People v. Kelly, supra,* 47 Cal.4th at p. 1026–27.) Put another way, a legislative enactment amends an initiative if it "prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.)

Perhaps most significantly, a legislative act such as SB 549 may effect a void amendment of a pre-existing initiative statute even where the Legislature did not name the statute or express an intent to amend it. (*Proposition 103 Enforcement Project, supra,* 64 Cal.App.4th at p. 1486–1487.) "Whether an act is amendatory of existing law is determined not by title alone, or by declarations in the new act that it purports to amend existing law. On the contrary, it is determined by an examination and comparison of its provisions with existing law." (*Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1199.) When a legislative act does effectively amend law adopted by initiative, it contravenes the State Constitution, and is void *ab inititio.* (See, e.g., *People v. Kelly, supra,* 47 Cal.4th at p. 1025; *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776.)

B. SB 549 IMPROPERLY AMENDS THE UCL LAWS AS MODIFIED BY PROPOSITION 64.

As detailed above, Proposition 64 requires clients represented by private counsel in UCL cases to have suffered an actual injury in the form of lost money or property as a result of the alleged unlawful competition. Removing this requirement from a UCL claim (by actual or de facto amendment) would require, in turn, another initiative.

Undoing the limitations imposed by Proposition 64 is precisely the intent and effect of SB 549. As the legislative history makes clear, SB 549 was brought forth only after the Tribes' unsuccessful attempt to persuade voters to amend Proposition 64's standing strictures through

Proposition 26. And, as the Agua Caliente Plaintiffs concede, the purpose of SB 549 is to once and for all resolve their "longstanding" claim that the card rooms statewide have engaged in unfair competition against the Tribes. *See, e.g., Agua Caliente FAC at ¶ 13*.

That SB 549 does not expressly state that it is amending the UCL is of no consequence. As set forth above, whether a statute adopted by the Legislature impermissibly amends a provision adopted by initiative is determined "not by title alone, or by declarations in the new act" (*Planned Parenthood Affiliates, supra*, 173 Cal.App.3d at p. 1199), but by examining whether the statute "authorizes what the initiative prohibits," (*People v. Superior Court (Pearson), supra,* 48 Cal.4th at p. 571.)

In other words, the Legislature is not free to "indirectly accomplish…what it cannot accomplish directly by enacting a statute which amends the initiative's statutory provisions." (*Proposition 103 Enforcement Project, supra,* 64 Cal.App.4th at p. 1487.) "To hold otherwise would elevate form over substance…and would mean that the voters' prohibition on any amendments save those which further their purposes in adopting an initiative would be 'of little worth if it can be evaded by so simple a device.'" (*Id., quoting Cashman v. Root* (1891) 89 Cal. 373, 383.)

Here, SB 549 allows *any* Tribe properly operating a tribal casino to seek declaratory and injunctive relief as against *any* card room in the state, no matter how close or distant, no matter how big or how small, no matter whether or not the tribal casino offers similar table games, without *any* express requirement of actual injury. (See *Chai v. Velocity Invs., LLC* (2025) 108 Cal.App.5th 1030, 040-41 [taking "the Legislature's abstaining from" adding "limiting language" requiring actual injury "to be deliberate"].) Because SB 549 effectively undoes the injury-in-fact restriction that the People imposed through Proposition 64, it is void *ab initio*. (*See, e.g., People v. Kelly, supra*, 47 Cal.4th at p. 1025; *Franchise Tax Bd. v. Cory, supra,* 80 Cal.App.3d at p. 776.)

Had the Legislature intended to limit standing under SB 549 to Tribes which could allege and prove they sustained actual damages as a result of a defendant's gaming, it could have done so. The fact that it did not is dispositive here. In *Chai v. Velocity Investments, Inc., supra*, the

issue was whether the state Fair Debt Buying Practices Act (FDBPA) required that a plaintiff filing suit under the Act suffer actual damages. The statute did not specifically state that actual damages were not required and the defendant argued that the court should infer from this silence the intent of the Legislature was to require actual damages. The appellate court disagreed:

> [H]ad the Legislature intended to limit standing to plaintiffs who had sustained actual damages, it could have done so. The unfair competition law authorizes private suits only "by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204; see also *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321–322, 120 Cal.Rptr.3d 741, 246 P.3d 877.) So with [the FDBPA] we take the Legislature's abstaining from such limiting language to be deliberate. (*Chai, supra,* 108 Cal. App. 5th at p. 1040.)

The same is true here, particularly in light of the strict standards imposed by Art. II, Sect. 10(c) of the Constitution and, as noted, the court's "duty to 'jealously guard' the people's initiative power," (*People v. Kelly, supra*, 47 Cal.4th at p. 1025.) The Legislature knew how to limit standing to Tribes with actual damages. As in *Chai,* the Court must take the Legislature's abstaining from such limiting language to be deliberate. Therefore, since SB 549 is an improper attempt to authorize a UCL-type lawsuit in violation of Proposition 64, and since the Legislature did not obtain approval from the voters via an initiative, as required, this lawsuit is an improper delegation of this authority to the courts, and the demurrer must be sustained without leave to amend.

IV. CONCLUSION.

SB 549 violates Article II, Sect. 10(c) of the California Constitution. As such, it is void and cannot be the basis of this or any other litigation. The demurrer must be sustained without leave to amend.

DATED: May 2, 2025

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