

Lucas Vebber: Tribal gaming lobbyists pushing legally questionable effort to expand their state monopoly to print money

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As lawmakers once again are poised to consider a bill related to online sports betting, they need yet another reminder that the state constitution has not changed. While the tribal gaming lobbyists may be pushing hard to get what they want, the Legislature has absolutely no power to give it.

That's because almost 30 years ago the people of Wisconsin voted to take that power away, Amending the constitution to provide: "the legislature may not authorize gambling in any form." Hard to get more clear than that.

Now, it might be time to amend the constitution again. Polling suggests that public sentiment is changing. But while statewide polling shows voters might want some online sports betting, they strongly oppose the Legislature's current approach. Across party lines, voters reject granting exclusive control to a single entity, concentrating authority in the governor's office, and bypassing voter approval. Instead, they overwhelmingly favor a constitutional process that allows the public to decide.

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Under the current system, if the legislature passes the bill being considered, tribal operators would exclusively be able to control online sports bets throughout the

state of Wisconsin. They would be able to negotiate any terms they want with the governor, with no oversight or opportunity for public involvement. That's insane.

And the people of Wisconsin recognize that insanity. Statewide polling shows 60% of voters oppose legalization if it gives exclusive control to a single entity, and 86% believe voters themselves should decide whether sports betting is legalized. A majority also opposed giving the governor sole authority to negotiate the terms, and nearly three in four said the lack of consumer protections makes them less likely to support the proposal.

Together, the findings showed support erodes as voters learn more about the structure of the plan. No wonder they've been trying to sneak this through for months.

Beyond the state constitution, there are also federal law concerns. The current proposal is premised on the idea that an online bet occurs where it is processed, on a server located on tribal land, rather than where the bettor is physically located. Under that theory, statewide online betting would fall under the Indian Gaming Regulatory Act (IGRA).

But in late October, a federal court in Colorado rejected that argument outright. In *Southern Ute Indian Tribe v. Polis*, the court ruled that for purposes of IGRA, online sports betting occurs where the bettor is located, not where the server sits. If that reasoning is upheld or adopted elsewhere, the legal basis for Wisconsin's proposal could collapse.

To be clear, that ruling is under appeal, and is not binding here. But this is no longer a hypothetical risk. A federal judge has already found the core legal premise behind this type of bill to be flawed. Pushing forward with this proposal invites litigation, uncertainty, and the possibility that the entire effort will be undone.

Rushing through the current proposal being pushed by tribal gaming lobbyists may be tempting, but there is a much safer and more durable path forward. A constitutional amendment, approved by the people of Wisconsin, would eliminate legal ambiguity, preserve checks and balances, and reflect the will of the people. This is the only pure way to give the people what they want.

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