

SFGate.comwww.sfgate.com[Return to regular view](#)

Tribal gaming gets OK

Ruling opens door to casino in San Pablo

[Bob Egelko, Chronicle Staff Writer](#)

Tuesday, December 23, 2003

[©2003 San Francisco Chronicle](#) | [Feedback](#) | [FAQ](#)[URL: sfgate.com/article.cgi?file=/chronicle/archive/2003/12/23/BAGTL3T1NS1.DTL](http://www.sfgate.com/article.cgi?file=/chronicle/archive/2003/12/23/BAGTL3T1NS1.DTL)

A federal appeals court upheld California's voter-approved expansion of tribal gambling Monday, saying federal law lets states grant Indian tribes a monopoly on Nevada-style casinos.

The ruling by the Ninth U.S. Circuit Court of Appeals in San Francisco rejected challenges by card rooms and charitable organizations to casinos run by 62 tribes that have signed compacts with the state. The opponents argued that exclusive tribal control of unrestricted casino gambling was unauthorized by federal law and amounted to an unconstitutional racial preference.

The appellate court's decision also removes an obstacle to one tribe's plan to open the state's first metropolitan-area casino in the west Contra Costa County city of San Pablo.

It was the first federal appeals court ruling on the validity of a state law granting Indian tribes a monopoly on high-stakes gambling. Opponents will appeal to the U.S. Supreme Court, said Bo Links, spokesman for the plaintiff group led by Artichoke Joe's card room in San Bruno. He said it was both unfair and illegal "to allow only Indian tribes to engage in one particular enterprise."

The state's lawyer, Deputy Attorney General Marc Le Forestier, countered that voters who approved the tribal gambling initiative in March 2000 "were motivated by concerns for historic injustices that have occurred against tribes in California."

The appeals court gave a similar rationale, saying the California law "furthers the federal government's longstanding trust obligations to Indian tribes and helps promote their economic self-development."

A contrary ruling would have forced the 62 tribes to scale back or eliminate their casinos and also would have scuttled plans for an urban casino in San Pablo. In September, another appeals court panel rejected requests by the same card clubs to block transfer of the San Pablo site to the federal government, which now holds it in trust as a tribal reservation.

The site, formerly a card club called the Casino San Pablo, is to become the home of the Lytton Band of Pomo Indians, who intend to transform it into the Bay Area's first full-fledged gambling emporium, with 1,000 slot machines.

The Lyttons still face a court challenge to their official tribal status and need Gov. Arnold Schwarzenegger's approval for the casino. During his campaign for governor, Schwarzenegger denounced rivals' acceptance of tribal campaign contributions but did not rule out approving more Indian casinos, saying only that he would insist on a share of the profits for the state.

Monday's ruling upheld Proposition 1A, a state constitutional amendment approved 2-1 by voters in 2000. It authorized tribes to negotiate agreements with the state to operate casinos with lucrative forms of gambling, including slot machines and house-banked card games, in which gamblers play against the house. Casinos of that nature are not allowed elsewhere in California.

Then-Gov. Gray Davis negotiated agreements with 62 tribes, of which 39 now operate casinos with slot machines. Casinos have become the largest source of revenue for California Indian tribes. Part of the revenue is shared with the 44 tribes that have no casinos. Before the Oct. 7 recall election, Davis proposed renegotiating the agreements to guarantee a share for the state.

In their lawsuit, the card rooms argued that the monopoly granted by Prop. 1A violated the federal Indian Gaming Regulatory Act, which lets a state approve an expansion of tribal gambling only if the state also allows the same type of gambling "by any person, organization or entity."

The court said the federal law does not clearly authorize, or forbid, tribal monopolies on gambling. In such cases, when the law was intended to benefit Indian tribes, a court must adopt an interpretation that favors the tribes, the three-judge panel said.

The court also said the tribal preference is constitutional because it is based on the tribes' political status, not their members' race.

"The very nature of a tribal-state compact is political," wrote Judge Susan Graber. "It is an agreement between an Indian tribe, as one sovereign, and a state, as another."

E-mail the writer at bejelko@sfgate.com

[©2003 San Francisco Chronicle](#) | [Feedback](#) | [FAQ](#)

[Page A - 19](#)