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California Tribal Lobbying and the Interest Group Perception

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ABSTRACT OF THE THESIS

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Tribal nations, in much the same way as state governments, influence other sovereigns through lobbying. But unlike corporate special interests, states and tribal nations lobby on behalf of the needs of their constituents. As a result of the Indian Gaming Regulatory Act, tribal nations are experiencing increased political incorporation into state politics, leading many academics to argue that tribal nations are merely corporate special interests. The impacts of this perception could be potentially catastrophic for tribal nations, as critics of California tribal interest group behavior have called for an end to tribal sovereignty. Through the analysis of polling data, and statements from politicians, academics, and news media, I show that the public perceives tribal nations lobbying in California as "special interests" akin to corporate profit-seekers and I demonstrates that tribal lobbying represents the actions of one sovereign attempting to influence another.

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DEDICATION

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Chapter 1: Introduction

In the last two decades, tribal nations in the US have leveraged their resurging economies into substantial political power.¹ This transition has been met with a sharp increase in scholarship written on tribal nations' use of interest group strategies to influence legislation. The rise of tribal interest group strategies intersects with a recent shift in the relationship between states and tribal sovereigns. Tribal nations, in much the same way as state governments, influence other sovereigns through lobbying, but unlike corporate special interests or "pressure groups," states and tribal nations lobby on behalf of the needs of their constituents. As a result of tribal gaming and the Indian Gaming Regulatory Act, the political behavior of the wealthiest and most powerful tribal nations has received considerable academic attention, the reality that nearly all sovereign tribal nations engage in lobbying to protect the interests of their citizens is eschewed in favor of arguments that tribal nations are merely corporate special interests. The impacts of this perception could be potentially catastrophic for tribal nations, as critiques of California tribal interest group activity "seek an end to tribal sovereignty, which they say is an un-American concept."² California, the state with the largest number of tribal nations in the contiguous US, is an ideal locale in which to examine the political strategies and influence of tribal nations. Through the analysis of polling data, and statements from politicians, academics, and news media, I show that the

¹ Hansen, Kenneth N., and Tracy A. Skopek. *The new politics of Indian gaming: The rise of reservation interest groups*. University of Nevada Press, 2015, 2.

² Golab, Jan. "Arnold Schwarzenegger Girds for Indian War." *The American Enterprise* 15, no. 1 (2004): 19.

public perceives tribal nations lobbying in California as “special interests” akin to corporate profit-seekers. This analysis rejects the myth that lobbying consolidates power into only the wealthiest tribal nations—an extension of “rich Indian racism”—and instead demonstrates that tribal lobbying represents the actions of one sovereign attempting to influence another.

The First Nations Information Governance Center, a research and advocacy organization publishing tools to support the sovereignty of Native nations’ data, reports:

Researchers have recklessly sensationalized problems among First Nations, without regard for the impact on communities or their social and political interests. Their research tends to focus on problems without looking at the positive and it often portrays First Nations people as solely poor, sick, dependent, violent and child-like.³

With a knowledge of that critique of non-Native researchers like myself, this paper aims to show that tribal lobbying is crucial to the self-determination of tribal nations in California. Yak Tityu Tityu Northern Chumash and Yokut political scientist Kouslaa T. Kessler-Mata writes that self-determination “regards the ability of tribes to construct and pursue their own goals with the reasonable expectation that they will not be subject to arbitrary interference from other polities.”⁴ Tribal lobbying is a key element of political self-determination for all tribal nations in California, and as this research shows, even for tribes without substantial gaming operations. In the face of declining public approval for tribal gaming and widespread misconceptions about

³ Kukutai, Tahu, and John Taylor. *Indigenous data sovereignty: Toward an agenda*. ANU press, 2016, 144.

⁴ Kessler-Mata, Kouslaa T. *American Indians and the trouble with sovereignty: A turn toward structural self-determination*. Cambridge University Press, 2017, 5.

the nature of tribal lobbying, this research adds critical support to tribal nations enacting their sovereignty.

Chapter 2: Interest Groups and Tribal Politics

The interest group theory of politics identifies three primary goals or functions of interest group activities: narrowing the scope of conflict, venue shifting, and internal and external lobbying techniques.”⁵ Steven A. Light, Associate Professor of Political Science and Public Administration at the University of North Dakota and Co-Director of the Institute for the Study of Tribal Gaming Law and Policy, presents a case study of Minnesota gaming compacts to argue that these strategies, while producing some successes, open tribal sovereignty to attacks from state governments.⁶ Light argues that the perception of tribal nations as “interest groups” permits states to leverage their own authority over tribal nations, who are viewed by the public as greedy “vote buyers.”⁷ Corporations with large lobbyist expenditures contribute to the perception that all interest group activity is corrupt, but tribal nations, unlike corporations, lobby on behalf of their constituents’ interests and not just to increase corporate profits. This perception is frequently replicated in academic publications. In 2004, Jan Golab, a researcher from the American Enterprise Institute, wrote that “The wild rise of Indian gambling has turned a relatively tiny number of individuals into millionaires, and ‘sovereign

⁵ Light, Steven Andrew. "Indian gaming and intergovernmental relations: State-level constraints on tribal political influence over policy outcomes." *The American Review of Public Administration* 38, no. 2 (2008): 227.

⁶ Light, 240.

⁷ Light, 239.

nation' moguls untouchable by everyday law."⁸ Here Golab is repeating a common critique of tribal nations: they are too wealthy and powerful to be sovereign. This critique adds to the perception that tribal nations are little more than corporate special interests, and that perception is only growing. In a recent 2022 news article covering a California proposition to expand sports betting in tribal casinos, University of Nevada Las Vegas professor of casino management Anthony Lucas claimed "It's about money. [Tribes] are businesses, so that is what they are supposed to be about in large part."⁹ As Light showed in Minnesota, publishing these unsubstantiated perceptions of tribal gaming in California influences voters, who in-turn influence their state representatives. During Arnold Schwarzenegger's 2003 campaign for state governor, Schwarzenegger's internal polling found public support for taxing tribal gaming operations. In response, he ran a television ad saying "it's time the Indians pay their fair share. All the other major candidates take their money and pander to them. I don't play that game."¹⁰ This infamous quote fueled the perception that tribal nations in California use gaming wealth to buy votes and influence from state representatives.

Despite the perception that sovereign tribal nations engaged in lobbying are effectively corporate special interests, it is not at all uncommon for sovereigns to

⁸ Golab, Jan. "Arnold Schwarzenegger Girds for Indian War." *The American Enterprise* 15, no. 1 (2004): 37.

⁹ Reed, Kathryn. "Tribal Casinos Bet Big on November Ballot Measure to Expand Gambling." *The North Bay Business Journal*, March 10, 2022. <https://www.northbaybusinessjournal.com/article/article/california-tribal-casinos-put-millions-on-the-table-for-november-ballot-me/>.

¹⁰ Golab, Jan. "Arnold Schwarzenegger Girds for Indian War." *The American Enterprise* 15, no. 1 (2004): 36.

engage in lobbying. California, for example, spent over \$500,000 lobbying the Federal government on issues like transportation and the budget in 2022.¹¹ When a state or local government lobbies Congress, academics describe this as “intergovernmental lobbying,” acknowledging the government-to-government advocacy structure.¹² But when tribal nations lobby other governments, scholars relegate their actions to “interest group activity,” the same as any corporation or special interest. Some academics have gone so far as to argue that tribal nations are incapable of responsible self-governance and should be forbidden from using gaming revenues to enact their sovereignty. In 2010, Legal scholar Mary Beth Moylan argued:

Congress should not knowingly provide tribes the tools to gain an economic advantage without ensuring that the primary use of the money acquired is to further the welfare of tribe members. Lining the pockets of federal and state legislator campaign committees and ballot measure committees may result in tribes having increased access to state and federal lawmakers. However, unless one supposes illegal bribery or improper quid pro quo arrangements are being made in return for the expenditure of casino profits, there is no direct benefit to tribal members when casino revenues are spent on state or federal elections.¹³

Moylan claims that tribal governments couldn’t possibly justify lobbying expenditures unless they were engaging in fraud. Moylan’s coded argument is that tribal governments need paternalistic federal oversight because tribes with effective lobbying strategies are getting too powerful.

¹¹ “State of California Issues Lobbied.” OpenSecrets. Accessed September 6, 2023. <https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2022&id=D000000812>.

¹² Jensen, Jennifer M. “Intergovernmental lobbying in the United States: Assessing the benefits of accumulated knowledge.” *State and Local Government Review* 50, no. 4 (2018): 271.

¹³ Moylan, Mary-Beth. “Sovereign Rules of the Game: Requiring Campaign Finance Disclosure in the Face of Tribal Sovereign Immunity.” *BU Pub. Int. LJ* 20 (2010): 32.

Since the 1988 passage of the Indian Gaming Regulatory Act (IGRA), tribal lobbying and related interest group strategies—campaign donations, issue advertising, etcetera—have received increased attention from news media, politicians, and academics like Moylan.¹⁴ Tribal nations who operate gaming businesses face scrutiny and backlash for what is frequently elucidated as “rich Indian” stereotyping.¹⁵ This stereotype, which was replicated in the aforementioned quotes from Golab, Lucas, Schwarzenegger, and Moylan, threatens tribal sovereignty by intimating that tribal nations no longer *need* sovereignty due to gaming wealth.¹⁶ Many of these criticisms result from a widespread perception of “unfairness.” Commonly held myths that Native peoples don’t pay taxes, or that they receive limitless federal checks, contribute to the public’s idea that tribal nations experience systemic advantages in the US.¹⁷ Related is the belief that when minority groups attempt to achieve parity within historically white institutions, those institutions are illegitimately favoring minorities. When the legend of the “unfair advantage” meets the reality of tribal deficiencies in health and economic development, the frequent response is that those imagined advantages produce a lazy population incapable of “bootstrapping.” While these myths are not frequently polled, some data does exist showing the California public holds reticence for tribal

¹⁴ Hansen and Skopek, 1.

¹⁵ Contreras, Kate Spilde. "Cultivating new opportunities: Tribal government gaming on the Pechanga Reservation." *American Behavioral Scientist* 50, no. 3 (2006): 325.

¹⁶ Spilde, Katherine Ann. *Acts of sovereignty, acts of identity: negotiating interdependence through tribal government gaming on the White Earth Indian Reservation*. University of California, Santa Cruz, 1998, 13.

¹⁷ “FAQ.” CNIGA, October 1, 2021. <https://cniga.com/industry-resources/faq/>.

gaming. One 2011 poll of Sacramento voters found that 72% of respondents opposed off reservation casinos,¹⁸ and a 2004 Los Angeles Times poll reported 63% of likely California voters would only support new gaming compacts that increased revenue sharing to the state.¹⁹ "Rich Indian" stereotypes and the myth of the unfair advantage have been addressed in numerous papers and monographs, led by Native scholars who endorse a sovereignty-first analytical perspective.²⁰ While the voting public has held negative perceptions of tribal gaming, these scholars identify tribal gaming as a key driver of increased living standards for tribal nations and their nearby communities.²¹

Light asserts that to avoid infringing upon tribal sovereignty, states and tribes should prioritize government-to-government relations rather than perpetuating the interest group perception. But even Light's analysis breaks down through his assumption that tribes only participate in interest group politics by default or for lack of better options.²² It is inaccurate to assume that there are

¹⁸ Miller, Jim. "Tribal Gaming: Off-Reservation Casinos Opposed, Survey Shows." Press Enterprise, December 7, 2011. <https://www.pressenterprise.com/2011/12/07/tribal-gaming-off-reservation-casinos-opposed-survey-shows/>.

¹⁹ "Poll Finds Strong Support for California Tribal Gaming." indianz.com, April 26, 2004. <https://indianz.com/News/archive/001916.asp>.

²⁰ See: Corntassel, Jeff, and Richard C. Witmer. *Forced federalism: Contemporary challenges to indigenous nationhood*. Vol. 3. University of Oklahoma Press, 2008; Kessler-Mata, Kouslaa T. *American Indians and the trouble with sovereignty: A turn toward structural self-determination*. Cambridge University Press, 2017. For additional research on "rich Indian" racism from non-Native scholars see: Flaherty, Anne. "American Indian land rights, rich Indian racism, and newspaper coverage in New York State, 1988-2008." *American Indian culture and research journal* 37, no. 4 (2013): 53-84; Cramer, Renee Ann. "The common sense of anti-Indian racism: Reactions to Mashantucket Pequot success in gaming and acknowledgment." *Law & Social Inquiry* 31, no. 2 (2006): 313-341.

²¹ Kessler-Mata, 102-103.

²² Light, 239.

never cultural motivations for tribal political behavior. Light's assumption is reminiscent of paternalistic constitutions imposed upon tribal nations, without regard for the nations' traditional governance structures, by the Bureau of Indian Affairs in the 1930s.²³ Public policy analysts Stephen Cornell and Joseph P. Kalt argue that when politicians—or academics—prescribe methods of governance onto tribal nations, the "effectiveness" of that strategy will be influenced by the cultural context of the tribe.²⁴ Direct advocacy, the primary function of a lobbyist, is a political strategy prioritized and practiced by Native nations and Indigenous peoples around the world. These interest group activities are also an expression of an Indigenous form of politics.

The interest group label is not inaccurate; tribes finance public relations initiatives in order to focus attention on their political priorities, or "narrow the scope of the conflict" via "external lobbying." Tribal leaders in California carefully assess their nations' policy priorities and the political climate to "shift venues" between the courts, state and federal legislatures, and ballot initiatives depending on their anticipated support.²⁵ Direct advocacy to legislators—"internal lobbying"—is a political tactic many tribal nations have employed since the formation of the United States,²⁶ and it is a strategy whose roots can be found in many Native

²³ Cornell, Stephen, and Joseph P. Kalt. "Where's the glue? Institutional and cultural foundations of American Indian economic development." *The Journal of Socio-Economics* 29, no. 5 (2000): 453.

²⁴ Cornell, Stephen, and Joseph P. Kalt. "Where's the glue? Institutional and cultural foundations of American Indian economic development." *The Journal of Socio-Economics* 29, no. 5 (2000): 443-470.

²⁵ Hansen and Skopek, 106.

²⁶ Barsh, Russell Lawrence, and James Youngblood Henderson. *The road: Indian tribes and political liberty*. (Univ of California Press, 2022), 198.

governance systems significantly older than this country.²⁷ The modern political dynamic wherein state governments exercise an increasing amount of power over tribal policy—discussed further in the section on sovereignty—has shifted many tribal nation’s expenditures on lobbyists and political donations towards state legislatures.²⁸ Tribal nations in California lobby on a wide range of issues (see figures 1 and 3) in order to influence the actions of other sovereigns, not merely to enrich themselves. Lobbying expenditures on issues like police funding or transportation budgets are common for tribal nations and state governments alike, but the perception that tribal nations only engage in interest group strategies to increase their gaming revenues belies the public’s misunderstanding of sovereignty itself. These interest group strategies are critical to the resurgence of tribal economies and the resilience of tribal sovereignty, but the perception of tribal nations as interest groups—as *only* interest groups—is demonstratively harmful.²⁹

The New Politics of Indian Gaming, the primary monograph concerning contemporary tribal lobbying, argues that tribal interest group behavior is an expression of tribal sovereignty that does not invalidate the government-to-government framework:

I treat tribes as both governments and pressure groups for the purpose of my analysis. All governments, tribal or otherwise, can be seen through this lens: Each has spheres where it decides and spheres where it wishes to influence others’ decisions. Behaving like pressure groups does not contradict legal status as governments. When states lobby the federal government for more aid or beneficial programs, for example, and when the U.S. government

²⁷ Pharo, Lars Kirkhusmo. "Democracy of the" New World": The Great Binding Law of Peace and the Political System of the Haudenosaunee Confederacy." (2019): 158.

²⁸ Hansen and Skopek, 2.

²⁹ Light, 239.

seeks to influence decisions of international organizations, all these governments act as pressure groups without renouncing their sovereignty.³⁰

This distinction between tribes as pressure groups (special interests that pressure political decision makers) and sovereign nations with self-determining governments is an important step towards a nuanced academic approach to tribal politics.

However, Hansen and Skopek—political scientists and editors of *The New Politics of Indian Gaming*—continuously reproduce a homogenized view of tribal politics. The first step towards unraveling the interest group problem is to draw a distinction between tribal governments and Native politics. When an individual tribal nation lobbies, hires a lobbying firm, makes a campaign donation, or engages in other “interest group” behaviors, that is an example of what Hansen and Skopek call “governments behaving like pressure groups.” State governments are sovereigns, but they engage in lobbying and other interest group behavior because they have little independent power over the actions of other sovereigns like the federal government. Tribal nations, behaving in the exact same manner, have no additional or “unfair” powers, yet academics and politicians publicly criticize them for enacting their sovereignty. Native politics as a whole are much larger than the actions of any one tribal nation. The unique, and academically under evaluated, element of tribal politics is that there are tribal governments engaging in these activities, and there are bona fide interest groups pressuring decision makers for the sake of Native peoples in the US. The “interest group” label homogenizes tribal politics, resulting in this subset—the actual interest groups—being underexamined in the academy.

³⁰Kenneth N. Hansen, Tracy A. Skopek, “Introduction : the rise of the First Nations in state politics,” iv.

This distinction is of heightened importance for tribal nations without substantial economic resources whose discrete policy needs may not be represented by large coalition groups.³¹

Tribal interest group behavior is a contentious subject. While gaming and tribes' employment of interest group strategies have contributed to significant standard of living gains in Indian Country,³² some Native scholars argue that as tribes mobilize their political ambitions against rising state control, tribal nations are trading short term gains for long term decreases in substantive sovereignty. Jeff Corntassel, a Cherokee Nation scholar of Indigenous Studies at the University of Victoria, argues that the rise in tribal political incorporation into US politics is akin to a kind of "forced federalism."³³ Corntassel asserts that the encroachment of state power on tribal nations since the passage of IGRA has required tribes to act less like sovereigns and more like any other interest group without inherent sovereignty. Without the power of treaty making, tribal nations use lobbying and other interest group activity to influence the actions of other sovereigns. According to Corntassel's analysis, the era of increased political incorporation requires tribal nations to engage less in nation-to-nation relationships with the federal government, and instead bargain with states and local governments.³⁴ Although other sovereigns,

³¹ Kessler-Mata, *American Indians and the trouble with sovereignty: A turn toward structural self-determination*. 102.

³² Akee, Randall KQ, Katherine A. Spilde, and Jonathan B. Taylor. "The Indian gaming regulatory act and its effects on American Indian economic development." *Journal of Economic Perspectives* 29, no. 3 (2015): 186.

³³ Corntassel, Jeff, and Richard C. Witmer. *Forced federalism: Contemporary challenges to indigenous nationhood*. Vol. 3. University of Oklahoma Press, 2008, xiii.

³⁴ Corntassel, Jeff. "Indigenous governance amidst the forced federalism era." *Kan. JL & Pub. Pol'y* 19 (2009): 47.

like state governments, also engage in interest group activities, tribal nations attempting to exert their sovereign powers are branded by academics, politicians, and casino interests as merely interest groups. This process, Corntassel asserts, has left tribal nations vulnerable to “rich Indian racism,” whereby tribes are treated as wealthy interests looking to take advantage of state resources.³⁵

Steven A. Light takes this argument a step beyond “rich Indian racism,” arguing that the perception of tribes as merely interest groups permits states to leverage their own authority over tribal nations, who are viewed by the public as greedy “vote buyers.”³⁶ The “vote buyers” perception is rooted in a notion that elected representatives prioritize lobbyists and the needs of their wealthy clients over the public interest.³⁷ But unlike corporate lobbyists, tribal nations lobby on behalf of their voting publics, and many tribal policy issues, like environmental protections, are in the interest of all Californians. Under light’s analysis, the perception of tribes as interest groups is harmful not only due to critiques of tribal political expenditures, but because of a long-held perception that tribal nations maintain an “unfair advantage” over other political actors. This perception is visible at every level of government, such as when Washington’s Senator Slade Gorton

³⁵ Corntassel and Witmer, 4.

³⁶ Light, Steven Andrew. 2011. Indian Gaming and Intergovernmental Relations: The Constraints of tribal Interest Group behavior. In *The New Politics of Indian Gaming: The Rise of Reservation Interest Groups*, eds. Kenneth N. Hansen and Tracy A. Skopek, 25–37. Reno: University of Nevada Press, 236.

³⁷ “Fighting Special Interest Lobbyist Power over Public Policy.” Center for American Progress, August 30, 2023. <https://www.americanprogress.org/article/fighting-special-interest-lobbyist-power-public-policy/>.

contemptuously labelled Native peoples “super-citizens,”³⁸ or at the state level when California Governor Arnold Schwarzenegger campaigned on the platform that gaming tribes must pay the state their “fair share.”³⁹ Some Native scholars, like political scientist Kouslaa T. Kessler-Mata, argue that that the current encroachment of state power over tribal nations cannot be combatted by interest group strategies alone. Tribal nations will always be vulnerable to attacks like Schwarzenegger’s unless, according to Kessler-Mata, tribes are established as equal sovereigns within the federalist system of the US constitution, with sustainable and independent political power for tribal nations.⁴⁰ “Rich Indian racism” and the perceived “unfair advantage” of tribal nations can be traced directly to the general US population’s misunderstanding of the tribal-federal trust relationship.⁴¹ As Kessler-Mata argues, interest group activity will never fully realize decolonization, but this paper adds to the compelling evidence that increased issue representation has substantively positive impacts on tribal sovereignty. The following section details the origins of IGRA and its effects on the self-determination of tribal nations, leading into a discussion of tribal sovereignty.

³⁸ Barsh and Henderson, 201.

³⁹ Barsh and Henderson, 179.

⁴⁰ Kessler-Mata, 15-17.

⁴¹ Steinman, Erich. "(Mixed) Perceptions of Tribal Nations’ Status: Implications for Indian Gaming." *American Behavioral Scientist* 50, no. 3 (2006): 308.

Chapter 3: Tribal Gaming

Few places garner more attention to tribal gaming than California, the state with the largest number of gaming tribes and the highest tribal gaming revenues.⁴² While Native scholars like economist Randall Akee show that tribal gaming is an effort to level the playing field,⁴³ California officials and non-Native casino industry interests like the Coalition Against Unregulated Gambling have claimed gaming unfairly advantages tribal nations and leads to increased criminal activity.^{44,45} Akee finds that tribal gaming has contributed to California Reservation populations outpacing the rest of the country's increases in per capita and median household incomes, as well as decreases in California Reservation poverty and unemployment.⁴⁶ Arguments about the social and criminal impacts of casinos abound, but there is little doubt that gaming was a critical intervention in the protection of tribal sovereignty.⁴⁷ Gaming tribes, as an expression of their own self-determination, consistently steward ethical gaming with exacting regulations and the funding of gambling addiction support and awareness programs.⁴⁸ Tribal nations

⁴² California Tribal Gaming - Indian Casinos in California 2023," Play CA. N.d. <https://www.playca.com/tribal-gaming/>.

⁴³ Akee, Randall, Katherine Spilde PhD, and Jonathan B. Taylor. "Social and economic changes on American Indian reservations in California: an examination of twenty years of tribal government gaming." UNLV Gaming Research & Review Journal 18, no. 2 (2014): 42.

⁴⁴ Charlene Wear Simmons , California Research Bureau, "Gambling in the Golden State 1998 Forward," 2006, 3-5.

⁴⁵ Contreras, 325

⁴⁶ Akee, Spilde, Taylor, 47-48.

⁴⁷ Akee, Spilde, Taylor, 58.

⁴⁸ "FAQ." CNIGA, October 1, 2021. <https://cniga.com/industry-resources/faq/>.

distribute the funds generated from California gaming in several different ways. Per IGRA, the state of California and an individual tribe negotiate a compact to license, operate, and regulate casino-style gambling. In California, these compacts are currently only negotiated between the state and federally recognized tribal nations, and Class III gaming without a compact remains illegal. In exchange for this practical monopoly over casino gaming, compact tribes dispense hundreds of millions of dollars annually to the state government's Special Distribution Fund.⁴⁹ A separate portion of tribal gaming revenues are distributed quarterly to non-compact tribes through the Revenue Sharing Trust Fund. Under the Indian Gaming regulatory act, gaming revenues may be used in the following ways:

(i) To fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies⁵⁰

While the California Gambling Control Commission audits and distributes these funds, money in the Revenue Sharing Trust Fund is not regulated or controlled by the state. Instead, recipient tribal nations self-determine the allocation of revenue sharing monies.⁵¹ Interest group activities meant to influence political outcomes in favor of a tribe or coalition of tribal nations are "tribal government operations," meaning many tribal nations without substantial gaming operations have the

⁴⁹ California State Auditor, and Michael Tilden, Indian Gaming Special Distribution Fund, August 25, 2022.

⁵⁰ 25 U.S.C. § 2710 (1988)

⁵¹ "Executive Order D-31-01 of March 21, 2001, Executive Department of the State of California, <https://www.library.ca.gov/wp-content/uploads/GovernmentPublications/transcripts/2782-2783.txt>

opportunity to use funds from the Revenue Sharing Trust to lobby for their own interests.

For many tribal nations, “every dollar expended in lobbying is taken away from some already substandard welfare program.”⁵² Nevertheless, gaming revenues are increasingly allocated by tribal nations to fund policy advocacy. These expenditures, from coalition groups in particular, contribute to the modern anti-Indian narrative in US politics.⁵³ Frederick J. Boehmke and Richard C. Witmer, political scientists from the University of Iowa and Creighton University provide quantitative evidence that tribal lobbying is a tool to support the sovereignty of tribal nations now and into the future. In 2020’s “Representation and Lobbying by Indian Nations in California: Is Tribal Lobbying All About Gaming?,” Boehmke and Witmer analyze every bill introduced in the California legislature from 2000 to 2012 and match tribal lobbying expenditures to the content of the bills tribes lobbied. Boehmke and Witmer find that over half the bills tribal nations in California reported lobbying expenditures on were not gaming related. While gaming is central to most tribal nations’ interest group activity, they also lobby for dozens of other policy issues meant to safeguard the survivance of their nations now and into the future. Tribal nations in 2023 still lobby to protect their cultures and their environments, to advance tribal education, to develop new businesses, and for many other policy goals (See figures 3 and 4).

⁵²Barsh and Henderson, 219.

⁵³ Hansen and Skopek, 152.

Tribal lobbying cannot be seriously discussed without considering the implications of the Indian Gaming Regulatory Act. Popular misconceptions have formed purporting that tribal gaming is a form of federal welfare, or a perk of a protected status based in race or religion. The reality is that tribes fought the courts, and tribal lobbyists fought with Congress, for their sovereign rights to self-direct their own economic redevelopment.⁵⁴ The passage of the Indian Gaming Regulatory Act in 1988 accomplished several federal policy goals. The Reagan administration's primary ambition for IGRA was to offset over one billion dollars in cuts to federal programs that benefitted tribal nations.⁵⁵ To accomplish this, IGRA established a level playing field for tribal nations to engage in gaming enterprises by carving out an exception to the Johnson Act. The Johnson Act, as amended in 1962, states:

"It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special maritime and territorial jurisdiction of the United States."⁵⁶

IGRA's exception to the Johnson Act represents a recurrent theme of tribal nations lobbying for a level playing field—the right to self-determination as sovereigns—misidentified as an "unfair advantage." IGRA did not create tribal gaming, but it did repeal the unequal treatment of tribes in federal gaming law.

⁵⁴ Hearing before the Committee on Indian Affairs, United States Senate, One Hundred Seventh Congress, "First Session on Oversight Hearing on the Implementation of the Indian Gaming Regulatory Act," July 25, 2001, Washington, DC. 2002. Washington: U.S. G.P.O. Page 23.

⁵⁵ Barsh and Henderson, 171.

⁵⁶ 15 U.S.C. § 1175.

The second policy goal of IGRA's drafting legislators was to establish a mechanism for state control over tribal gaming. The contemporary Chairman of the Senate committee on Indian affairs, Hon. Daniel K. Inouye disclosed in a 2001 Congressional oversight hearing that "...tribes were adamantly opposed to state regulation of Indian gaming. But we had the [Reagan] Administration on the other side; an Administration that was dedicated to the protection of state's rights; and they were equally as opposed to any Federal regulation of gaming."⁵⁷ Aside from the Johnson Act, federal law contained few regulatory provisions on gaming in 1988. Legislators presumed that most states already maintained a regulatory framework for casino gaming, and that compact negotiations would fairly distribute the cost of regulatory enforcement.⁵⁸ These presumptions quickly led to a regulatory environment heavily favoring state governments over tribal nations. With the exception of Nevada and New Jersey, most states did not have an established framework for gaming regulations. This afforded state governments the opportunity to establish regulation out of whole cloth that favored their own interests. By design IGRA increased the regulatory power of states over tribal nations, but this fact goes unmentioned by critics of tribal gaming and lobbying. IGRA originally included a clause requiring "good faith negotiations" for compacts between states and tribes, but states used their favorable position with the court system to develop 11th amendment law such that the "good faith" clause would be ruled unconstitutional.⁵⁹

⁵⁷ First Session on Oversight Hearing on the Implementation of the Indian Gaming Regulatory Act," Page 2.

⁵⁸ Barsh and Henderson, 171.

⁵⁹ Hearing before the Committee on Indian Affairs, 3

California, and California tribes like Cabazon Band of Mission Indians, played an outsized part in this judicial history.

In 1987, one year before IGRA, the US Supreme Court handed down *California v. Cabazon Band of Mission Indians*.⁶⁰ This case involved California officials attempting to exert jurisdiction of civil affairs over tribal nations. Cabazon Band, as well as Morongo Band of Mission Indians, ran card games and bingo on reservation trust lands. These games were operated in accordance with Bureau of Indian Affairs approved tribal ordinances, but under the paternalistic Public Law 280, California charged the Bands with violating state gambling laws.^{61,62} When the US Supreme Court upheld the regulatory sovereignty of tribal nations, states feared they would lose all power over tribal gaming, including access to revenues. State and gambling industry lobbyists flooded Congress with requests to regulate Indian gaming.⁶³ The 1988 version of IGRA implemented a "state veto" over new tribal gaming operations, a win for states and the gambling industry.⁶⁴ However, the original IGRA also included a hard-won "good faith negotiation" clause.

⁶⁰ *California v Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S. Ct. 1083 (1987).

⁶¹ PL280, or Public Law 83-280, is an act of Congress passed in 1953 as a part of US termination era policy. PL280 grants criminal jurisdiction over tribal lands to a few specific state governments, including California. See: Goldberg, Carole, Duane Champagne, and Heather Valdez Singleton. "Final report: Law enforcement and criminal justice under public law 280." *US Department of Justice, Washington, DC* (2007), 1-7.

⁶²*Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900 (9th Cir., 1986).

⁶³ Laura Hansen Smith, "The Struggle over the Geographic Expansion of Indian Gaming," in *The Tribes and the States*, ed. Brad A. Bays and Erin H. Foulberg (MD: Rowman & Littlefield, 2002), 101-117.

⁶⁴ Sandoval, Christopher F. "The Second California Goldrush: Tribal Sovereignty Expressed by California Indian Gaming". ProQuest Dissertations Publishing (2004), 28.

The “good faith” clause was a mechanism for tribes to enforce their sovereign rights over state governments by suing states which refused fair negotiations over new gaming compacts. In 1996, the Seminole Tribe of Florida sued the state of Florida over this exact issue, but the courts had soured on tribal sovereignty in the decade following *Cabazon*. The US Supreme Court handed down a decision stating that Congress cannot strip states of their “sovereign immunity from suit” without the state’s consent, regardless of tribal nations’ own sovereign immunity.⁶⁵ As a direct result of this decision, states across the nation began extorting tribal nations out of millions of gaming dollars through revenue sharing schemes.⁶⁶

In the decades since the passage of IGRA, gaming operations have brought billions of dollars into Native nations.⁶⁷ A substantial amount of this money comes from high stakes gambling and slot machines. Under IGRA, lucrative “Class III” games like slot machines are regulated by state-tribal gaming compacts.⁶⁸ IGRA gaming activities are separated into three categories. Class I games are “social games solely for prizes of minimal value or traditional forms of Indian gaming ... in connection with tribal ceremonies or celebrations.”⁶⁹ Bingo and other similar games are Class II games.⁷⁰ Tribal governments self-regulate Class I games and regulate Class II games in conjunction with the National Indian Gaming Commission, a

⁶⁵ *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996)

⁶⁶ Eric S. Lent, “Are States Beating the House: The Validity of Tribal-State Revenue Sharing under the Indian Gaming Regulatory Act,” *Georgetown Law Journal* 91, no. 2 (January 2003): 451-474

⁶⁷ Akee, Spilde and Taylor, 186.

⁶⁸ Public Law 100-497-Oct. 17, 1988 100th Congress Sec. 2701.

⁶⁹ 25 U.S.C. § 2703(6).

⁷⁰ 25 U.S.C. § 2703(7).

regulatory body established by IGRA.⁷¹ Class III games include all types of gaming not covered by Class I or II. Class II and III games are permitted on tribal lands in states that allow gambling for any similar purpose,⁷² but before a tribal nation operates Class III games, IGRA requires that tribe to negotiate a compact with their state.⁷³

For 12 years after the passage of IGRA, California continued to fight against the inclusion of Class III games in tribal casinos.⁷⁴ In 2000, tribes across California funded a ballot initiative that successfully amended the California constitution and legalized compact negotiations between tribes and the governor of California. The ensuing gaming revenues have created an opportunity for tribal governments to undertake a substantial increase of lobbying efforts.⁷⁵ While the courts have decreased meaningful support for tribal sovereignty in recent decades, tribal nations now use gaming revenues to lobby for increased self-determination. As California tries to squeeze more money from gaming compacts, and the courts continue to broaden state power over tribal nations, tribal lobbyists find themselves once again fighting for fair play.

There are no state or national polls tracking public support for tribal gaming in the US over time. California interest groups like the California National Indian Gaming Association use past rates of support for California ballot propositions as evidence for the popular support of tribal gaming. California ballot propositions are

⁷¹ 25 U.S.C. § 2704.

⁷² 25 U.S.C. § 2710 (d)(1)(B)

⁷³ 25 U.S.C. § 2710 (d)(1)(C)

⁷⁴ SCA 11 (Proposition 1A)

⁷⁵ Boehmke, Frederick J., and Richard Witmer. "State lobbying registration by Native American tribes." *Politics, Groups, and Identities* 3, no. 4 (2015): 637.

a form of direct democracy whereby California citizens may vote, usually during general elections, to adopt or reject legislation or to amend the state constitution.⁷⁶ As a result of a 1911 California constitutional amendment, Californians with signed support equal to at least 5% of the previous gubernatorial election turnout may place their measure on the ballot. California's office of the Secretary of State tracked 2,098 direct initiatives on the ballot since 1912.⁷⁷ Proposition campaigns are a critical aspect of California tribal interest group activity, and to the history of tribal gaming in the state.⁷⁸ The gaming revenues funding most California tribal interest group activity today were made possible in March 2000 by a tribal initiative campaign to amend the state constitution.⁷⁹ Despite past successes with this strategy, recent ballot measures provide tribes reason for concern. During the 2022 election, UC Berkely's Institute of Governmental Studies (IGS) published a poll showing only 31% of California voters approved of Proposition 26, a ballot measure to legalize sports betting at tribal casinos.⁸⁰ A smaller poll, 1400 California voters versus the IGS' 8725, from SurveyUSA reported 43% of respondents favored the

⁷⁶ California Constitution Article. I, §§ 8-12

⁷⁷ "History of California Initiatives." California Secretary of State. Accessed August 26, 2023. <https://www.sos.ca.gov/elections/ballot-measures/resources-and-historical-information/history-california-initiatives>.

⁷⁸ Hansen and Skopek, 29-30.

⁷⁹ Contreras, 326.

⁸⁰ Poll, Berkeley IGS. "Tabulations from a late-September 2022 Poll of California Likely Voters about the Election for Governor and Four Propositions on the Statewide General Election Ballot." *University of California, Berkeley* (2022).

tribal gaming proposition.⁸¹ Tribal nations looking to expand and diversify their gaming operations through Proposition 26 were met with heavy opposition from the non-Native gambling industry.

Cardrooms—Class II gaming establishments unaffiliated with tribal casinos—hoping to hold their own stake in California sports betting poured over 40 million dollars into the fight against Proposition 26.⁸² The final Proposition 26 election tally showed only 33% of voters, 3.5 million out of over 10 million votes cast, voted in favor of the initiative.⁸³ In 1998, Nevada casino interests named their anti-tribal gaming interest group “Coalition Against Unregulated Gambling,” using the perception of gambling related crime and lawlessness to advertise against tribal gaming.⁸⁴ Similarly, in 2008 three compact related propositions were opposed by cardrooms and race tracks under the name “Californians Against Unfair Deals,” as an attempt to highlight the perceived “unfairness” of tribal gaming.⁸⁵ The non-Native casino industry continued this strategy during the recent 2022 Proposition

⁸¹ “Results of SurveyUSA Election Poll #26543.” SurveyUSA, October 11, 2023. <https://www.surveyusa.com/client/PollReport.aspx?g=f36e5b4d-140b-4cc1-b061-603e980136b7>.

⁸² “Entity Details.” TAXPAYERS AGAINST SPECIAL INTEREST MONOPOLIES, A COMMITTEE SPONSORED BY LICENSED CARD CLUBS - FollowTheMoney.org. Accessed September 5, 2023. <https://www.followthemoney.org/entity-details?eid=54451328&default=ballotcom>.

⁸³ “California Proposition 26, Legalize Sports Betting on American Indian Lands Initiative (2022).” Ballotpedia. Accessed August 26, 2023. [https://ballotpedia.org/California Proposition 26, Legalize Sports Betting on American Indian Lands Initiative \(2022\)](https://ballotpedia.org/California Proposition 26, Legalize Sports Betting on American Indian Lands Initiative (2022)).

⁸⁴ Contreras, 325.

⁸⁵ “Entity Details.” CALIFORNIANS AGAINST UNFAIR DEALS - FollowTheMoney.org. Accessed September 5, 2023. <https://www.followthemoney.org/entity-details?eid=10243798&default=ballotcom>.

26 campaign, running ads paid for by the “Taxpayers Against Special Interest Monopolies” proposition measure committee. This name explicitly casts tribal nations as “special interests.” The word “monopolies” in the committee’s title refers to tribal nations transferring revenues to the state in exchange for geographic and Class III gaming exclusivity, an arrangement taxpayers voted in favor of in 2000. The cardroom interest groups use the term here to reinforce the notion that tribal nations are unfairly wealthy, an iteration of “rich Indian” stereotyping. After two decades of attacks from the non-Native casino industry, California tribal leaders experiencing a potential downturn in public support for expanded tribal gaming will need to carefully consider the efficacy of expensive interest group strategies to support their sovereignty going forward.⁸⁶ For the tribes without large gaming operations, this downturn in public support could seriously impact their legislative strategies for increasing tribal economic development and self-determination. Evidence supporting the utility of tribal lobbyists is, under these political conditions, important for all tribes within the state.

It is troublesome to rely on propositions as a metric of support for tribal nations, as the intent of the voters is not clear. Propositions themselves are a double-edged sword for California tribal nations.⁸⁷ In the early years of CA tribal gaming, Governor Wilson refused good faith negotiations with California tribes.⁸⁸ This opposition was met with massive public support for tribal gaming in the form of

⁸⁶ This is not a clear causal link, as the lack of support may also be correlated to confusion over the separate but conflated propositions 26 and 27.

⁸⁷ Hansen and Skopek, 29.

⁸⁸ Contreras, 324.

a 63% favorable vote for Proposition 5.⁸⁹ Proposition 5—a ballot initiative to legalize slot machines on tribal lands—was developed and funded by 96 tribal nations working in conjunction to secure their sovereign gaming rights. At the time, the gaming industry and the state government were aligned in their desire to minimize and extort tribes throughout the compact process. Within two months of its adoption, California’s Oaks Card Club and three other cardrooms challenged Proposition 5 in court, forcing tribal nations to start the entire ballot initiative process over again.⁹⁰ It was only through largescale public support for 2000’s Proposition 1A that the California constitution was amended and industry interests were temporarily cowed.⁹¹ However, these propositions, which were so instrumental in the development of California tribal gaming, also cost tribal nations tens of millions and bolstered the public perception of tribes as interest groups willing to pour money into state politics.⁹² While there are no substantive polls to compare with, the metric for support that tribal interest groups maintain—proposition votes—are no longer clearly supportive of tribal gaming. This interest group perception, which the gaming industry has carefully promoted, is starting to take hold on California voters.

⁸⁹“California Proposition 1A, Gambling on Tribal Lands Amendment (March 2000).” Ballotpedia. Accessed September 5, 2023. [https://ballotpedia.org/California_Proposition_1A,_Gambling_on_Tribal_Lands_Amendment_\(March_2000\)#cite_note-3](https://ballotpedia.org/California_Proposition_1A,_Gambling_on_Tribal_Lands_Amendment_(March_2000)#cite_note-3).

⁹⁰ “California Tribal Gaming - Indian Casinos in California 2023,” Play CA. Accessed September 6, 2023. <https://www.playca.com/tribal-gaming/>.

⁹¹ Contreras, 326.

⁹² Gorman, Tom. “Tribes Spending Heavily on Casino Measure.” Los Angeles Times, August 4, 1998. <https://www.latimes.com/archives/la-xpm-1998-aug-04-mn-10022-story.html>.

Chapter 4: Revenue Sharing

California's Revenue Sharing Trust Fund allocates monies from gaming tribes to non-compact tribes. Tribal-state compacts authorize the California Gambling Control Commission to calculate revenue sharing on a progressive scale determined by the number of slot machines operated by a tribal nation, as negotiated in the individual nation's gaming compact.⁹³ Under this progressive scale, tribal nations with 350 or fewer gaming devices—generally slot machines—are considered “non-compact” or “limited gaming” tribes under California gaming law.^{94,95} In California, the first state to implement a tribe-to-tribe gaming revenue sharing program,⁹⁶ tribal nations engaged in Class I and II gaming, and tribes with “limited” gaming compacts are eligible to receive these funds.⁹⁷ Under IGRA, tribes retain the “exclusive right to regulate gaming activity” and as such the use of revenue sharing trust funds is wholly up to the discretion of the recipient nation and their own gaming regulators.⁹⁸ The 1999 California compact model established the existing

⁹³ State of California, Office of Governor Gray Davis, *Tribal-State' Compact Between the State Of California And the San Manuel Band Of Mission Indians*, 1999, 7-8.
http://www.cgcc.ca.gov/documents/compacts/original_compacts/San_Manuel_Compact.pdf.

⁹⁴ State of California, Office of Governor Gray Davis, *Tribal-State' Compact Between the State Of California And the San Manuel Band Of Mission Indians*, 1999, 6.

⁹⁵ State of California, Office of Governor Edmund G. Brown Jr., *Tribal-State Compact Between the State Of California And the Twenty-Nine Palms Band Of Mission Indians*, 2018, 27.
http://www.cgcc.ca.gov/documents/compacts/original_compacts/San_Manuel_Compact.pdf.

⁹⁶ Light, Steven Andrew, Kathryn RL Rand, and Alan P. Meister. "Spreading the wealth: Indian gaming and revenue-sharing agreements." *NDL Rev.* 80 (2004): 672.

⁹⁷ State of California, Office of Governor Edmund G. Brown Jr., *Tribal-State Compact Between the State Of California And the Twenty-Nine Palms Band Of Mission Indians*, 1999, 27.

⁹⁸ 25 U.S.C. § 2701(3)

rule that “The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes.”⁹⁹ Recipient nations of the Revenue Sharing Trust may use the funds in accordance with any of IGRA’s gaming revenue use provisions.

The Revenue Sharing Trust Fund provides quarterly payments of \$275,000, or 1.1 million dollars annually, to non-compact tribal nations.¹⁰⁰ While this paper demonstrates the importance of these funds for promoting tribal economic development, self-sufficiency, and strong tribal governments—the stated goal of IGRA—¹⁰¹the Revenue Sharing Trust Fund has been criticized by academics and tribal governments alike.¹⁰² Tribes, as sovereign nations, are not subject to the same information reporting requirements as other US governments. As a result, gaming revenues generated under the Indian Gaming Regulatory Act are not subject to freedom of information act requests. Researchers like the University of Nevada’s William N. Thompson argue that this sovereign right limits their access to data on the economic impacts of gaming and California’s Revenue Sharing Trust Fund.¹⁰³ Northern Cheyenne and Chicana social demographer Desi Rodriguez writes

⁹⁹ State of California, Office of Governor Gray Davis, *Tribal-State Compact Between the State of California and the Agua Caliente Band Of Cahuilla Indians*, 1999, 7. http://www.cgcc.ca.gov/documents/compacts/original_compacts/San_Manuel_Compact.pdf.

¹⁰⁰ Ngo, Susie, Revenue Sharing Trust Fund (RSTF) Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended June 30, 2023 (July 20, 2023).

¹⁰¹ 25 U.S.C. § 2701(4)

¹⁰² Contreras, 340.

¹⁰³ William N. Thompson, *Economic Issues and Native American Gaming*, 7 WISC. INTEREST, (1998) 5.

that “those working with Indigenous data have a responsibility to show how those data are used to support Indigenous people’s self-determination and collective benefit.”¹⁰⁴ Thompson, who has made a career criticizing tribal gaming, would have difficulty justifying his motivations to scholars of tribal data sovereignty. Indigenous scholars like economist Randall Akee have analyzed existing data to identify positive impacts of the Revenue Sharing Trust Fund, entirely without infringing on the data sovereignty of the nations they studied.¹⁰⁵

The Revenue Sharing Trust Fund has also been criticized by tribal nations as a form of forced taxation imposed on tribes by the state of California. In 2003, Coyote Valley Band of Pomo Indians argued before the US Ninth Circuit Court of Appeals that a “provision in a Tribal-State compact requiring that the tribe pay a ‘tax, fee, charge, or other assessment’” is impermissible under IGRA¹⁰⁶ The Ninth Circuit found that the State of California had not negotiated in bad faith by requiring compact tribes to contribute to this fund, as the Revenue Sharing Trust Fund supports the stated goals of IGRA. In his opinion, Circuit Judge William A. Fletcher wrote “The RSTF provision advances this Congressional goal by creating a mechanism whereby all of California's tribes — not just those fortunate enough to have land located in populous or accessible areas — can benefit from Class III gaming activities in the State.”¹⁰⁷ Fletcher also ruled that, because California offered

¹⁰⁴ Carroll, Stephanie Russo, Ibrahim Garba, Rebecca Plevel, Desi Small-Rodriguez, Vanessa Y. Hiratsuka, Maui Hudson, and Nanibaa’A. Garrison. "Using indigenous standards to implement the CARE principles: Setting expectations through tribal research codes." *Frontiers in Genetics* 13 (2022).

¹⁰⁵ Akee, Spilde and Taylor, 58-59.

¹⁰⁶ *In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003)

¹⁰⁷ *In re Indian Gaming Related Cases*, 331 F.3d at 1111

meaningful concessions in the form of Class III gaming exclusivity, the revenue sharing trust fund was not evidence of California negotiating in bad faith.¹⁰⁸

Coyote Valley Band of Pomo Indians, who do not currently operate enough Class III gaming machines to contribute to the Revenue Sharing Trust Fund, were unable to affect policy change in the courts.¹⁰⁹ However, tribal nations do have a certain amount of leverage to assert their policy priorities during the compact negotiation processes. Pursuant to Governor Jerry Brown's approval of Assembly Bill 2914,¹¹⁰ Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation and nine other nations all negotiated compacts that prohibit the publishing or public access of confidential data.¹¹¹ These 10 tribes contribute to the Revenue Sharing Trust Fund on a net win or gross gaming revenue basis unlike, for example, Yuhaaviatam of San Manuel Nation, who make flat-rate annual payments based on the number of machines operated.¹¹² Under AB 2914, tribal nations which

¹⁰⁸ *In re Indian Gaming Related Cases*, 331 F.3d 1094 at 1112

¹⁰⁹ Ngo, Susie, Revenue Sharing Trust Fund (RSTF) Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended June 30, 2023 (July 20, 2023).

¹¹⁰ AB-2914 Gaming: Indian Gaming Revenue Sharing Trust Fund (2015-2016).

¹¹¹ Ngo, Susie, Revenue Sharing Trust Fund (RSTF) Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended June 30, 2023 (July 20, 2023). The 10 tribal nations who do not publicly report their Revenue Sharing Trust Fund contributions are Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, Buena Vista Rancheria of Me-Wuk Indians of California, Jackson Band of Miwok Indians, Pala Band of Mission Indians, San Pasqual Band of Diegueno Mission Indians of California, Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), Sycuan Band of the Kumeyaay Nation, and the Viejas Band of Kumeyaay Indians.

¹¹² State of California, Office of Governor Gray Davis, *Amendment To The Tribal-State Compact Between The State Of California And The San Manuel Band Of Mission Indians*, 2006, 3

contribute on a net win or gross gaming revenue basis need not publicly disclose confidential information as agreed to in their individual compacts, including information on their total revenues, which could be gleaned from the California Gambling Control Commission's quarterly distribution reports. Instead, the Commission aggregates their collective contributions into the total of quarterly revenues received.¹¹³ This is an important acquiescence to the sovereignty of these tribes and their data, especially given that the California Gambling Control Commission has repeatedly misused and mismanaged revenues from the Special Distribution Fund.¹¹⁴ Despite critiques, the Revenue Sharing Trust Fund was an important factor in the passage of Propositions 5 and 1a, and it has distributed nearly two billion dollars to non-compact tribal nations.¹¹⁵

Chapter 5: Tribal Sovereignty and State Encroachment

Well before the formation of the United States, Native nations negotiated treaties governing the relationship between themselves and colonial powers.¹¹⁶ Only sovereign nation-states hold treaty-making powers, meaning Native civilizations have always been recognized as nations by the laws of colonial governments. In

http://www.cgcc.ca.gov/documents/compacts/amended_compacts/San%20Manuel%202006%20Amendment.pdf.

¹¹³ Ngo, Susie, Revenue Sharing Trust Fund (RSTF) Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended June 30, 2023 (July 20, 2023).

¹¹⁴ California State Auditor, and Michael Tilden, Indian Gaming Special Distribution Fund. The California State Auditor found that, as of 2022, the Special Distribution Fund had collected \$124 million more than needed for regulatory costs.

¹¹⁵ Ngo, Susie, Revenue Sharing Trust Fund (RSTF) Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended June 30, 2023.

¹¹⁶ Riley, 100.

1831, the US Supreme court reaffirmed tribal nations' status as original sovereigns which pre-exist the US Constitution. In a string of three cases from 1823 to 1832—*Johnson v. McIntosh*, *Cherokee Nation v. Georgia*, and *Worcester v. Georgia*—the Marshall Court ruled tribal nations have sovereign powers of self-governance that do not stem from the United States.¹¹⁷ Alongside federal and state governments, tribal nations are the “third sovereign” of the US political structure.¹¹⁸ Because tribal nations are Indigenous to their lands, they maintain their rights to govern their own peoples unless and until a sovereign tribal power is explicitly removed by Congress.¹¹⁹ Tribes and the US government operate within government-to-government relationships whereby the federal government has responsibilities to tribal nations, as established in individual treaty agreements. These responsibilities, commonly referred to as the tribal-federal trust relationship, include the recognition that states do not hold legislative authority over tribal nations.¹²⁰ In the same way that, for example, Minnesota cannot enforce Minnesotan law on the nation of Canada, the Marshall court established that states cannot impinge tribal sovereignty by enforcing their laws on tribal lands. Tribal sovereignty is the law of the land, but it has been under attack since the inception of the US government. The canons of

¹¹⁷ Frickey, Philip P. “Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law.” Chapter. In *Reading American Indian Law: Foundational Principles*, edited by Grant Christensen and Melissa L. Tatum, 23. Cambridge: Cambridge University Press, 2019. doi:10.1017/9781108770804.004.

¹¹⁸ Light, Steven A. “The third sovereign: Indian gaming as a teaching case in intergovernmental relations and public administration.” *Journal of Public Affairs Education*, 10 (2004): 315.

¹¹⁹ Frickey, 28.

¹²⁰ Frickey, 6.

construction, a legal doctrine prioritizing tribal rights over state encroachment, has been diluted by Supreme Court cases like *Oliphant v. Suquamish*, limiting tribal governments' jurisdictional powers and infringing upon their sovereignty.¹²¹

While the sovereignty of tribal nations does not stem from the United States, attacks on that sovereignty certainly do. Native nations in the US today are systemically disadvantaged by a representative political structure based on misrepresentative data. The US Census, for example, determines the number of political representatives apportioned for a regional population. Yet the Census consistently undercounts Native populations and aggregates Native peoples into categories irrespective of tribal citizenship statuses or mixed ancestries.¹²² This leaves Native nations, many of which constitute small proportions of state populations, with even fewer representatives in the US political system.¹²³ These systemic barriers motivate a history of Native interest group politics. Protests, demonstrations, and negotiations have often been more successful interventions than voting and elections for Native peoples in the US.¹²⁴ The structural disadvantages faced by 109 distinct tribal nations in California negotiating with the state government creates a dynamic whereby tribes are relegated to coalition-

¹²¹ Frickey, 38.

¹²² Akee, Randall and Jonathan Taylor. "Social & Economic Change on American Indian Reservations: A Databook of the US Censuses and the American Community Survey 1990 – 2010." Unpublished Manuscript (2014): 18-21.

¹²³ Schroedel, Jean Reith, and Artour Aslanian. "A case study of descriptive representation: the experience of native American elected officials in South Dakota." *American Indian Quarterly* 41, no. 3 (2017): 254.

¹²⁴ Carlson, Kirsten Matoy. "Lobbying as a strategy for tribal resilience." *BYU L. Rev.* (2018): 1159-1164.

based interest group behavior.¹²⁵ Viewing these politics through the government-to-government relationship framework, tribal interest group politics look less like a group of people with shared interests, and more like representatives of distinct sovereign peoples exploited by a political structure designed to limit tribal power. Once we have accepted the government-to-government model, academics can dismantle the interest group label into individual groups of power brokers. Modern tribal nations are increasingly lobbying for varied or individual goals.¹²⁶ In the past this might have been taken as evidence of a breakdown of tribal interest group success, but I see it as evidence that lobbying has more cultural and historical underpinnings in tribal politics than a 20th century political theory.

Chapter 6: Indigenous Political Representation

Despite the perception that tribal nations only engage in lobbying to concentrate their gaming wealth, sovereign tribal nations have lobbied US state and federal governments since the formation of the union.¹²⁷ Treaty making—the origin of the government-to-government framework—necessitated tribal leaders directly advocating for their constituents' needs through clear communication with US decisionmakers. The US Congress formally ended the treaty making process in 1871, and by 1914 it had ceased making any new government-to-government agreements with tribal nations.¹²⁸ This change of the government-to-government

¹²⁵ "California Tribal Communities." California Tribal Communities - tribal_projects, 2013. <https://www.courts.ca.gov/3066.htm>.

¹²⁶ Boehmke and Witmer, 80-101.

¹²⁷ Riley, Angela R. "(Tribal) sovereignty and illiberalism." *Calif. L. Rev.* 95 (2007): 100.

¹²⁸ Wilkins, David E., and Heidi Kiiwetinepinesiiik Stark. *American Indian politics and the American political system*. Rowman & Littlefield, 2017, 111.

framework created a power vacuum necessitating new strategies for the maintenance of tribal political power.¹²⁹ The end of treaty making meaningfully diminished the powers of sovereign tribal nations, but it did not stop tribal leaders from asserting their rights to self-determination through direct advocacy. Attempts to diminish the efficacy of tribal lobbying can be situated within a long history of tribal governments being excluded from substantive influence over US policy. The rise of tribal lobbying delineates from a history of attacks on Native political representation in the US government.

The United States' lack of descriptive representation for Native peoples did not start in the modern era.¹³⁰ Among the litany of broken treaty promises faced by Native nations in this country, the unfulfilled right to political representation has been a consistent theme in the history of US colonialism. The Native fight for representation began in the first written treaty between the US government and a Native nation. In 1778, the Lenni Lenape and the US government signed the Treaty of Fort Pitt. This treaty guaranteed the Delaware Nation a Congressional representative in the event that they joined with other Native nations to establish a state.¹³¹ Small states bitterly refused a governance structure that disadvantaged them based on relative population size. Today, all states enjoy equal Senate

¹²⁹ Wilkins and Stark, 112.

¹³⁰ Descriptive representation denotes representatives who mirror the gender, race, or ethnicity of their constituency. For more on descriptive representation of Native peoples in the US, see Schroedel, Jean Reith, and Artour Aslanian. "A Case Study of Descriptive Representation: The Experience of Native American Elected Officials in South Dakota." (*The American Indian Quarterly* 41, no. 3, 2017): 251.

¹³¹ Kappler, Charles Joseph, ed. *Indian affairs: Laws and treaties*. Vol. 7, (US Government Printing Office, 1904), 5.

representation regardless of demographics, but Native nations were explicitly excluded from statehood status in the early days of the Union.¹³² Tribes were no less concerned about an overreaching federal government, and they fought for a voice in the halls of their oppressor. The Lenni Lenape’s representative treaty provision was written with the express intent to guarantee Lenni Lenape rights into the future, and to assuage fears “that it is the design of the States aforesaid, to extirpate the Indians and take possession of their country.”¹³³ Despite this treaty, within four years the US government largely forced the Lenni Lenape out of their ancestral homelands.¹³⁴ The promise of Native representation through statehood continued to be used as a tool to limit the sovereignty of Native Nations and extract their resources. Nearly one hundred years after Leni Lenape removal, the five tribes--Creek, Chickasaw, Choctaw, Cherokee, and Seminole Nations—formed the Okmulgee council. This international committee developed statehood proposals for their peoples and publicly rejected Congressional plans for the establishment of an “Indian state” without Native representation or political agency.¹³⁵

California has its own history rejecting the rights of Native peoples to represent themselves politically, or even be represented by others. In *American Genocide*, historian Benjamin Madley details the debates over Native representation in the earliest days of the California legislature. Madley writes that, during

¹³² Barsh and Henderson, 220.

¹³³ Kappler, 4

¹³⁴ “History.” Delaware Nation, June 17, 2019. <https://www.delawarenation-nsn.gov/history/>.

¹³⁵ KAHN, BENJAMIN A. “A Place Called Home: Native Sovereignty Through Statehood and Political Participation.” (*Natural Resources Journal* 53, no. 1 2013), 8-9.

California's 1849 constitutional convention, "the Indian suffrage battle almost blew the convention apart, nearly aborting the constitution and with it California's bid for statehood."¹³⁶ In parallel to modern claims about illegitimate "vote buying," California delegates M.M. McCarver and Jacob D. Hoppe argued "The whole Indian race should be excluded from the elective franchise," lest democracy be "perverted."¹³⁷ The delegates coalesced over an amendment which would theoretically allow Native suffrage for one Native individual at a time, provided that person could secure two thirds of the legislature to vote in their favor.¹³⁸ It would take another 169 years, until 2019, for any Native individual to be elected to the California legislature.¹³⁹

Native resistance to settler political power is not relegated to an older era. Indigenous innovations in political representation can be seen around the world. In October of 2023, Australians will vote on the formation of a permanent Aboriginal and Torres Strait Islander advisory council to Parliament. "The Voice," as Australians refer to this proposition, would consist of 20-30 Aboriginal Australians selected by their communities advising Parliament on all legislation related to Indigenous peoples in Australia. This referendum, Australia's first since 1999, will amend the Australian constitution, and if successful, it will honor the Aboriginal activists who

¹³⁶ Madley, Benjamin. *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873*, Yale University Press, 2016, 154.

¹³⁷ Madley, 152.

¹³⁸ Madley, 156.

¹³⁹ McFadden, Chuck. "James Ramos: CA's First Native American State Lawmaker." *Capitol Weekly*, October 17, 2019. <https://capitolweekly.net/james-ramos-cas-first-native-american-state-lawmaker/>.

have petitioned for such representation since at least 1938.¹⁴⁰ The referendum was developed in consultation with over 1200 Aboriginal and Torres Strait Islander people, and it was also heavily influenced by Māori legislators who have held reserved seats in the legislature of Aotearoa New Zealand since 1867.¹⁴¹

Reserved seats are representative positions held in a legislature for only members of a specific group.¹⁴² In the United States, reserved seats are used to ensure the representation of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Indian Nation in the Maine legislature. Maine's legislature has held reserved seats for tribal nations since 1823, but new innovations in political representation are still being developed by tribal nations today.¹⁴³ In 2019, Cherokee Nation Principal Chief Chuck Hoskin Jr. appointed Kimberly Teehee to Congress as a nonvoting Cherokee delegate. Teehee is the first representative appointed under the delegate clause of the 1835 Treaty of New Echota. For nearly 200 years Cherokee Nation has been denied this representative right, yet critiques of tribal sovereignty still claim that tribal nations have too much political influence.¹⁴⁴ Presuming this delegate position would be modeled on the non-voting representative seats held by representatives from US territories, Teehee

¹⁴⁰ McGill, Georgina. "Reserved seats in Parliament for indigenous peoples: the Maori example." Department of the Parliamentary Library, Information and Research Services, 1997.

¹⁴¹ "Uluru Statement from the Heart." Voice.gov.au. Accessed August 26, 2023. <https://voice.gov.au/about-voice/uluru-statement>.

¹⁴² DeHart, Cameron, and Elliot Mamet. "Do Reserved Seats Work? Evidence from Tribal Representatives in Maine." (2020), 1.

¹⁴³ Dehart and Mamet, 2.

¹⁴⁴ Golab, 19.

could make a substantive impact on the Congressional legislative agenda.¹⁴⁵ Some tribal nations like Penobscot Nation and Muscogee Creek nation have recently appointed ambassadors to directly represent their interests to the federal government.^{146,147}

Reserved seats and non-voting positions, while innovative, are of course still not equivalent to treaty-making powers or electoral representation. Studies find that reserved seats are at times used by non-Indigenous representatives as an excuse to ignore or pass responsibility for their Indigenous constituents.¹⁴⁸ Beyond these innovations, interest group activity, and lobbying in particular, are the main strategy for the representation of tribal nations' political priorities. While these priorities vary with every tribal nation and Native individual, Native peoples in the US as a whole are notably issue driven.¹⁴⁹ For many of the same reasons that Native peoples experience disadvantages in the electorate, they are also less represented in national political polls. Despite this disparity, the few polls conducted by Native scholars demonstrate electoral behavior among tribal leaders and the Native population that is motivated by issue politics rather than party alignment or

¹⁴⁵ Lewallen, J. and Sparrow, B.H., Nothing on the Floor: Congress, the Territorial Delegates, and Political Representation. (Political Science Quarterly, 133, 2018), 740.

¹⁴⁶ "Chaudhuri Named Muscogee (Creek) Nation Ambassador." The Muscogee Nation, June 7, 2019. <https://www.muscogeenation.com/2019/05/07/chaudhuri-named-muscogee-creek-nation-ambassador/>.

¹⁴⁷ "Ambassador Maulian Dana Penobscot Nation." Congress.gov. Accessed August 26, 2023. <https://www.congress.gov/116/meeting/house/110377/witnesses/HHRG-116-AP06-Bio-DanaM-20200211.pdf>.

¹⁴⁸ DeHart and Mamet, 1

¹⁴⁹ Corntassel, Jeff J. "American Indian tribal government support of office-seekers: Findings from the 1994 election." *The Social Science Journal* 34, no. 4 (1997): 522.

ideology.¹⁵⁰ This has explanatory value for the importance of tribal lobbying, as the primary function of a lobbyist is to improve the issue representation of their client's policy priorities.

Conclusion

A widespread perception that tribal nations are little more than corporate pressure groups using the unfair advantage of sovereignty to buy influence from legislators and concentrate gaming wealth has been replicated by academics and politicians such that it is now a consistent perception in the mind of the American voter. This perception—which I demonstrate through the analysis of quotations from politicians, academic publications, polls, and the political behavior of the non-Native gaming industry—is a genuine threat to tribal sovereignty, and therefore the survival of tribal nations. Tribal lobbying is just one of the many ways Indigenous peoples around the world seek to be heard and respected as distinct political entities. When the state of California engages in lobbying activity, you will find no academics bending backwards to decry the “unfair advantage” of its sovereignty. You will hear no concerns about “protecting the public interest.” It is past time for academics and politicians to recognize tribal lobbying for what it is: one sovereign, acting on behalf of its constituents, attempting to influence another sovereign power. Critics offer no alternative for these tribal sovereigns. How else should they exercise their sovereignty and protect their peoples? Through violence? Through strongly worded letters? Attacks on tribal interest group behavior are only the latest in a long history of settler governments pushing Indigenous peoples out of power.

¹⁵⁰ Corntassel and Witmer, 87.

Lobbying may not be the answer to all tribal nations' problems, but it is a crucial tool for any sovereign government.

Appendix

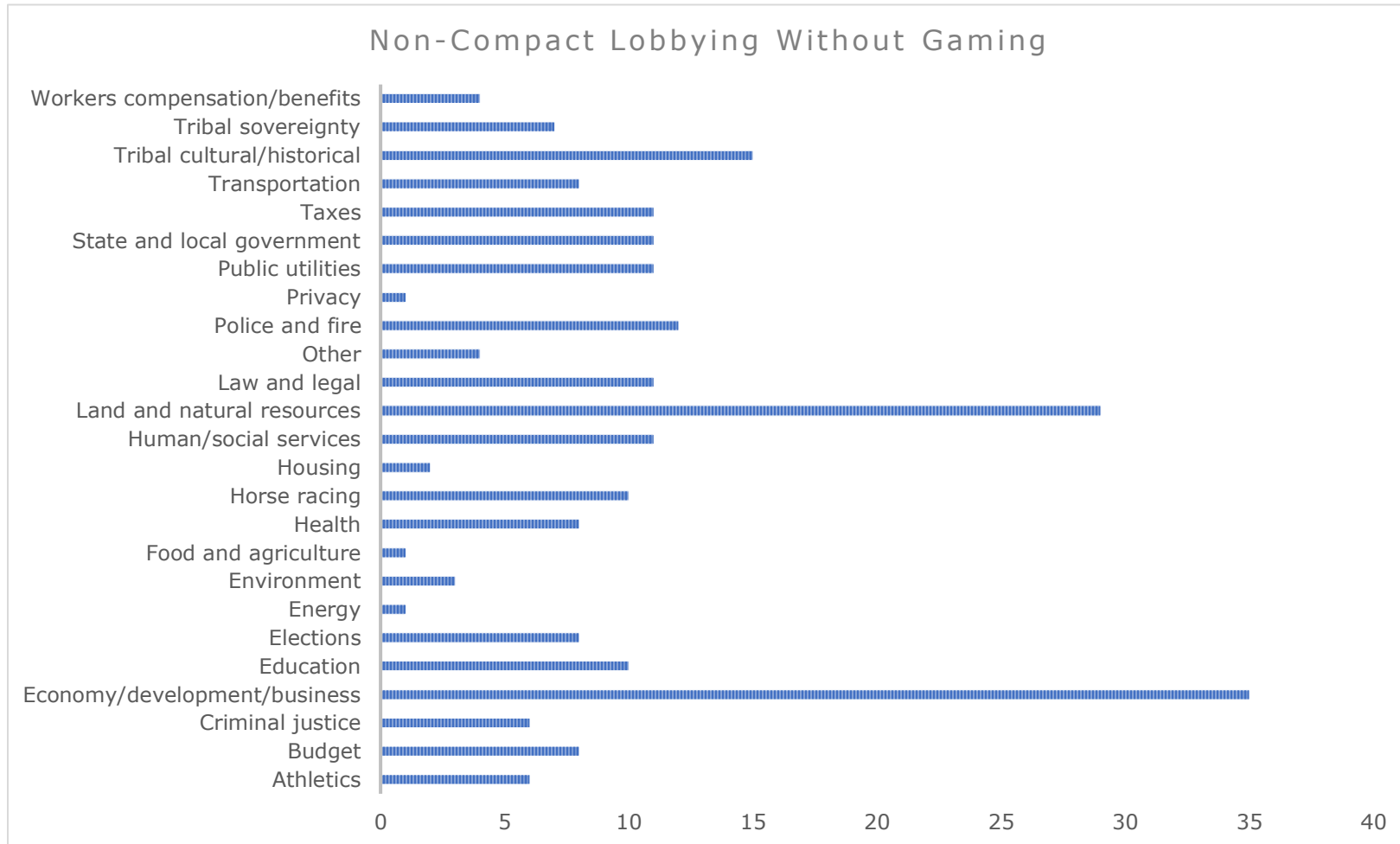


Figure 1

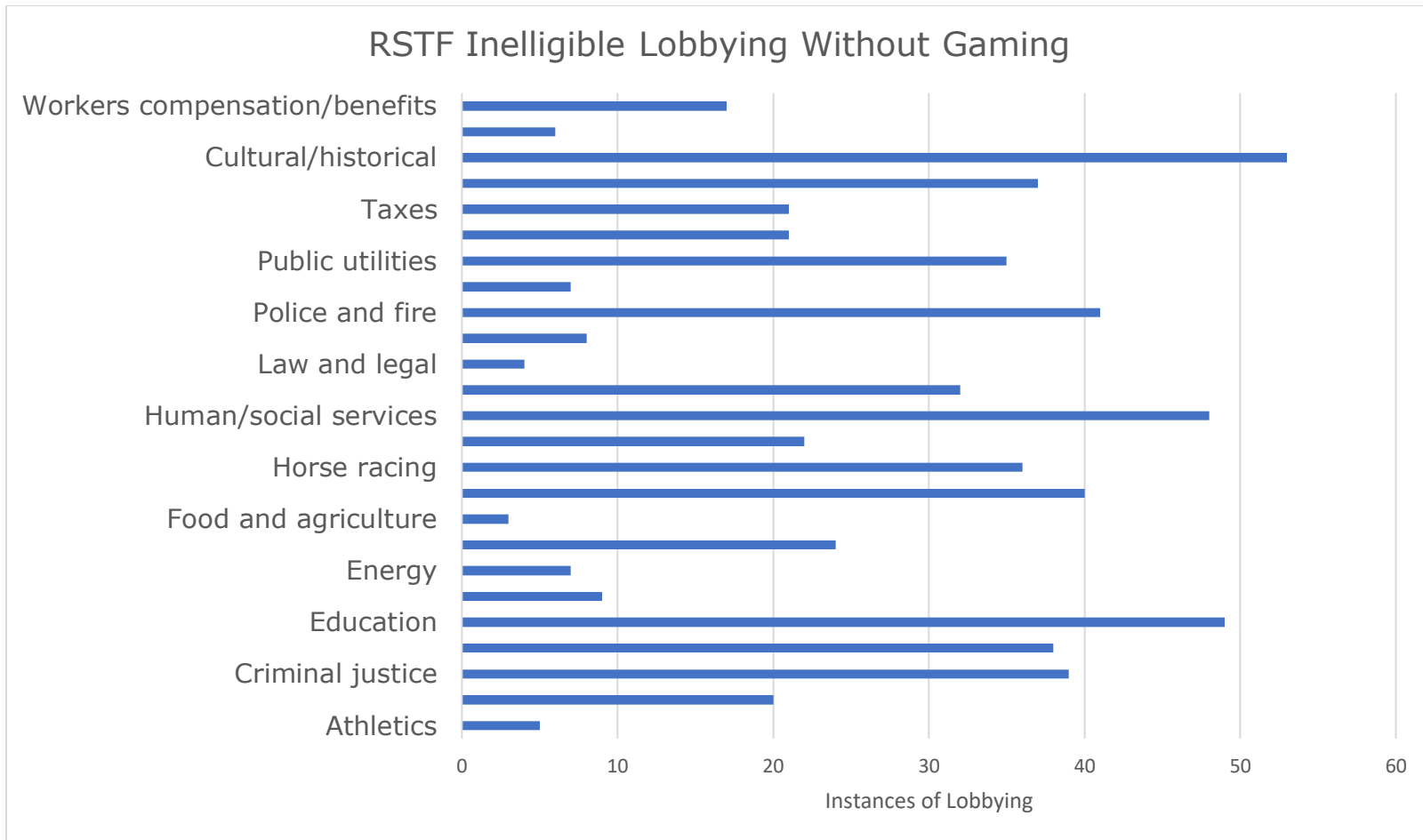


Figure 2

Subject	Reported Instances of Non-Compact Lobbying
Athletics	6
Budget	8
Criminal justice	6
Economy/development/business	35
Education	10
Elections	8
Energy	1
Environment	3
Food and agriculture	1
Health	8
Horse racing	10
Housing	2
Human/social services	11
Land and natural resources	29
Law and legal	11
Other	4
Police and fire	12
Privacy	1
Public utilities	11
State and local government	11
Taxes	11
Transportation	8
Tribal cultural/historical	15
Tribal sovereignty	7
Workers compensation/benefits	4
Gaming	288
Total	521
Total without gaming	233

Figure 3

Subjects	Instances of RSTF Ineligible Lobbying
Athletics	5
Budget	20
Criminal justice	39
Economy/development/business	38
Education	49
Elections	9
Energy	7
Environment	24
Food and agriculture	3
Health	40
Horse racing	36
Housing	22
Human/social services	48
Land and natural resources	32
Law and legal	4
Other	8
Police and fire	41
Privacy	7
Public utilities	35
State and local government	21
Taxes	21
Transportation	37
Cultural/historical	53
Sovereignty	6
Workers compensation/benefits	17
Gaming	514
Total	1136
Total without gaming	622

Figure 4

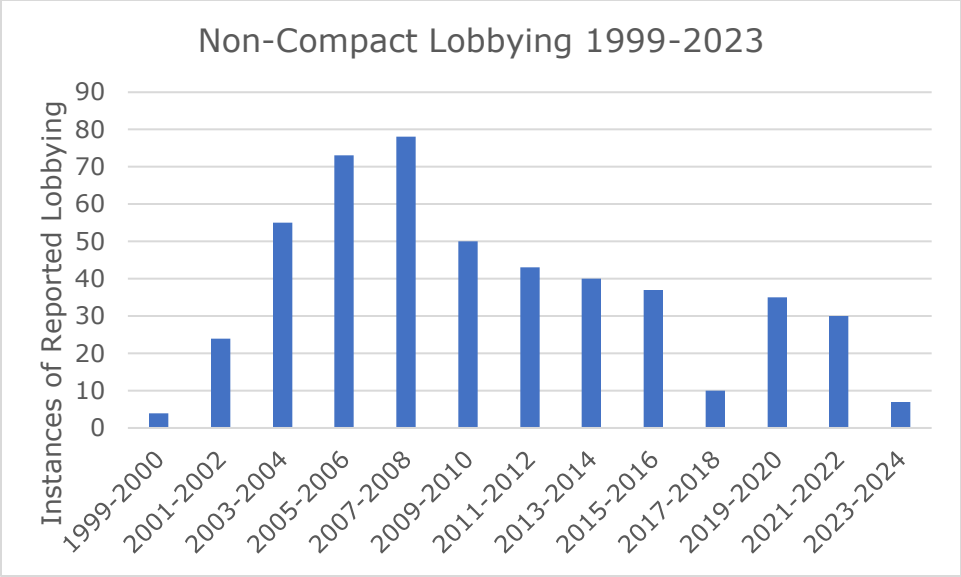


Figure 5

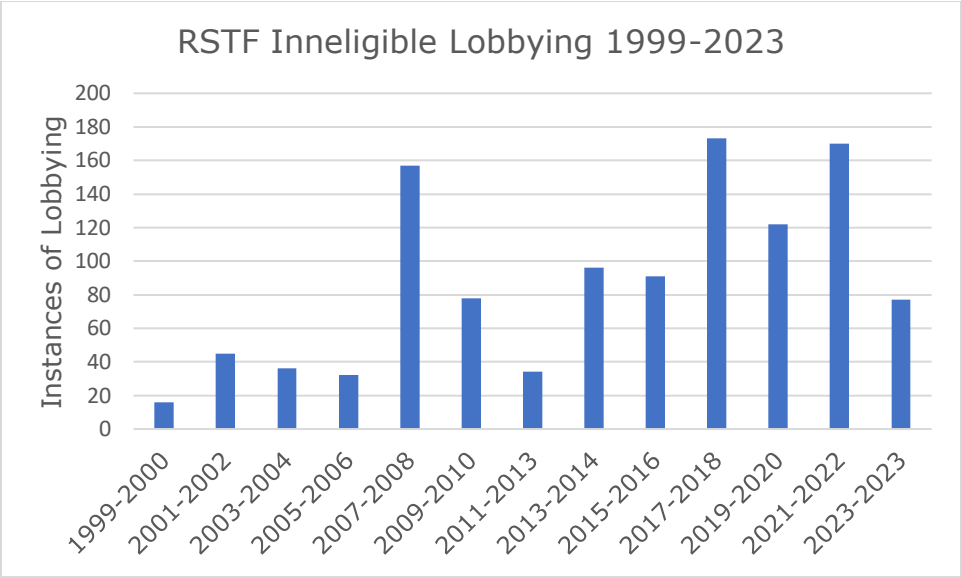


Figure 6

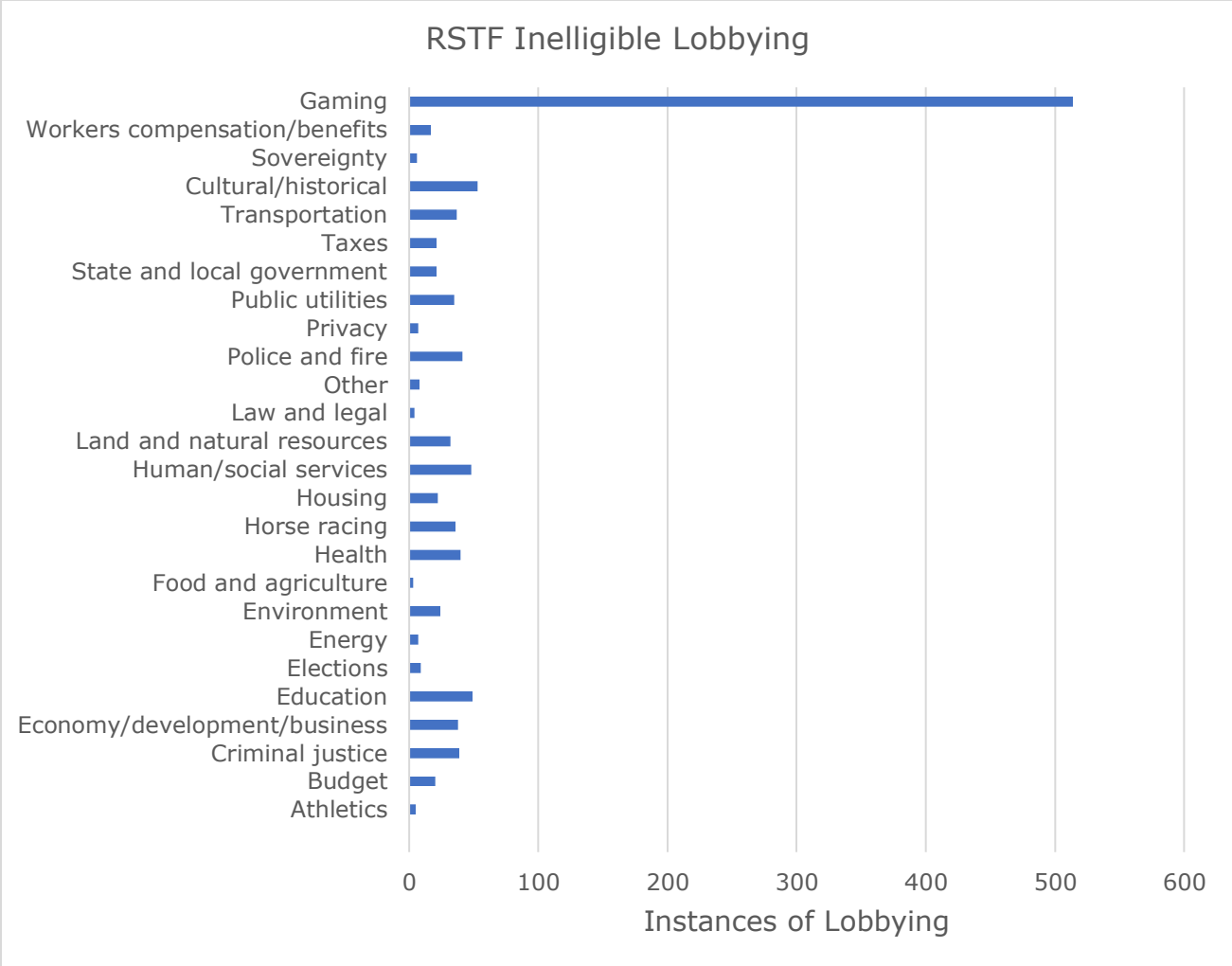


Figure 7

These charts show lobbying expenditures from 1999-2023 by non-compact tribal recipients of the RSTF and tribal nations which have compacted and no longer receive distributions from the RSTF. Similar to Boehmke and Witmer’s 2020 study “Representation and lobbying by Indian nations in California: Is tribal lobbying all about gaming?,” I code bills based on subject category by reading the Legislative Counsel’s Digest and history for each bill.¹⁵¹ I replicate Boehmke and

¹⁵¹ Legislative Counsel’s Digest and history is found at leginfo.legislature.ca.gov

Witmer's categories, with a few alterations. I found that bills related to mining fit more appropriately in the "Land and Natural Resources" category, as none of the bills were attempts to develop tribal mining operations, but instead they were bills where tribal nations attempted to influence land-use regulations for the entire California mining industry. Also, I located bills related to waste in the "Public Utilities" category. The gaming category is based on a key word search for terms gaming, gambling, casino, cardroom, compact, lottery, and raffle. However, it should be noted that many bills in the gaming category could have easily fit into categories like "Economic Development and Business," or "Land and Natural Resources." These results add to the evidence that tribal lobbying is not an unfair political advantage held by "rich Indian" nations, but it instead supports the self-determination of all tribal nations in California.

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