

THE FAILURE TO REGULATE THE GAMBLING INDUSTRY EFFECTIVELY: INCENTIVES FOR PERPETUAL NON-COMPLIANCE*

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I. INTRODUCTION

The United States has periodically experimented with legalized gambling activities. In each historical "wave," the social costs related to gambling became both apparent and overwhelming, consistently leading to the criminalization of all gambling activities.¹ Historically, policymakers rediscovered that the social costs of gambling were enormous, and experts concluded that applying those costs "to the adult population of the United States [in 1994] implie[d] losses equal to . . . an additional Hurricane Andrew, the most costly disaster in American history, *every year*."² Yet legalized gambling had no significant social or economic benefits, as it "involves simply sterile transfers of money or goods between individuals, creating no new money or goods. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, . . . gambling subtracts from the national income."³

In addition to these enormous social costs, gambling in the United States remained extremely difficult, if not impossible, to regulate effectively. This situation was essentially due to two factors. First, the regulatory scheme in

* Due to rapidly developing issues, current periodicals were necessarily utilized. This analysis attempted to filter out publications which were too influenced by the gambling industry.

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1. See generally CHARLES CLOTFELTER & PHILLIP COOK, *SELLING HOPE* (1989). See also John Warren Kindt, *The Economic Impacts of Legalized Gambling Activities*, 43 *DRAKE L. REV.* 51, 59 (1994) [hereinafter *Economic Impacts*].

2. Earl L. Grinols, *Gambling as Economic Policy: Enumerating Why Losses Exceed Gains*, *ILL. BUS. REV.*, Spring 1995, 7 (emphasis added) [hereinafter *Economic Losses Exceed Gains*].

3. PAUL A. SAMUELSON, *ECONOMICS* 425 (10th ed. 1976) (Samuelson won the Nobel Prize in Economic Science in 1970); see John Warren Kindt, *U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of the Legalization of Gambling Activities*, 39 *ST. LOUIS U. L.J.* 567 (1995). See also *Economic Losses Exceed Gains*, *supra* note 2, at 6, 8 ("Gambling beyond the point of recreation or entertainment reduces national income.").

place in many states provided a larger incentive for gambling operators to skirt the law than to comply with it. As legalized organized gambling spread throughout the United States during the 1990's, gambling operators often preferred to pay a fine when caught violating regulations rather than simply complying with them on a regular basis.⁴ Second, the gambling industry formed powerful lobbies as soon as it was established in a given state, making large political contributions and compromising any significant opposition.⁵ These efforts created a climate of corrupt decision-making that influenced legislators to weaken the regulatory scheme then in place and to refuse to address gambling issues in a manner consistent with the public interest.⁶ Each of these factors was driven by the large, almost unlimited supply of cash generated by gambling operations and available to finance the interests of the gambling industry. As long as these factors remained unchanged, effective regulation of the gambling industry was a practical failure. Economic history has demonstrated that legalized gambling activities corrupted government decision-making and destabilized the strategic economic base.

The basic McDougal/Lasswell approach to government policy-making utilized in this analysis was focused on U.S. regulatory efforts, but the issues and conclusions also reflect the problems in other countries and can be extrapolated to those countries, particularly to developing countries lacking even rudimentary regulations. Utilizing the meta-language model of policy-oriented jurisprudence confirmed this analysis and conclusion.⁷

4. See discussion of fines, *infra* Part IV.

5. See generally BETTER GOV'T ASS'N, STAFF WHITE PAPER: CASINO GAMBLING IN CHICAGO 95-101 (1992) [hereinafter BGA REPORT]. "A regulation [was] strong only if it [was] enforced. Our research indicate[d] that the cash flow involved in the casino business, as well as the nature of the business itself, encourage[d] corruption and undermine[d] the most well-intentioned regulations." *Id.* at 101.

6. See generally "The Backlash Against the Gambling Industry and Associated Government Officials," *infra* Part V.A.

7. This particular article is summary in scope, but it follows the McDougal/Lasswell model for decision-making. In the areas of legal and government policy, which subsume strategic socio-economic and business concerns, the classic decision-making models were formulated by the post legal realists, particularly Professor Myres McDougal and Professor Harold Lasswell, who postulated a conceptual framework for legal decision-making in a landmark article directed toward legal educators and law professors. Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); see also Harold D. Lasswell & Myres S. McDougal, *Criteria for a Theory about Law*, 44 S. CALIF. L. REV. 362 (1971); Myres S. McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1 (1966); John Warren Kindt, *An Analysis Of Legal Education And Business Education Within The Context Of A J.D./MBA Program*, 31 J. LEGAL EDUC. 512, 517-18 (1981); John Warren Kindt, *An Analysis Of Legal Education And Business Education Within The Context Of A J.D./MBA Programme*, 13 LAW TEACHER 12, 14-16 (1979). The decision-making concepts which McDougal and Lasswell introduced were later expanded to include international law and U.S. domestic law, as these areas interfaced with "policy-oriented jurisprudence." See John N. Moore, *Prolegomenon to the Jurisprudence of Myres McDougal and*

II. DELIMITATION OF PROBLEMS: STRATEGIC NATIONAL ISSUES ASSOCIATED WITH GAMBLING

A. Addictions

In 1995, Associate Professor Howard Shaffer of the Division on Addictions at Harvard Medical School concluded that “[g]ambling is an addictive behavior, make no mistake about it Gambling has all the properties of a psychoactive substance, and . . . changes the neurochemistry of the brain.”⁸ When legalized organized gambling activities become socially acceptable and publicly accessible, state governments begin creating new populations of pathological (addicted) gamblers. As early as 1980, the addictive nature of gambling was officially recognized by the American Psychiatric Association (“APA”).⁹ Before widespread legalized gambling existed in the United States, there was a naturally occurring base rate of 0.77 percent of the U.S. adult population that constituted pathological gamblers, as determined by the 1976 U.S. Commission on the Review of the National Policy Toward Gambling.¹⁰ The percentage of adult pathological gamblers then rose to between 1.5 and 5 percent as gambling was legalized in the 1980's and 1990's.¹¹ According to the Harvard Division on Addictions, for example, 1.5 million people, or 0.5 percent of the U.S. population, became new pathological gamblers in the 3-year period from 1994 to 1997,¹² which resulted

Harold Lasswell, 54 VA. L. REV. 662 (1968); Frederick S. Tipson, Note, *The Lasswell-McDougal Enterprise: Toward a World Public Order of Human Dignity*, 14 VA. J. INT'L L. 535 (1974).

8. Ford Turner, *Neurochemicals Blamed for Compulsive Gambling*, 8 COMPULSIVE GAMBLING, Winter 1995-96, at 1 (citing article in the BEACON-NEWS (Springfield, Mass.), May 10, 1995).
9. See AM. PSYCHIATRIC ASSOC., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, § 312.31 (4th ed. 1994) (“pathological gambling”) [hereinafter DSM-IV] (technically, pathological gambling was categorized as an impulse control disorder).
10. U.S. COMM’N ON THE REV. OF THE NAT’L POL’Y TOWARD GAMBLING, GAMBLING IN AMERICA 73 (U.S. Gov’t Printing Off. 1976).
11. See, e.g., *Economic Losses Exceed Gains*, supra note 2, at 6; ALTA. LOTTERIES AND GAMING, GAMBLING AND PROBLEM GAMBLING IN ALBERTA, at 18 (1994).
12. The calculation of 0.5 percent of the U.S. population or 1.5 million new pathological (addicted) gamblers created by legalized gambling between 1994 and 1997 came from the Div. on Addictions, Harvard Medical School, *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-analysis*, at 43, Table 13 & 51, Table 16 (Howard J. Shaffer, Matthew N. Hall, & Joni Vander Bilt, Dec. 15, 1997) [hereinafter Harvard Addictions Meta-analysis]; see Press Release of Harvard Medical Sch., “Harvard Medical School Researchers Map Prevalence of Gambling Disorders in North America,” Dec. 4, 1997 (From .84 percent, “the prevalence rate [for pathological gambling] for 1994-1997 grew to 1.29 percent of the adult population.”).

in new costs to the U.S. taxpayers of up to \$45 billion per year.¹³ An additional 2 percent, or 3.5 million more people, became new problem gamblers during that same three-year period.¹⁴

Maintaining the same level of quality of life after gambling was legalized in any given venue was calculated to require a 100 percent to 550 percent increase to social-welfare budgets, most likely generated by a sharp increase in taxes.¹⁵ These costs did not include the costs of rehabilitating any pathological gamblers, which constituted an additional \$17,000 to \$42,000 per gambler.¹⁶

Recognizing that 27 to 55 percent of casino revenues came from pathological and problem gamblers,¹⁷ concerns were raised during the 1990's about appeals to this market segment.¹⁸ Like any other industry, elements of the gambling industry apparently pursued the most lucrative customer segment—the pathologically addicted gambler:

By purchasing lists from credit-card companies, the casinos know what you buy, and then they can track census data to approximate your home value and income. Then there are the direct-mail lists. One such list from the early 1990s was baldly called the "Compulsive [i.e., Pathological] Gamblers Special" and promised to deliver 200,000 names of people with "unquenchable appetites for all forms of gambling." Another list features "some 250,000 hard-core gamblers."¹⁹

Other techniques included tracking gamblers by "frequent-gambler card[s]" inserted into electronic gambling devices, as well as credit cards that earned points toward casino promotions.²⁰

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13. See, e.g., Statement of John Warren Kindt, Univ. Ill., to the National Gambling Impact Study Commission, "U.S. and International Concerns over the Socio-Economic Costs of Legalized Gambling: Greater Than the Illegal Drug Problem?," Chicago, Ill., May 21, 1998, [hereinafter "U.S. and International Costs"] at Table 1. See also John Warren Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*, 22 *MANAGERIAL AND DECISION ECON.* 17 (2001) [hereinafter *Mega-Lawsuits*].
 14. Harvard Addictions Meta-analysis, *supra* note 12, at 43, Table 13 & 51, Table 16.
 15. *Economic Impacts*, *supra* note 1, at 65.
 16. See generally *Economic Impacts*, *supra* note 1.
 17. See, e.g., "Measuring the Costs of Pathological Gambling," Address by Prof. Henry R. Lesieur, Ill. St. Univ., at the Nat'l Conf. on Gambling Behavior, Nat'l Coun. on Problem Gambling, Chicago, Ill., Sept. 3-5, 1996.
 18. See John Warren Kindt, *Follow the Money: Gambling, Ethics, and Subpoenas*, 556 *ANNALS AM. ACADEMY POL. & SOC. SCI.*, 85, 91 (1998) [hereinafter *Follow the Money*].
 19. S. C. Gwynne, *How Casinos Hook You: The Gambling Industry is Creating High-Tech Databases to Reel in Compulsive Players*, *TIME*, Nov. 17, 1997, at 68, 69.
 20. *Id.* at 68-69.

B. Bankruptcies

If the demographics of prior studies were paralleled, the 1.5 million new pathological gamblers created from 1994 to 1997 could have easily resulted in 315,000 new bankruptcy filings.²¹ A bankruptcy study focusing on 1997 by the WEFA Group, a consultant group often used by the gambling industry, found that 70 percent of all bankruptcy filings in that year were Chapter 7 filings.²² The adjusted weighted average debt per filer was \$74,650.²³ The average legal cost was \$505.²⁴ Furthermore, the average court cost was \$418.²⁵ Thus, WEFA calculated the total average cost at \$75,573 per Chapter 7 filing. Applying this result to bankruptcy filings by new pathological gamblers implied a total cost of over \$16.66 billion for Chapter 7 filers over the 3-year period.²⁶ For the 30 percent that were Chapter 13 filings, WEFA found an adjusted weighted average debt per filer of \$137,272,²⁷ an average legal cost of \$1000,²⁸ and an average court cost of \$837.²⁹ Thus, the total average cost was \$139,109 per Chapter 13 filer. Applying this result to bankruptcy filings by new pathological gamblers corresponded to a total cost of \$13.15 billion for Chapter 13 filings over the three-year period.³⁰ Thus, the total cost to society of personal bankruptcies by new pathological gamblers over the 3-year period was an astounding \$29.81 billion.³¹ Holding the number and proportion of filings constant and adjusting to the U.S. Bureau of Labor Statistics ("BLS")

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21. SMR RESEARCH CORP., *THE PERSONAL BANKRUPTCY CRISIS, 1997*, 123-24 (1997) [hereinafter *BANKRUPTCY CRISIS*].
 22. WEFA GROUP, *THE FINANCIAL COSTS OF PERSONAL BANKRUPTCIES*, at 1 (Feb. 1998) [hereinafter *WEFA 1998*].
 23. *Id.* at 11.
 24. *Id.* at 15.
 25. *Id.*
 26. If the conservative estimate of 315,000 new bankruptcies attributed to new pathological gamblers paralleled the 70 percent calculation for Chapter 7 filers as WEFA implied, then at an average cost of \$75,537 each, the total Chapter 7 bankruptcy cost of pathological gamblers was \$16.66 billion.
 27. WEFA 1998, *supra* note 22, at 11.
 28. *Id.* at 15.
 29. *Id.*
 30. If the conservative estimate of 315,000 new bankruptcies attributed to new pathological gamblers paralleled the 30 percent calculation for Chapter 13 filers as WEFA implied, then at an average cost of \$139,109 each, the total Chapter 13 bankruptcy cost of pathological gamblers was \$13.15 billion.
 31. See also *BANKRUPTCY CRISIS*, *supra* note 21, at 123-24 (finding that the total cost to society of personal bankruptcies by new pathological gamblers over the 3-year period was at least \$9 billion); *Mega-Lawsuits*, *supra* note 13, at 45, Table A4; "U.S. and International Costs," *supra* note 13, at Table 4 and accompanying footnotes (finding a range of \$12 billion to \$36 billion in bankruptcy costs due to pathological gamblers).

prices for 2000,³² this cost figure grew to approximately \$31.98 billion, or \$10.66 billion per year.

Applying the same type of calculations to the 90,000 bankruptcy filings³³ by the 3.5 million new problem gamblers over that same 3-year period revealed that the total Chapter 7 costs were \$4.76 billion and the total Chapter 13 costs were \$3.76 billion. These personal bankruptcies of new problem gamblers totaled approximately \$8.52 billion in costs to society over the 3-year period.³⁴ Holding the number and proportion of filings constant and adjusting to year 2000 BLS prices, this figure grew to about \$9.14 billion.

While some economists might have argued that the debts per filer should not be included in these calculations because they represented a transfer of wealth from the gambler-debtor to the gambling industry, these debts still constituted losses to the primary financial institutions involved with concomitant transactional, administrative, and even policy costs. By comparison, sociologists definitely include the debts per filer as "abused" nonproductive costs.³⁵

C. Crime

According to a gambling industry funded study,³⁶ legalized gambling caused 1.5 million people, or 0.5 percent of the U.S. population, to become new criminals in the three years from 1994 to 1997, at a U.S. cost of \$12 billion to \$15 billion.³⁷ Adjusting these figures to year 2000 BLS prices,³⁸ the

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32. Numbers are adjusted to year 2000 dollars using the Consumer Price Index for All Urban Consumers, published by the U.S. Bureau of Labor Statistics, at [ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt) (last modified Mar. 21, 2001); see generally <http://stats.bls.gov/cpihome.htm>. The formula for calculating the year 2000 numbers is: $\$ \text{ Prior year} \times (\text{CPI}_{2000} / \text{CPI Prior year}) = \$ \text{ Year 2000}$.
33. BANKRUPTCY CRISIS, *supra* note 21, at 123–24.
34. *Id.* (finding that the total cost to society of personal bankruptcies by new problem gamblers over the 3-year period was at least \$3 billion); *Mega-Lawsuits*, *supra* note 13, at 45, Table A5; "U.S. and International Costs," *supra* note 13, at Table 5 and accompanying footnotes (finding a range of \$3 billion to \$14 billion in bankruptcy costs due to problem gamblers).
35. For a summary of cost studies, see "U.S. and International Costs," *supra* note 13, at Tables 3–8 and accompanying footnotes. Costs can be adjusted to year 2000 dollars using the procedure discussed in footnote 32, *supra*. See also *Mega-Lawsuits*, *supra* note 13, at 44–47, Tables A3–A8.
36. "U.S. and International Costs," *supra* note 13, at Table 10 note 1. ("Critics of the [Harvard Addictions] [M]eta-analysis [*supra* note 12] noted that the analysis was entirely funded by a \$140,000 grant from the gambling industry . . .").
37. Harvard Addictions Meta-analysis, *supra* note 12, at 43, Table 13 & 51, Table 16; "U.S. and International Costs," *supra* note 13, at Tables 1, 7, and accompanying footnotes. See also *Mega-Lawsuits*, *supra* note 13, at 44, 46, Tables A1, A7.
38. See *supra* note 32 and accompanying text.

costs became \$12.9 billion to \$16.1 billion. However, the total cost of criminal activities undertaken to support gambling habits was significantly higher; sociologists and psychologists uniformly reported that “[v]irtually all pathological gamblers commit crimes,”³⁹ although many of these gamblers were not prosecuted because their victims often included “family members or close associates.”⁴⁰ During the 1980s and 1990s, experts and studies reported that “between 12.5 percent and 15 percent of all pathological gamblers would become incarcerated.”⁴¹ When multiplied by the 1.5 million new criminals admitted in the Harvard Meta-analysis,⁴² this corresponded to 187,500 to 225,000 jailed pathological gamblers over the three-year period, or an average of 62,500 to 75,000 pathological gamblers incarcerated each year. Interestingly, although these numbers were reported to the National Gambling Impact Study Commission (“NGISC”) on May 21, 1998, the *NGISC Final Report* issued in 1999 suggested even more dramatic numbers.⁴³ Specifically, the *NGISC Final Report* stated: “A third of problem and pathological gamblers had been arrested, compared to 10 percent of low-risk gamblers and 4 percent of non-gamblers. *About 23 percent of pathological gamblers have been imprisoned, and so had 13 percent of problem gamblers.*”⁴⁴

This assessment approximately doubled the earlier numbers reported by many experts in the 1980's and 1990's, as well as the 1998 summary calculations.⁴⁵

III. CLARIFICATION OF GOALS

A. The Unacknowledged Public Interest and Regulatory Need

Throughout the latter years of the 20th century, the gambling industry tried to reclassify itself as one of several categories in the entertainment industry. However, to become a *bona fide* entertainment venue from an economic perspective, the gambling industry needed to conduct its business without creating new addicted gamblers and the bankruptcies and crime that

39. See, e.g., “U.S. and International Costs,” *supra* note 13, at 9, Table 8 notes 3–5.

40. *Id.* at 9.

41. *Id.*; *Mega-Lawsuits*, *supra* note 13, at 47, Table A8 notes 4–9.

42. See *supra* notes 36–37 and accompanying text.

43. NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT ch. 7, 14 (June 1999), available at <http://www.npr.gov/ngisc/reports/finrpt.html> [hereinafter NGISC FINAL REPORT].

44. *Id.*

45. See, e.g., “U.S. and International Costs,” *supra* note 13, at Table 8 and accompanying footnotes.

accompanied them.⁴⁶ Furthermore, to constitute entertainment in the economic sense, legalized organized gambling would have to be so structured that there could be no net loss in national income - a theoretical and practical impossibility.⁴⁷ Gambling was also miscategorized as entertainment from a societal perspective, as the industry has sought disproportionate advantage in distinct regulatory systems of individual states, and by making excessive contributions to legislators.⁴⁸ Therefore, federal and state governments needed to pursue distinct regulatory goals in order to prevent the gambling industry from draining the economies of the United States and degrading the social fabric of the regions in which it operates.

If licensed organized gambling could have been contained as a form of entertainment only and not permitted to the point of addiction, theoretically it would not have resulted in a significant increase in social costs. However, because social costs were inherent in any gambling activities, the public interest in containing social costs required a regulatory system in which licensed organized gambling activities, such as casinos, faced large penalties and other disincentives so they would not pursue those actions which created the multibillion dollar social costs.⁴⁹ From a historical perspective, this system's starting point required the gambler's physical presence to gamble. If gambling constituted entertainment and nothing more, this requirement was not burdensome. The system also supported a universal ban on internet gambling, which was impossible to regulate by virtue of its widespread accessibility. During the late 1990's, internet gambling proponents argued that, as a practical matter, gambling could not be banned on the internet because of its technological ubiquity. Where the government did not have the practical power to "ban" some activity, however, it certainly could not

46. See generally discussion in "Delimitation of Problems," *supra* Part II.

47. See SAMUELSON, *supra* note 3 ("When pursued beyond the limits of recreation, . . . gambling subtracts from the national income.").

48. See generally discussion in "Compromising the Opposition," *infra* Part V.A3. See also Dan Morain & Tom Gorman, *Legislature Quickly OKs Gaming Ship Casinos: Bill Marks a Test for Gov. Davis by Expanding Indian Gambling to Cruises in International Waters*, L.A. TIMES, Mar. 17, 2000, at A3 [hereinafter *Legislature Quickly OKs Casinos*] ("The Indians have bought Sacramento,' said Assemblyman Bruce Thomas. . . . 'They can have whatever they want.'"); KENT REDFIELD, *STACKING THE DECK: THE FLOW OF MONEY FROM GAMBLING INTERESTS INTO ILLINOIS POLITICS* 8 (1999) [hereinafter *STACKING THE DECK*] ("The more than \$1.6 million in campaign contributions [in Illinois] from gambling interest[s] in 1995/96 placed gambling ahead of real estate, insurance, and public utilities. . . . [I]n a very short time, gambling interests have become a significant contributor to state-level public officials and candidates in Illinois.").

49. For an overview of the costs of legalized gambling, see generally "Delimitation of Problems," *supra* Part II.

“regulate” that activity effectively. Furthermore, bans were more easily enforced.

Proper regulation required fair and regular enforcement. With regard to licensed casinos, for example, regulators during the 1990's needed to demand and obtain compliance with the federal and state laws and regulations *to which the casinos agreed when they established themselves*.⁵⁰ In order to achieve practical compliance, regulators needed to increase the amounts of fines by factors of five or ten, and then to check regularly for violations. Furthermore, regulatory authorities needed to be prepared to revoke licenses for non-compliance. Also, in order to maintain the existing degree of oversight, regulators had to fight the deteriorating influences of political contributions⁵¹ and corruption.⁵² Once states began authorizing various forms of regulated gambling, it quickly became difficult for them to act with sufficient uniformity, enabling the industry to use the false allure of comparative economic advantage to woo states.⁵³ Social costs were easily overlooked in such contests.

To contain the social costs of gambling, a strictly-enforced loss limit was necessary to control the total amount wagered per gambling session as well as the amount wagered per round—a function of the speed of the gambling. For example, losses could be tracked by casinos and limited to \$500 per visit per day, and some smaller amount per wager or per round of gambling. Loss limit laws provided a good place to start, but they had to be rigidly enforced. Enforcing loss limits was generally a difficult task, since both casinos and pathological and problem gamblers had incentives to ignore the loss limit.⁵⁴ Thus, strong disincentives to thwart the loss limits needed to be in place in the form of heavy fines and frequent enforcement.

B. Selected Goals Recommended by the 1999 National Gambling Impact Study Commission

Several objectives listed in the Final Report of the National Gambling Impact Study Commission⁵⁵ (the “1999 U.S. Gambling Commission”) were

50. BGA REPORT, *supra* note 5, at 99.

51. See generally *Legislature Quickly OKs Casinos*, *supra* note 48; *STACKING THE DECK*, *supra* note 48.

52. See generally BGA REPORT, *supra* note 5, at 96–101.

53. See, e.g., *Economic Losses Exceed Gains*, *supra* note 2, at 10.

54. See, e.g., Rick Alm, *Tokens Outside Casino Peeve State Auditor: Panel Doesn't Share Her Concerns About Loss Limit*, KAN. CITY STAR, June 29, 2000, at C1 [hereinafter *Tokens Outside Casino Peeve State Auditor*].

55. See generally NGISC FINAL REPORT, *supra* note 43.

notable. The report was submitted under unanimous agreement. Many of its recommendations recognized the difficulty of regulating the gambling industry effectively.

The 1999 U.S. Gambling Commission recommended that "warnings regarding the dangers and risks of gambling, as well as the odds where feasible, should be posted in prominent locations in all gambling facilities."⁵⁶ Clearly, the 1999 U.S. Gambling Commission understood the addictive nature of gambling, as well as the potential for excessively large losses. Of course, posted warning statements can be disregarded, and misleading advertising could be made.⁵⁷

Furthermore, the 1999 U.S. Gambling Commission recommended restricting all legal gambling activities to participants who were "at least 21 years of age and that those who [were] under 21 years of age should not be allowed to loiter in areas where gambling activity occurs."⁵⁸ Specifically regarding sports gambling, the 1999 U.S. Gambling Commission recommended that "betting on collegiate and amateur athletic events that is currently legal [in 1999] be banned altogether."⁵⁹ The 1999 U.S. Gambling Commission also warned that lotteries and convenience gambling could play "a significant role in the development of youthful gamblers."⁶⁰ These principles were critically important because, first, the rate of pathological and problem adolescent gamblers was roughly double that for adults,⁶¹ and second, sports gambling was causing adolescents to become "the first U.S. generation in 100 years raised to believe that legalized gambling [was] an acceptable activity and [had] career opportunities."⁶²

In an attempt to limit the perceived "acceptability" of licensed organized gambling activities, the 1999 U.S. Gambling Commission recommended that "all relevant governmental gambling regulatory agencies should ban aggressive advertising strategies, especially those that target people in

56. *Id.* at ch. 3, 17; NAT'L GAMBLING IMPACT STUDY COMM'N, EXECUTIVE SUMMARY, 29 (June 1999) [hereinafter NGISC EXECUTIVE SUMMARY].

57. See discussion of alleged potential fraudulent activity, *infra* Part IV. B., under "False Advertising and Fixed Games."

58. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 17; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 29.

59. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 18; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 30.

60. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 19; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 32.

61. See, e.g., *Economic Impacts*, *supra* note 1, at 66, 117-18 (citing Valerie Lorenz, Exec. Dir., National Ctr. Pathological Gambling, AN OVERVIEW OF PATHOLOGICAL GAMBLING, at 3 (1990)) (The compulsive gambling rate among teenagers was "4 percent to 7.7 percent.").

62. "U.S. and International Costs," *supra* note 13, at 13.

impoverished neighborhoods or youth anywhere.”⁶³ This is especially true for so-called “convenience gambling:”

The Commission received testimony that convenience gambling, such as electronic devices in neighborhood outlets, provides fewer economic benefits and creates potentially greater social costs by making gambling more available and accessible. Therefore, the Commission recommends that *states should not authorize any further convenience gambling operations and should cease and roll back existing operations.*⁶⁴

However, the scope of regulatory review was necessarily broader concerning the appropriateness or inappropriateness of various degrees of licensed gambling. The 1999 U.S. Gambling Commission recommended that “states and tribal governments should conduct periodic reassessments of the various forms of gambling permitted within their borders for the purpose of determining whether the public interest would be better served by limiting, eliminating, or expanding one or more of those forms.”⁶⁵ Thus, state gambling control boards were to prepare to eliminate the various forms of gambling from the fastest forms to the slowest forms⁶⁶ to reduce mounting social costs. This recommendation directly countered the marketing trends and accompanying strategies moving toward implementation of faster and faster forms of gambling.

The 1999 U.S. Gambling Commission made several recommendations regarding improved enforcement efforts:

[W]ith respect to all forms of legal and illegal gambling, the Commission recommends that all relevant governmental gambling regulatory agencies enact and enforce harsh penalties for abuse in this area involving underage gamblers. Penalties and enforcement efforts regarding underage gambling

63. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 18; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 30.

64. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 18 (emphasis added); NGISC EXECUTIVE SUMMARY, *supra* note 56, at 30 (emphasis added).

65. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 19; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 31.

66. Both the addictiveness of gambling and the growth rate of the corresponding social costs increase as the speed of the gambling becomes faster. Slower forms of gambling included dog and horse tracks; bingo and off track betting were somewhat faster forms; casinos and video gambling machines were very rapid forms of gambling. See “U.S. and International Costs,” *supra* note 13, at 5. “The most relevant number [was] the amount *lost* by gamblers per year in the *relevant market*. . . . In gambling industry studies, the underlying focus [was] usually on: (1) how *fast* money [could] be extracted from the public, and (2) how *efficiently* money [could] be extracted from the public.” [Original emphasis maintained.] *Id.* Faster gambling technology was one method used by the industry to accomplish its goals.

should be greatly increased.⁶⁷

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Enforcement should include a mechanism for recognizing and addressing any citizen complaints that might arise regarding advertisements. Additionally, the Commission recommends that Congress amend the federal truth-in-advertising laws to include Native American gambling and state-sponsored lotteries.⁶⁸

The 1999 U.S. Gambling Commission also addressed the problem of the "revolving door," in which regulators and industry interests formed sweetheart relationships that eventually culminated in regulators leaving their government posts to take jobs in the industry.⁶⁹ To that end, the 1999 U.S. Gambling Commission recommended that "federal, state, and tribal gambling regulators should be subject to a cooling-off period that prevents them from working for any gambling operation subject to their jurisdiction for a period of 1 year."⁷⁰ All state and tribal governments needed to adopt this recommendation in specific ethics legislation as an anti-corruption measure.⁷¹ Further anti-corruption measures involved campaign finance reform aimed at preventing the gambling industry from having inordinate influence among legislators:

The Commission recognizes the difficulty of campaign finance reform in general and an industry-specific contribution restriction in particular. Nonetheless the Commission believes that there are sound reasons to recommend that states adopt tight restrictions on contributions to state and local campaigns by entities—corporate, private, or tribal—that have applied for or have been granted the privilege of operating gambling facilities.⁷²

With regard to the specter of internet gambling, it was encouraging that the 1999 U.S. Gambling Commission recommended a zero-tolerance policy.⁷³ It recognized that "current technology . . . makes it possible for gambling to

67. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 19; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 32.

68. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 18–19; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 31.

69. *See Report of Attorney General Robert Abrams in Opposition to Legalized Casino Gambling in New York State* (May 1981) [hereinafter *Attorney General Abrams NY Report*], cited in BGA REPORT, *supra* note 5, at 99.

70. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 19; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 32.

71. The recommendation still had not been implemented by mid-2001.

72. NGISC FINAL REPORT, *supra* note 43, ch. 3, at 18; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 29–30.

73. *See* NGISC FINAL REPORT, *supra* note 43, ch. 5, at 12; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 35–36.

take place in the home or the office.”⁷⁴ Therefore, the 1999 U.S. Gambling Commission recommended that “states not permit the expansion of gambling into homes through [internet] technology and the expansion of account wagering.”⁷⁵ With respect to legislative enforcement, internet gambling received special attention:

The Commission recommends to the President, Congress, and the Department of Justice (DOJ) that the federal government should prohibit, without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States or among parties in the United States and any foreign jurisdiction. Further, the Commission recommends that the President and Congress direct DOJ to develop enforcement strategies that include, but are not limited to, Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions.⁷⁶

....

[Similarly,] [t]he Commission recommends to the President, Congress, and state governments the passage of legislation prohibiting wire transfers to known Internet gambling sites, or the banks who represent them. Furthermore, the Commission recommends the passage of legislation stating that any credit card debts incurred while gambling on the Internet are unrecoverable.⁷⁷

It was especially important to prohibit Internet gambling, because a failure to do so effectively opened a video gambling casino in every home and office, increasing the accessibility of gambling to the point of ubiquity.

The position of the 1999 U.S. Gambling Commission with respect to gambling on Indian lands was less precisely articulated. However, it recognized the need to curtail gambling operations that were either effectively uncontrolled or involved unclear jurisdictional authority between the state and federal governments—identifying the need that “the federal government fully and consistently enforce all provisions of the IGRA [Indian Gaming

74. NGISC FINAL REPORT, *supra* note 43, ch. 5, at 12; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 35–36.

75. NGISC FINAL REPORT, *supra* note 43, ch. 5, at 12; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 36.

76. NGISC FINAL REPORT, *supra* note 43, ch. 5, at 12; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 35.

77. NGISC FINAL REPORT, *supra* note 43, ch. 5, at 12; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 35.

Regulatory Act].”⁷⁸ The 1999 U.S. Gambling Commission also recommended “that Congress should specify a constitutionally sound means of resolving disputes between states and tribes regarding [casino] gambling”⁷⁹ which seemed to occur most often when an Indian group sought to build a casino against the wishes of the state.

IV. HISTORICAL BACKGROUND

A. Fines for Violations of Gambling Regulations Were Traditionally Too Low to Function as Meaningful Enforcement Devices

Fines were a common form of regulation which provided disincentives for actors to behave in the manner identified as undesirable. They essentially redefined the costs of the undesired behavior. The fines became increasingly effective as the costs outweighed the benefits of undertaking the undesired behavior.⁸⁰ Under normal circumstances, fines were effective deterrents because money was limited, at least to the extent that the actor would benefit more by choosing an alternate course of action that did not risk a fine.

The multi-billion dollar gambling industry was not normal in that sense; the scarcity of money did not necessarily constrain the industry as long as the public continued to transfer more money to it via gambling losses.⁸¹ This drive to remain open and operating produced flagrant violations. For example, Emerald Casino Inc. began construction on a proposed casino in Rosemont, Illinois even before the Illinois Gaming Board voted on its license application, because the casino estimated it had to forego \$25 million per

78. NGISC FINAL REPORT, *supra* note 43, ch. 6, at 23; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 38.

79. NGISC FINAL REPORT, *supra* note 43, ch. 6, at 23; NGISC EXECUTIVE SUMMARY, *supra* note 56, at 38–39; 25 U.S.C. 2701–2721 (2000).

80. This concept applied the normal economic assumption that actors would act rationally, seeking to maximize their net benefit (*i.e.*, benefits less costs). When levied, fines added to the cost of undertaking the action discouraged by regulation. As a more practical matter, the expected increase in cost due to a fine was the product of the fine itself and the probability it would be levied. For this reason, when creating an effective regulation, the fine needed to be high enough and enforced frequently enough to change the incentive for an actor to undertake the socially undesirable behavior.

81. Consider, for example, the receipt by the California Gambling Control Commission of “a huge check—\$34.5 million, from sources they’re still trying to discern” apparently allocated to an Indian revenue-sharing fund overseen by that Commission. Todd Murphy, *Getting Down to Business*, INT’L GAMING & WAGERING BUS., Feb. 2001, at 14. “Officials were confused by the check because there was no breakdown of which tribes provided how much of the \$34.5 million . . .” *Id.* at 16.

month in revenue until it opened.⁸² After its investigation, the Illinois Gaming Board denied Emerald Casino's license application, citing concerns that "some investors . . . 'provided false and misleading information to the Board and failed to establish a record of regulatory compliance'"⁸³ and "the proposed casino's [alleged] links to organized crime."⁸⁴ At \$25 million per month, the estimated revenues for that casino alone were approximately \$800,000 to \$1.0 million *every day*.⁸⁵ In fact, this example paralleled the conventional wisdom in the gambling industry during the 1990's that the average well-run casino should bring in approximately \$1.0 million per day.

Taking the projected revenue model of the Emerald Casino as an example, the failure of fines as a regulatory mechanism in the gambling industry became clear.⁸⁶ Assuming a casino in this model enjoyed an even stream of daily revenues of \$1.0 million and was permitted to operate six days per week. Thus, it was open twenty-six days per month on average and therefore expected normal monthly revenues of \$26 million. Even if this casino received a fine of \$100,000 once during the month for some serious breach of conduct, this fine was insignificant: instead of making \$26 million that month, the casino in this model made \$25.9 million. The cost of the fine was less than 0.39 percent of the casino's revenue for the month, or 0.03 percent for the year. Thus, the fine was barely noticeable when compared to the casino's revenue from operations, and therefore failed to change the casino's behavior. Instead, the rational decision from the perspective of the casino operator was to continue to violate the law, for the casino took in higher revenues from non-compliant activities whether or not it was fined. When the occasional fine was levied, it was a mere cost of doing business, because the casino still enjoyed higher revenues than if it were to comply with the law.

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82. Douglas Holt & Michael Higgins, *Rosemont Casino Work Halts After State Rebuke*, CHI. TRIB., Feb. 26, 2000, §1, at 1 [hereinafter *Work Halts After State Rebuke*].
 83. Patricia Richardson, *Board Denies Rosemont Casino*, CRAIN'S CHI. BUS., Jan. 30, 2001, available at <http://www.chicagobusiness.com> [hereinafter *Board Denies Rosemont Casino*].
 84. *Id.* See also Tim Novak, *Mob Ties Sink Rosemont Casino*, CHI. SUN-TIMES, Jan. 31, 2001, at 1-2.
 85. Depending on how many business days the casino was open, expected daily revenues based on the \$25 million per month revenue estimate (see *Work Halts After State Rebuke*, *supra* note 82) were at least \$0.8 million per day on average if the casino was open every day. If the casino was closed one day per week and the monthly revenue was still \$25 million, then the corresponding expected daily revenues rose to approximately \$1.0 million per day.
 86. This model used the estimated revenues from the then-proposed casino in Rosemont, Illinois (see *Work Halts After State Rebuke*, *supra* note 82) to illustrate the ineffectiveness of fines as a regulatory technique in the gambling industry. The license application of Emerald Casino to operate in Rosemont was denied by the Illinois Gaming Board on other grounds. See, e.g., *Board Denies Rosemont Casino*, *supra* note 83. The decision of the Illinois Gaming Board to deny Emerald a casino license did not affect the analysis of the ineffectiveness of fines.

To achieve compliance rather than routine indifference to the laws, all regulatory incentives need to be corrected to ensure that a casino found violating the law would be made worse off than if it had voluntarily complied with the law. This necessarily involves setting the fine and the frequency of enforcement such that a casino choosing to skirt the law could regularly expect to lose a substantial portion of its revenue. To continue the model of a serious breach of conduct, an effective fine needed to be at least three percent to eight percent of the projected yearly revenue—corresponding to roughly one-third to one-half of the revenues for that month, or \$10–25 million in this model. Such a fine would catch the attention of the casino operators and investors, and induce compliance with the law. A set percentage of revenue as a fine would be easily calculated from the specified casino's own reports, and therefore would be more practical as distinguished from the more speculative and argumentative "flat fines" or fines predicated upon a certain portion of the average revenue earned by the median operator in the industry. A set percentage would be more successful at inducing operators to voluntarily comply with the regulations.

The nature of the violations during the 1990's illustrated the ineffectiveness of fines to regulate the gambling industry. The best illustration of this phenomenon came from Missouri, which had the reputation within the gambling industry of being "the toughest state in which to do business."⁸⁷ The Missouri Gaming Commission enforcement efforts exemplified several categories of violations that almost certainly occurred in other jurisdictions with less stringent enforcement of gambling regulations.

1. *Cash-Related Violations*

During the 1990's there were several examples of fines for alleged security or procedural violations. In Missouri, for example, Players Island was fined \$75,000 for "alleged violations that included unattended cash drawers, improper employee access to slot machine cash drop boxes and failure to contact a jackpot winner who had been underpaid \$1125."⁸⁸ The Flamingo Hilton Casino was fined \$50,000 for "allegations of unsecured keys and improperly stored cash and casino tokens."⁸⁹ Station Casino in St. Charles was fined \$20,000 when its security officers "allegedly were playing cards in

87. Rex Buntain, *Missouri Mudslinging*, INT'L GAMING & WAGERING BUS., Jan. 2001, at 15, 22.

88. *Three Casinos Fined*, KAN. CITY STAR, June 29, 2000, at C1.

89. *Id.*

the surveillance room . . . instead of watching monitors.”⁹⁰

Some states had “loss limit” laws, by which casinos were supposed to limit patrons to a preset amount of tokens. In theory, this rule prevented excessive losses during any one visit to the casino. However, these laws were difficult to enforce. For example, a check in 1999 of six of the twelve casinos in Missouri revealed violations at all of them.⁹¹ In this investigation “each of the six casinos checked by investigators working undercover [was] hit with fines of \$10,000 for allowing gamblers to purchase tokens or chips in excess of the [\$500] limit or for not recording the purchases on electronic cards designed to track losses.”⁹² Missouri Gaming Commission Chair Julian Seeherman compared the routine violation of loss limits by the casinos to theft: “[T]his is no different than stealing. . . . The fact that every casino is at fault means we really have lousy discipline.”⁹³

In another scenario, the Missouri Gaming Commission fined the Argosy Casino \$225,000 for 42 violations over several months during 1998.⁹⁴ The casino was cited for allegedly permitting entry on several occasions by two people banned from all Missouri casinos. Argosy was also fined for a range of alleged procedural violations, including “inappropriate storage of tokens, slot machines accepting U.S. currency, procedural errors in the counting of tokens and money, lack of enforcement of loss limits, and failure to file reports on transactions of more than \$10,000 with the Gaming Commission and Internal Revenue Service”⁹⁵ pursuant to federal anti-money-laundering laws. Similarly, violations of curbs to combat money laundering cost the Trump Taj Mahal Casino in Atlantic City \$477,000 in 1998 for 106 violations, and by comparison, in 1993 then Atlantic City casinos had been fined \$2.5 million for such violations.⁹⁶

90. Rick Alm, *Station Casinos to Pay Fines*, KAN. CITY STAR, Mar. 25, 1999, at C1 [hereinafter *Station Casinos to Pay Fines*].

91. Rudi Keller, *Six Casinos Face Fines for Violating Loss Limits*, COLUMBIA DAILY TRIB. (Columbia, Mo.), July 29, 1999.

92. *Id.*

93. *Id.*

94. Randolph Heaster, *Argosy Casino Faces \$225,000 in Fines: Regulators Allege 42 Violations in '98; Appeal is Possible*, KAN. CITY STAR, Feb. 25, 1999, at C1.

95. *Id.*

96. In 1998 the Trump Taj Mahal Casino in Atlantic City, New Jersey, was fined \$477,000 for violating laws to curb money laundering on 106 occasions. See *Trump Taj Mahal Fined \$477,000 by Fed. Banking Regulators*, DOW JONES NEWSWIRES, Jan. 28, 1998. The Taj Mahal failed to file Currency Transaction Reports for patrons trading amounts in excess of \$10,000 either to or from chips. *Id.* At the time it was issued, the fine against the Taj Mahal was “the [highest] levied against a casino for violations of the Bank Secrecy Act.” *Id.*

2. *Gambling by Minors*

Adolescents of the 1990's were "the first U.S. generation in 100 years raised to believe that gambling [was] an acceptable activity, and ha[d] career opportunities."⁹⁷ Not surprisingly, the percentages of adolescent pathological and problem gamblers were typically between double and triple the reported numbers for the adult population.⁹⁸ Despite prohibitions, incidents of underage gambling exist. For example, two Missouri riverboat casinos, Station and Harrah's, were each fined \$250,000 for an incident in June, 2000 when a 16-year-old girl used false identification to board and gamble.⁹⁹ The mother of the girl in this incident was charged "with a class B underage gambling misdemeanor that carries a penalty of up to six months in the county jail and a fine of up to \$500" if convicted.¹⁰⁰ The charges also included allegations that Station Casino had admitted 20-year-old males bearing false identification on separate occasions in May and June of 2000.¹⁰¹ Furthermore, Station Casino was fined \$5,000 for a separate incident in November, 1998 for failing to prevent a 16-year-old male from entering the casino and gambling on slot machines. The adolescent's mother was also charged with allowing a minor to gamble, and faced up to 6 months in jail.¹⁰²

Station Casinos Inc., one of two casinos fined \$250,000 in August, 2000, previously paid another \$250,000 fine in 1997, when a 12-year-old girl was caught gambling at a slot machine.¹⁰³ Arguably, the previous \$250,000 fine was not a sufficient incentive to cause the casino to raise its security to a level which would stop any minors from gaining entry. According to the Missouri Riverboat Gaming Association, an industry organization, 29,800 minors were identified and refused admittance to Missouri Casinos in 1997.¹⁰⁴ However, critics could argue that this statistic did not necessarily demonstrate any

97. See "U.S. and International Costs," *supra* note 13, at 13.

98. See AN OVERVIEW OF PATHOLOGICAL GAMBLING, *supra* note 61, at 3 (1990) ("The compulsive gambling rate among teenagers is 4 percent to 7.7 percent."); BGA REPORT, *supra* note 5, at 28. (In 1992, the range of adolescents who were already problem or compulsive gamblers was between 4 percent and 15 percent.)

99. Rick Alm, *Station, Harrah's Hit with \$250,000 Fines*, KAN. CITY STAR, Aug. 30, 2000, at C1 [hereinafter *Station, Harrah's Hit with \$250,000 Fines*].

100. *Id.*

101. *Id.*

102. Rick Alm, *Commission Lets Hilton Off Hook in Bribery Case*, KAN. CITY STAR, Jan. 28, 1999, at C1 [hereinafter *Commission Lets Hilton Off Hook*].

103. *Station, Harrah's Hit with \$250,000 Fines*, *supra* note 99, at C1.

104. *Commission Lets Hilton Off Hook*, *supra* note 102, at C1.

diligence in the efforts by the casinos to keep minors from gambling, but instead raised the question of why almost 30,000 minors¹⁰⁵ gravitated to Missouri casinos in 1997.¹⁰⁶

B. False Advertising and Fixed Games

The Missouri Gaming Commission fined Station Casino \$21,825 in 1999 for false advertising claims and regulatory violations.¹⁰⁷ The alleged false advertising involved the “out-of-date and misleading” claim made in 1997 that Station offered the “loosest slots”¹⁰⁸ (“industry jargon for devices that return the highest percentage of jackpot payouts to players”),¹⁰⁹ and the claim that “Station Casino Kansas City offered ‘over 400’ nickel and dime slot machines . . . [when the number of such] machines at Station had dwindled to fewer than 200.”¹¹⁰

The Missouri Commission also reprimanded two companies, Universal Manufacturing and Bingo Systems and Supply, “for their roles in a rigged pull-tab promotion.”¹¹¹ The Commission found that “insiders knew which box of unsold cards contained the winning ticket.”¹¹² Additionally it “intended to revoke Bingo Systems’ state license over the incident,” but the disciplinary action was not pursued after the company was sold.¹¹³ The scenario of selling a gambling company or license exemplified a typical industry tactic whereby gambling interests could profit substantially—instead of being fined or disciplined.

105. The actual number of minors that attempted entrance to Missouri casinos in 1997 could have been, in fact, much higher than 30,000. The number published by the Missouri Riverboat Gaming Association only reflected the number of minors turned away. However, several fines have been issued for minors *as young as 12 years old* who successfully entered casinos and gambled. *Station, Harrah's Hit with \$250,000 Fines*, *supra* note 99, at C1. Therefore, it was apparent that the casinos were not completely successful at blocking all attempts by minors to enter and gamble. *See id.*

106. *See* Harvard Addictions Meta-analysis, *supra* note 12, (2.2 million pathological *adolescent* gamblers, 5.7 million problem *adolescent* gamblers nationwide in 1997), *cited in* “U.S. and International Costs,” *supra* note 13, at Table 10 and accompanying footnotes.

107. *Station Casinos to Pay Fines*, *supra* note 90, at C1.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

V. TRENDS AND CONDITIONING FACTORS

A. The Backlash Against the Gambling Industry and Associated Government Officials

1. Experts Noted Links between Gambling Activities and Crime

a. Links between Gambling Activities and Organized Crime

Paralleling his 1995 testimony before the U.S. House of Representatives Committee on the Judiciary, former organized crime member William Jahoda noted in 1998 that crime costs associated with legalized gambling were so overwhelming that its supporters were "either 'ignorant' or 'on the take.'"¹¹⁴ Jahoda frequently highlighted that state-sanctioned gambling activities were like "heaven on earth" for organized crime.¹¹⁵ Attorney General for New York, Robert Abrams, concluded that "the casino environment offers organized crime groups the opportunity to engage in a wide range of illegal and lucrative activities which include juice loans and prostitution."¹¹⁶ Furthermore, during the 1990s, experts found growing evidence that for every dollar in new legalized gambling there was one dollar (or more) in new illegal gambling.¹¹⁷

114. William Jahoda, Address to the Midwest Conference of the Nat'l Coalition Against Legalized Gambling, Des Moines, Iowa (May 1-2, 1998) [hereinafter Jahoda 1998 Speech in Des Moines]; see *National Gambling Impact and Policy Comm'n Act: Hearing on H.R. 497 before the House Comm. on the Judiciary*, 104th Cong., 1st Sess. 60-89 (1995) (statement and testimony of William Jahoda, former member of organized crime) [hereinafter *Congressional Gambling Hearing 1995*].

115. Jahoda 1998 Speech in Des Moines, *supra* note 114; see *Congressional Gambling Hearing 1995*, *supra* note 114, at 60-89.

116. *Attorney General Abrams NY Report*, *supra* note 69, as cited in BGA REPORT, *supra* note 5, at 91 (1992).

117. Statement and Testimony of William G. Hall, Executive Director, Ill. Economic & Fiscal Committee, before the Illinois Legislative Gambling Task Force, Springfield, Ill., on July 20, 1996. See *Gambling In Illinois: Its History, Revenue and Future Trends, Before the Ill. Legislative Task Force on Gambling, Springfield, Ill.* (July 20, 1996) (statement of William G. Hall, Exec. Dir. & Edward Boss, Chief Econ., Ill. Econ. & Fiscal Comm'n.). Gambling critics indicated that the series of socio-economic negatives reported in the seriatim 1996 hearings of the Illinois Legislative Task Force on Gambling were so embarrassing to gambling proponents that those public hearings were never printed for dissemination to the public and the press. See also *Congressional Gambling Hearing 1995*, *supra* note 114, at 60-89. See also Jahoda 1998 Speech in Des Moines, *supra* note 114.

According to William Jahoda,

there always existed one solid constant—any new form or expansion of legal gambling always increased our client base. . . . Of most benefit to us in the illegal gambling underworld were: (a) agency marketing and media advertising blitzes promoting gambling . . . and (b) the resultant desensitization within the community from the reality that most forms of gambling . . . are by their very nature an actual and potentially dangerous vice.¹¹⁸

Bob Walsh, Assistant Director of the Chicago FBI during the early 1990's, noted that "gambling generates new gambling; the more accepted it becomes, the more all forms of gambling benefit Organized crime is continuously involved in gambling."¹¹⁹ Also, "William Roemer, a retired Senior FBI Agent on Organized Crime in Chicago for twenty-two years, agreed that, '[e]ven if you can keep them out of the casinos, the Mafia will still benefit immensely through increased illegal gambling, loan-sharking, and other such activities I don't see how it could be effectively regulated.'"¹²⁰

b. Links between Gambling Activities and White-Collar Crime

Of course, legalized gambling is a catalyst for crime. Some gamblers commit crimes to fuel their habit. Others corrupted by the vast amounts of money flowing through gambling facilities, also commit crimes. During the 1980's and 1990's white-collar crime, rooted in gambling, plagued the American insurance industry with billions of dollars of costs.¹²¹ In general, "insurance-related fraud, embezzlement, [and] arson in connection with [pathological] gambling" appeared to be common, with 47% of 241 Gamblers Anonymous members admitting to such behavior.¹²² Of those surveyed, "[o]nly 8 percent of those who had defrauded insurance companies claim to have made partial or total restitution."¹²³ Perhaps the worst case of insurance

118. BGA REPORT, *supra* note 5, at 92.

119. Testimony of Bob Walsh before the Chicago Metro Ethics Coalition panel on gambling, June 25, 1992, *cited in*, BGA REPORT, *supra* note 5, at 93.

120. BGA REPORT, *supra* note 5, at 91 (emphasis added).

121. Henry R. Lesieur & Kenneth Puig, *Insurance. Problems and Pathological Gambling*, 3 J. GAMBLING BEHAV., 123 (1987). By 1987, costs to the industry from pathological gambling included \$33 billion in fraud and an additional \$66 billion in surrendered policies. *Id.*; *see also* FLA. OFF. GOV., CASINOS IN FLORIDA: AN ANALYSIS OF THE ECONOMIC AND SOCIAL IMPACTS 67 (1994); *Economic Losses Exceed Gains*, *supra* note 2, at 7.

122. Lesieur & Puig, *supra* note 121, at 123.

123. *Id.* at 127.

fraud was a mother who was convicted¹²⁴ and sentenced to twenty-one years in prison¹²⁵ after allegedly killing her baby daughter to collect insurance money to continue gambling.¹²⁶ Another daughter “[f]ifteen months earlier, . . . died of unexplained causes.”¹²⁷

Various types of white-collar crime also developed apart from insurance-related schemes. A few examples from the end of the 20th century highlight the problems. In 2000, Argosy Gaming Co. was reportedly under investigation for allegations it defrauded shareholders and violated state regulations via a business relationship which included misrepresenting a \$3.5 million loan to a St. Louis businessman.¹²⁸ In 1996, Missouri charged two would-be bingo operators with “filing false license application information with the Missouri Gaming Commission.”¹²⁹ The two “allegedly used the corporate identification number of a real firm with a name similar to the name they were using in order to meet the state’s five-year existence requirement to sponsor bingo games.”¹³⁰ So-called “charitable gambling” activities often created not only increased public acceptability of non-charitable gambling activities (e.g., by casinos), but also rampant fraud which diminished the reputations of all charitable fund-raising activities. In Virginia, more than a dozen operators of charitable gambling activities were arrested in 1997 and 1998 on various charges that included fraud, embezzlement, illegal gambling, and winning by cheating.¹³¹ In Illinois, the state charged five individuals with “running illegal Las Vegas nights for Chicago area charities and then ripping them off.”¹³² The government sought a \$300,000 penalty.¹³³ In that incident, gamblers allegedly were instructed “to make the[ir] checks out to cash or leave the payee line blank.”¹³⁴ These checks were deposited in a private account¹³⁵

124. Matt O'Connor, *Mother Convicted of Fraud in Death of 2nd Baby Daughter*, CHI. TRIB., Feb. 12, 1999, §2, at 4 [hereinafter *Mother Convicted of Fraud*].

125. Matt O'Connor, *Prison Sentence in Baby's Killing: Mom Used Insurance Money for Gambling*, CHI. TRIB., Sept. 9, 1999, §2, at 6 [hereinafter *Mom Used Ins. Money for Gambling*].

126. *See id.*; *Mother Convicted of Fraud*, *supra* note 124 §2, at 4; Cam Simpson, *Baby Death Plot Told: Suburb Mom Indicted in Ins. Scheme*, CHI. SUN-TIMES, Mar. 7, 1998, at 1 [hereinafter *Baby Death Plot Told*].

127. *Mom Used Ins. Money for Gambling*, *supra* note 125, §2, at 6. *See also Baby Death Plot Told*, *supra* note 126, at 1; *Mother Convicted of Fraud*, *supra* note 124, §2, at 4.

128. Patricia Richardson, *State Panel Probing Riverboat*, CRAIN'S CHI. BUS., Sept. 11, 2000, at 1, 58-59.

129. *Bingo Applicants Indicted*, KAN. CITY STAR, Apr. 27, 1996, at C2.

130. *Id.*

131. Matthew Dolan, *Ex-Manager of Bingo Outfit Pleads Guilty to Embezzling*, VIRGINIAN-PILOT (Norfolk, Va.), Jan. 27, 1998, at B5.

132. Steve Warmbir, *Five Charged in Defrauding Charity Events*, CHI. SUN-TIMES, Sept. 16, 2000, at 10.

133. *Id.*

134. *Id.*

135. *See id.*

to “collect the cash and hide how much was actually collected.”¹³⁶ Thus, legalizing some forms of gambling neither slowed illegal gambling nor other crimes often associated with gambling.

2. *Regulations Were Ignored, Circumvented, and Blocked by the Gambling Industry*

One technique the industry commonly uses to circumvent regulations is legal political contributions to gain influence. The industry then utilizes its lobbying power to bypass unfavorable regulations. The inordinate amounts of money available to gambling interests mean they are not financially limited in pursuing their political goals. In New Jersey, the second state to get casino gambling, the gambling industry’s conduct constitutes a classic example.

Once gambling was legalized in Atlantic City and the casinos were able to show their strength, the casinos put enormous pressure on government officials to, ‘subvert and erode casino control mechanisms. . . .’ After only a few years in the state, the casino industry . . . [was successful in easing the regulations] which they accepted when they came into the state.¹³⁷

Thereafter, the gambling industry exerted its lobbying power in other states as well as New Jersey.¹³⁸

Casinos have demonstrated no hesitation in challenging the authority of regulators when inconvenienced by regulatory actions. Possibly in response to the Missouri Attorney General’s filing of perjury charges for allegedly lying to regulators, legislators introduced a bill in 1996 to abolish the Attorney General’s authority to initiate “criminal cases related to gambling.”¹³⁹ When the state Court of Appeals ruled the Attorney General of Missouri had original jurisdiction to prosecute criminal gambling offenses,¹⁴⁰ the state legislature voted later that same day to prevent the Attorney General from exercising this

136. *Id.*

137. *Attorney General Abrams NY Report, supra* note 69, as cited in BGA REPORT, *supra* note 5, at 98–99.

138. *See, e.g., Legislature Quickly OKs Casinos, supra* note 48, at A3. *See also* STACKING THE DECK, *supra* note 48, at 8–9 (noting that the gambling industry was a leading contributor to politicians, and that the contributions allowed the industry to secure favorable conditions).

139. Robert Sigman, Editorial, *Assault on Law Enforcement*, KAN. CITY STAR, Apr. 28, 1996, at K2.

140. *State v. Becker*, No. 68-779, 1996 Mo. App. LEXIS 628, at *5 (Mo. App. Apr. 16, 1996), *rev’d on other grounds*, 938 S.W.2d 267, at 268 (1997) (“[T]he plain meaning of the last sentence of the statute g[ave] the Attorney General ‘concurrent jurisdiction’ with the local prosecuting attorney. Under the plain language of the statute, the Attorney General’s authority to prosecute [was] equivalent to that of the local prosecuting attorney. Both ha[d] such authority independent of any recommendation or referral by the Gaming Commission.”).

authority.¹⁴¹ Legislators claimed the vote was not a reaction to the court decision.¹⁴² However, because “there [was] a backlash [against gambling in Missouri] building”¹⁴³ it seemed more likely that gambling interests instigated the original bill to limit the Attorney General’s authority rather than the state legislature enacting the bill on its own. Regardless of the reasons, the legislation’s practical effect limited the enforcement powers of the Missouri Attorney General’s office, thereby benefiting gambling interests.

In addition to trying to limit the jurisdiction of the Attorney General of Missouri, gambling industry members were also willing to challenge the authority of state gaming regulators. At a hearing in August, 2000 into the activities of casino lawyer Michael Lazaroff, “Station [Casino] executives challenged the [Missouri Gaming] [C]ommission’s investigative authority and refused to honor subpoenas to testify.”¹⁴⁴ Early in 2000, “Lazaroff pleaded guilty in federal court in St. Louis to multiple felonies, including misappropriation of more than \$800,000 in law-firm funds.”¹⁴⁵ In testimony, Lazaroff characterized his relationship with former Missouri Gaming Commission Chairman Robert Wolfson¹⁴⁶ as “an illicit and ‘tacit understanding’ that each would provide the other with useful information.”¹⁴⁷ Despite these accusations, the authorities found no wrongdoing by Wolfson.¹⁴⁸ However, when the executives of Station Casino refused to honor the Commission’s subpoenas, the Commission unanimously voted to revoke the Station Casino’s licenses.¹⁴⁹ This appeared to be an effective regulatory response. However, the practical effect of the Commission’s action was almost nothing, because the casino appealed, and continued its operations.¹⁵⁰

141. Kevin Murphy, *Opponents Fault Timing of Measure; Bill to Limit Attorney General’s Power Follows Contrary Court Ruling*, KAN. CITY STAR, Apr. 18, 1996, at C1 [hereinafter *Bill to Limit Attorney General’s Power*]; Terry Ganey, *Senators Would Cut Nixon’s Powers; Gambling Prosecutions Barred Under Measure*, ST. LOUIS POST-DISPATCH, Apr. 18, 1996, at B1 [hereinafter *Gambling Prosecutions Barred Under Measure*].

142. *Bill to Limit Attorney General’s Power*, *supra* note 141, at C1; *Gambling Prosecutions Barred Under Measure*, *supra* note 141, at B1.

143. Laura Scott, *In the Public Interest*, KAN. CITY STAR, May 1, 1996, at C6.

144. Rick Alm, *KC Casino Faces Loss of License: Missouri Regulators Move to Oust Station*, KAN. CITY STAR, Aug. 31, 2000, at A1 [hereinafter *KC Casino Faces Loss of License*].

145. *Id.* See also Rick Alm, *Casino Lawyer Pleads Guilty in U.S. Ct.*, KAN. CITY STAR, June 13, 2000, at C1 (“Lazaroff [allegedly] defrauded his law firm partners and clients of more than \$870,000. . .”).

146. Wolfson served as the chairman of the Missouri Gaming Commission from its establishment in 1993 until February 1999. See *KC Casino Faces Loss of License*, *supra* note 144, at A1.

147. *Id.*

148. See *id.* (Missouri state law had “no disciplinary sanctions against commissioners or former commissioners”).

149. *Id.*

150. *Id.*

Thus, the casino could continue to bring in \$1 million per day¹⁵¹ as it challenged the regulatory actions by the Commission.

In another example of circumvention, casinos would not shut down even to address safety issues because so much money was flowing through them. For example, Station Casino allegedly demonstrated its indifference for the safety of its patrons when the Missouri Gaming Commission proposed to close temporarily one of its two riverboats due to safety hazards caused by silting.¹⁵² A mandatory underwater inspection found that silting was causing at least one barge in the complex to settle in the river mud, "threatening passenger areas with shifting floor levels and the possibility of emergency [exit] doors becoming jammed."¹⁵³ The inspectors reported that "[t]he conditions 'constitute[d] an unacceptable and inappropriate level of risk to the safety of the public.'"¹⁵⁴ However, casino officials obtained a restraining order preventing the Commission from temporarily closing the boat.¹⁵⁵

Also, Missouri Auditor Claire McCaskill complained the gambling industry regularly dodged state regulations in several ways.¹⁵⁶

The audit alleged the gambling commission allowed: [1] [s]uppliers who provide slot machines and other equipment to the casinos to bypass a full background investigation . . . [2] [c]asinos to have slot machines that do not have the proper identification or did not correlate with those filed with the state . . . [and 3] [c]asinos to usurp the \$500 loss limit . . .¹⁵⁷

Even worse, however, the Gaming Commission did not seem to demand compliance on these issues.¹⁵⁸ In another instance, the same Commission took no disciplinary action against the parties involved in a bribery scandal in 1998 and 1999. In this case, "[t]he Missouri Gaming Commission . . . let Hilton Hotels Corp. walk away from a Kansas City casino bribery scandal unscathed."¹⁵⁹ Hilton merely surrendered its gaming license when it sold the riverboat to another operator.¹⁶⁰ By comparison, "Hilton agreed to pay the federal government more than \$500,000 [in 1998] to avoid a criminal trial on

151. See *supra* notes 82, 85 and accompanying text.

152. Rick Alm, *Action by Casino Regulators Blocked*, KAN. CITY STAR, Jan. 28, 1999, at C2.

153. *Id.*

154. *Id.*

155. *Id.*

156. Carolyn Tuft, *Audit Says Gaming Agency Doesn't Enforce Loss Limit*, ST. LOUIS POST-DISPATCH, June 29, 2000, at B1.

157. *Id.*

158. *Tokens Outside Casino Peeve State Auditor*, *supra* note 54, at C1.

159. *Commission Lets Hilton Off Hook*, *supra* note 102, at C1.

160. *Id.*

charges that it provided financial rewards to former Kansas City Port Authority Chairman Elbert Anderson in exchange for his political support for the casino."¹⁶¹ The regulatory seriousness of the situation was highlighted when the government charged a Hilton senior vice president with three counts of felony perjury in connection with the investigation.¹⁶² Even so, the \$500,000 fine was ridiculously low because it equated to just one-half of one day's casino revenues.

During the 1990's, the gambling industry's arrogance became readily apparent. Several examples demonstrated its belief it could and would receive everything it wanted. In some cases casinos tried to cast regulatory commissions and licensing qualifications as mere formalities that would always provide a rubber stamp of approval. For instance, in 2000, Emerald Casino Inc. officials apparently violated a rule requiring Illinois Gaming Board approval before entering into any construction contracts.¹⁶³ Emerald approved between \$5 million and \$10 million for steel and utilities work before the Board's approval "in order to open . . . as quickly as possible."¹⁶⁴ Even though it had not yet been licensed, the company apparently felt that "each month its opening [was] delayed translate[d] into an estimated \$25 million in lost revenue."¹⁶⁵ Similarly in Missouri, Harrah's advertised a grand opening gala for a new riverboat which had not yet been licensed.¹⁶⁶ Tom Irwin, Executive Director of the Missouri Gaming Commission, complained that "[w]e go through this every time," indicating that prospective casinos seemingly tried to create public demand to support their application for a license.¹⁶⁷ In Iowa, the required public hearing to renew the lease for Prairie Meadows Racetrack and Casino was initially skipped.¹⁶⁸ Tom Flynn, Prairie Meadows' lawyer said, "the public hearing and resolution should be a formality and cautioned that supervisors could put Prairie Meadows' gambling license at risk if they change[d] their vote."¹⁶⁹ Gambling opponents bristled

161. *Id.*

162. *Id.*

163. *Work Halts After State Rebuke*, *supra* note 82, §1, at 1.

164. *Id.*

165. *Id.*

166. Rick Alm and Oscar Avila, *Harrah's Gala Invitation Galls Gaming Commission*, KAN. CITY STAR, Apr. 27, 1996, at C2.

167. *Id.*

168. Frank Bowers, *Approval of Lease Premature: Supervisors Skipped Public Hearing on Casino-Track, Say Officials*, DES MOINES REG., Dec. 6, 1997, at M3 ("Under Iowa law, the [county] supervisors [were] required to hold a public hearing before approving any lease longer than three years. No such hearing was held before the supervisors leased county-owned Prairie Meadows to the Racing Association of Central Iowa.").

169. *Id.*

at the implied threats of the casino interests and at the condescending attitude of the gambling interests that the required public hearing was a rubber-stamping formality.¹⁷⁰ In reality, the agreement between the county and the Racing Association at issue “was controversial almost before the ink was dry,”¹⁷¹ which underscored the need for the hearing and explained why gambling interests that could have potentially lost their lease would have preferred to avoid the requirement.

3. *Compromising the Opposition: Contributions, Bribes, and Corruption*

Historically, the gambling industry appeared to have unlimited financial resources allowing it to vastly outspend its opponents to pursue industry agendas. In general, the gambling industry engaged in “‘cheerleading’ publishing by academics and economic consulting firms”¹⁷² by sponsoring “studies that gave favorable reports of the effects of gambling.”¹⁷³

Similarly, the industry brought multiple test cases in efforts to loosen or eliminate restrictions on certain aspects of their operations. For example, in *Posadas de Puerto Rico v. Tourism Co.*,¹⁷⁴ the Supreme Court upheld a ban on casino advertising to local residents. The Court deferred to the judgment of the legislature that the ban would reduce pathological and problem gambling among its constituents. In *Posadas*, the Court recognized the advertising ban as legitimate under the *Central Hudson* test.¹⁷⁵ It found that the “particular kind of commercial speech at issue here, namely, advertising of casino gambling aimed at the residents of Puerto Rico, concerns a lawful activity and is not misleading or fraudulent, *at least in the abstract.*”¹⁷⁶ Finding that “[pathological] casino gambling among local residents . . . would produce . . . disruption of moral and cultural patterns, the increase in local

170. *Id.*

171. *Id.*

172. *Economic Losses Exceed Gains*, *supra* note 2, at 9.

173. *Id.* at 8.

174. 478 U.S. 328 (1986).

175. *See Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980).

In commercial speech cases, then a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Id.

176. *Posadas*, 478 U.S. at 340–41 (emphasis added).

crime, the fostering of prostitution, the development of corruption, and the infiltration of organized crime,"¹⁷⁷ the Court determined the advertising ban advanced the government's interest¹⁷⁸ and was no more restrictive than necessary to do so.¹⁷⁹ A decade later, however, *Posadas* was all but overruled on the commercial speech issue by *44 Liquormart, Inc. v. Rhode Island*,¹⁸⁰ which noted that "*Posadas* clearly erred in concluding that it was 'up to the legislature' to choose suppression over a less speech-restrictive policy."¹⁸¹ While *Posadas* suggested banning advertising to local residents was less restrictive than banning the activity altogether,¹⁸² *44 Liquormart* simply presumed individual citizens could make informed decisions about the value of the advertising statements.¹⁸³ The Court's approach in *44 Liquormart* did not address how the addictive nature of gambling implied that many pathological and problem gamblers were unable to assess the value of the commercial speech by applying unclouded and rational judgment.

The Supreme Court also found no illegal restriction of commercial speech in upholding a federal statute¹⁸⁴ banning radio stations licensed in non-lottery states from broadcasting lottery advertisements from neighboring states.¹⁸⁵ However, where the advertisements were for casinos, and targeted solely at listeners residing in states where gambling was legal, the statutory ban was held to be a violation of commercial speech as applied to the broadcasters.¹⁸⁶ Furthermore, even though the Ninth Circuit recognized that "Congress has chosen not to lift the ban on the broadcast advertisement of private casino gambling,"¹⁸⁷ the court held that the ban violated commercial speech rights of broadcasters, even with respect to casino advertising that was broadcast into neighboring states where casino gambling was illegal.¹⁸⁸

177. *Id.* at 341.

178. *Id.*

179. *Id.* at 343.

180. 517 U.S. 484 (1996).

181. *Id.* at 509. For a further comment reinforcing its decision to abandon deference to state legislatures, see *id.* at 510 ("[W]e decline to give force to its highly deferential approach.").

182. *Posadas*, 478 U.S. at 345-46 ("In our view, the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling.").

183. *44 Liquormart*, 517 U.S. at 510 (citing *Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, at 770.) ("[I]t is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us.").

184. See 18 U.S.C. § 1304 (1993).

185. See generally *United States v. Edge Broad. Co.*, 509 U.S. 418 (1993).

186. *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 176 (1999).

187. *Valley Broad. Co. v. United States*, 107 F.3d 1328, 1330 (9th Cir. 1997), *cert. denied*, 522 U.S. 1115 (1998).

188. *Id.* at 1336.

The gambling industry's efforts were even more pointed when pushing specific goals: "It [was] not uncommon for the gambling industry to outspend its opponents by overwhelming margins of as much as \$100 to \$1 in areas where the industry want[ed] to place new casinos. . . . [U]nless gambling interests outspen[t] those on the other side by \$75 to \$1 or more, voters reject[ed] gambling."¹⁸⁹ Even when voters did reject gambling, the industry pursued other avenues. For example, on various occasions "in Florida, Iowa, Missouri, and Michigan, . . . public votes [were] taken repeatedly when the gambling industry point of view fail[ed]."¹⁹⁰ In both the community of Waterloo, Iowa and the State of Missouri in 1994, the repeated referenda occurred within the same year as the previous defeat—separated by only approximately four months in Iowa and seven months in Missouri.¹⁹¹ Similarly, when twelve of forty-six South Carolina counties voted to ban video gambling machines, "operators sued and got the ban overturned."¹⁹² After the legislature passed a bill re-imposing the ban in those counties, industry leaders again threatened suit.¹⁹³ Furthermore, the industry circumvented "even South Carolina's minimal laws" regarding limits on payouts and the number of machines in a location.¹⁹⁴

Corruption constituted an especially important issue because it could destroy the effectiveness of any existing regulation. With respect to gambling regulation, corruption came from a variety of private interests, such as organized crime.¹⁹⁵ Regulatory history revealed that organized crime has a deteriorating effect on attempts at effective regulatory structures: "Even the best regulatory system [was] undermined by the corrupting influence of organized crime. . . Money corrupt[ed], and corruption produce[d] more money. Once the cycle beg[an], it [was] difficult to stop."¹⁹⁶ Over time, patterns emerged:

189. *Economic Losses Exceed Gains*, *supra* note 2, at 9. See also *Follow the Money*, *supra* note 18, at 88.

190. *Economic Losses Exceed Gains*, *supra* note 2, at 9.

191. *Id.*

192. John Hechinger & John Reinan, *Billion-Dollar Video Poker Industry Dodges Weak State Laws: Some Major Owners Have Criminal Records*, CHARLOTTE OBSERVER (Charlotte, N.C.), June 8, 1997, Special Reprint, at 2 [hereinafter *Billion-Dollar Video Poker Industry Dodges Weak State Laws*].

193. *Id.*

194. *Id.* at 3.

195. See Jahoda 1998 Speech in Des Moines, *supra* note 114 (stating legalized gambling is like "heaven on earth" for organized crime). Apparently, corruption was endemic to certain state governments as well: there were "states . . . where corruption in government [was] almost a given . . ." Statement of Robin Farley, Gaming Analyst, cited in Janet Plume, *Keeping Casinos Controlled*, CASINO J., Jan. 2001, at 84, 86.

196. BGA REPORT, *supra* note 5, at 97.

Organized crime has a propensity to avoid regulations by corrupting public officials, especially when gambling is involved. Incidents of corruption and conflict of interest within government may be more damaging than organized crime interests in a casino, because public corruption allow[ed] the Mafia, or any other private interest group (such as casino operators), to compromise the public interest.¹⁹⁷

Corruption from private sources with interests in the gambling industry were also problematic:

Non-mob corruption is also an issue with casinos since individuals stand to make enormous amounts of money with the right "deal." Regarding the importance of licensing in Atlantic City to casino operators, New York Attorney General Abrams said that legalized casino gambling poses a danger to the integrity and credibility of government institutions and public officials.¹⁹⁸ . . . Attorney General Abrams found that several federal, state, and local officials were involved in influence peddling in licensing decisions.¹⁹⁹ . . . [T]here has also been a significant display of the "revolving door" phenomenon between city enforcement jobs and casino jobs.²⁰⁰

These sources of corruption, if not kept in check, could potentially destroy any attempts to regulate the gambling industry effectively.

Occasionally, the regulators made inappropriate decisions perhaps due to improper influences. These decisions often provoked questions as to the motivation of the regulators. For example, in 2000, gambling opponents criticized the Missouri Gaming Commission for approving each of three separate projects of the Isle of Capri Casino Company within days to weeks of its applications, while "[o]ther casino companies ha[d] waited years to get licenses."²⁰¹ Various opponents alleged outside forces influenced the commissioners' decisions, and requested the U.S. Attorney's office to investigate.²⁰²

Another example came from a 1999 investigation. The Illinois Gaming Board approved the sale of the Empress Casino located in Joliet, Illinois, to Jack Binion, despite the conclusion of its own research staff that "Binion has a record so fraught with questionable business deals and associations that he

197. *Id.* at 96.

198. *Id.* at 98.

199. *Id.* at 99 (citing *Attorney General Abrams NY Report*, *supra* note 69).

200. *Id.*

201. Carolyn Tuft, *Opponents of Casino Decision Demand Investigation of Gaming Commission*, ST. LOUIS POST-DISPATCH, July 28, 2000, at A1.

202. *Id.*

should be barred from operating a casino in Illinois.”²⁰³ The internal staff report further cited “a trail of poor business practices, regulatory violations[,] and financial malpractice.”²⁰⁴ Despite the internal recommendation to deny the sale, the Gaming Board formally approved the sale in late November 1999.²⁰⁵ Within weeks, the *Chicago Tribune* reported the staff recommendation in a front-page article,²⁰⁶ and Illinois Gaming Board Chairman Robert Vickrey resigned under pressure shortly thereafter.²⁰⁷ Finally, seven months later, the Illinois Gaming Board essentially adopted the position of its staff, when it unanimously denied an ownership license to Binion for the Empress Casino.²⁰⁸

4. *Conflict of Interest: Government Benefited as Its Constituents Were Drained*

Conflict of interest is one of the many problems that develop when governmental entities benefit from legalized gambling activities. Governmental regulators supposedly oversee the gambling industry with detached neutrality. But when such entities receive and subsequently become dependent on a portion of gambling revenues via taxes, these entities frequently lose their neutrality. Eventually those governmental entities became more concerned about guarding their revenue stream than about preventing crime or other social costs associated with pathological and problem gambling: “As soon as you get this partnership between government and gambling, government becomes addicted to gambling too.”²⁰⁹ During the 1990's, the sharpest illustrations of this phenomenon were the California cardrooms in general, and the Bicycle Club Cardroom of Bell Gardens in particular—in which the federal government controlled a stake and from which the city of Bell Gardens obtained “more than 60% of its income from

203. Douglas Holt, *Casino Probe Ignored*, CHI. TRIB., Jan. 4, 2000, §1, at 1, 6.

204. *Id.* at 6.

205. *Id.*

206. For the original article, see *id.*

207. Douglas Holt & Ray Long, *Gaming Chief Quits Under Fire; Ryan is Furious Over Casino Deal*, CHI. TRIB., Jan. 7, 2000, §1, at 1.

208. Douglas Holt, *Panel Declares Binion Unfit to Run Casino*, CHI. TRIB., July 1, 2000, §1, at 1; Tammy Webber, *Board Denies License for Casino Owner: Chief Owner of Riverboat in Joliet has been Accused of Questionable Business Practices*, ST. J. REG. (Springfield, Ill.), July 1, 2000, at 7, 9.

209. Robert Goodman, cited in Miranda Ewell, *Partners: Does City's Stake Weaken Efforts to Regulate?*, SAN JOSE MERCURY NEWS (San Jose, Cal.), Mar. 6, 1997, at A1 [hereinafter *Partners: Does City's Stake Weaken Efforts to Regulate?*]. See generally Robert Goodman, *THE LUCK BUSINESS* (1995).

taxes on the [Bicycle Club] casino's operations."²¹⁰

With respect to the cardrooms in general,

[c]lub and city interests converge[d] in one essential way: the more money the clubs ma[de], the more money the city ma[de].

A 13 percent gross-receipts tax on gaming revenue ma[de] [Bay 101 and Garden City] cardrooms San Jose's second-largest source of business taxes—\$8.5 million in the [1997] budget year.²¹¹

When Bay 101 violated a condition placed on its opening that required it to send to the city quarterly financial reports conducted by an independent accounting firm, "City Attorney Joan Gallo warned that the potential loss of tax revenue to the city 'create[d] a possible disincentive to strict enforcement of the Cardroom Ordinance.'"²¹² Since the club opened in 1994, "regulatory follow-up has been minimal."²¹³ Former Garden City club owner Chris Dalis commented that "[the taxes were] like an insurance policy for us . . . [the city] wouldn't want to put us out of business."²¹⁴

In fact, area prosecutors have noted that "San Jose's cardrooms clearly violate[d] state law by charging" a variable fee based on the amount bet.²¹⁵ Also, although players were limited to \$200 antes, they could make as many as fifteen separate wagers simultaneously per hand of cards at Garden City and ten separate simultaneous wagers at Bay 101.²¹⁶ One player per table served as a banker, "winning or paying off all the [other] bets on the table."²¹⁷ Based on the number of betting squares per player, bankers at the Garden City club "could put up \$18,000 to cover their bets;"²¹⁸ bankers could risk up to \$12,000 per hand at the Bay 101.²¹⁹ Bay 101 allegedly stated in its online rules that "[t]here [was] no maximum on banker/player wagers."²²⁰

The Bicycle Club in Bell Gardens was a special case demonstrating the conflicts of interest with the government regulating yet benefiting from gambling activities. Even after the federal government seized the club under

210. Jeffrey Rabin, *U.S. Agrees to Sell its Share of Card Club*, L.A. TIMES, Sept. 2, 1994, at B1.

211. *Partners: Does City's Stake Weaken Efforts to Regulate?*, *supra* note 209, at A1.

212. *Id.* at A13.

213. *Id.*

214. *Id.*

215. Miranda Ewell, *Card Clubs Appear to Skirt Betting Law*, SAN JOSE MERCURY NEWS (San Jose, Cal.), Mar. 6, 1997, at A1, A12-A13.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

its asset forfeiture program, “[s]erious crime [was] rampant at the Bicycle Club.”²²¹ The United States owned a controlling 36.2% share in the casino until it sold its interest.²²² During the period of federal involvement, the club’s head of security, Douglas Sparkes, stated that “[t]he skimming, cheating, stealing, and payoffs ha[d] drained the club of much-needed revenues.”²²³ He testified:

[T]he government ha[d] not and w[ould] not adopt an active role in controlling and eradicating criminal enterprise on the [Bicycle] Club’s premises for fear of loss of revenue. Indeed government inaction in the face of money laundering, skimming and narcotics to name a few, translate[d] into government participation in the criminal activity.²²⁴

. . . .

From the standpoint of law enforcement, the Club [was] seen as a place where crime [was] permitted and condoned. The Club ha[d] a world-wide reputation as the Macau of the West, where it [was] understood the management [would] tolerate almost anything as long as the management, (1) profit[ed] from the activity, and (2) [would] continue to profit from the activity.²²⁵

The federal government “received millions of dollars in profits from the Bicycle Club;”²²⁶ some of this money “was spent on political campaigns against competing casino operators.”²²⁷

During the government’s involvement in the Bicycle Club, the Justice Department . . . found itself investigating alleged criminal activity in a business it partially owned The government had to pay its share of hundreds of thousands of dollars in fines to the Internal Revenue Service for the casino’s violation of federal laws aimed at preventing money laundering.²²⁸

After four years, the federal government arranged to sell its share for \$37.96

221. James Bornemeier, *U.S.-Owned Casino Overrun by Crime, Security Chief Alleges*, L.A. TIMES, Mar. 20, 1996, at B3.

222. *Id.*

223. *The Asset Forfeiture Program: A Case Study of the Bicycle Club Casino: Hearing Before the Senate Comm. on Gov’t Affairs*, 104th Cong. 28, 78 (1996) (statement and testimony of Douglas Sparkes, Director of Security at the Bell Gardens Card Club) [hereinafter Sparkes Statement to Bicycle Club Hearing]. See also Bornemeier, *supra* note 221, at B3.

224. Sparkes Statement to Bicycle Club Hearing, *supra* note 223, at 80.

225. *Id.* at 26, 77.

226. Bornemeier, *supra* note 221, at B9.

227. *Id.*

228. Rabin, *supra* note 210, at B1.

million in late 1994.²²⁹

B. Manipulations by Gambling Proponents Inhibited Regulatory Effectiveness

1. *Gambling on Indian Lands: Sovereignty Inhibited Functional Regulation*

The Supreme Court decision in *California v. Cabazon Band of Mission Indians*²³⁰ substantially reduced the ability of states to regulate gambling on Indian lands. In essence, because California allowed low-stakes bingo games for charitable purposes,²³¹ the Court concluded that the lack of a total ban on gambling entitled the Cabazon Band to run high-stakes games on their reservation and not be subject to a California statute making such conduct a misdemeanor.²³²

After noting California categorized as a misdemeanor the organization of bingo games of the type proposed by the Cabazon Band, the majority of the Court failed to accept that games operated under those conditions were criminalized and therefore subject to California enforcement.²³³ Instead, because California permitted limited bingo for charity under strict conditions, the Court concluded that no violation of public policy occurred when Indian groups run bingo games that are not subject to the strict limits imposed on all others in that state.²³⁴ The Court also did not address how California's restrictions on bingo had the effect of limiting the social costs created by pathological and problem gamblers.²³⁵ These elements of control were lost when the Court, *via* its decision in *Cabazon*, gave Indian groups a special entitlement to conduct high-stakes gambling operations otherwise prohibited

229. *Id.*

230. 480 U.S. 202 (1987).

231. *Id.* at 211.

232. *Id.*

233. *Id.* at 209 (“[I]f the intent of a state law [was] generally to prohibit certain conduct, it [fell] within Pub. L. 280’s grant of criminal jurisdiction, but if the state law generally permit[ed] the conduct at issue, subject to regulation, it [was] classified as civil/regulatory and Pub. L. 280 [did] not authorize its enforcement on an Indian reservation”). Pub. L. 280, 67 Stat. 588 (1953) (codified as amended 18 U.S.C. § 1162 (1982 Supp. III)), gave force to state criminal laws and granted states jurisdiction to enforce those criminal laws on Indian lands. *See* § 1162(a).

234. *Cabazon*, 480 U.S. at 210–11 (“California [did] not prohibit all forms of gambling In light of the fact that California permit[ed] a substantial amount of gambling activity, including bingo, and actually promote[d] gambling through its state lottery, [the Court concluded] that California regulate[d] rather than prohibit[ed] gambling in general and bingo in particular.”).

235. *See generally id.*

in the state of California (and elsewhere).

The problem with the *Cabazon* decision is that California *did* have a sufficient state interest in deciding precisely under which conditions gambling could occur, due to the large burden of social costs that uncontrolled gambling on Indian lands produced.²³⁶ Justice Stevens, in his dissenting opinion, elaborated:

I am entirely unpersuaded by the Court's view that the State of California ha[d] no legitimate interest in requiring appellees' gambling business to comply with the same standards that the operators of other bingo games [had to] observe. The State's interest [was] both economic and protective. . . .

Moreover, I am unwilling to dismiss . . . the State's concern that these unregulated high-stakes bingo games may attract organized criminal infiltration. Comprehensive regulation of the commercial gambling ventures that a State elects to license [was] obviously justified as a prophylactic measure even if there [was] no criminal activity associated with casino gambling in the State.²³⁷

The breach in public policy resulting from the *Cabazon* decision was mitigated somewhat by the Indian Gaming Regulatory Act of 1988 ("IGRA").²³⁸ In particular, the IGRA superseded the result reached in *Cabazon*.²³⁹ Yet states had no jurisdiction over enforcement for any "Class III" games.²⁴⁰ As defined under the IGRA, "Class III" games included banking card and slot machine games, whether electronic or otherwise.²⁴¹ However, the U.S. Attorney General did have authority to seek injunctive

236. See also *United States v. Hurst*, 951 F.2d 1490, 1498 (6th Cir. 1991) (following *United States v. Dakota*, 796 F.2d 186 (6th Cir. 1986) rather than the public policy test of *Cabazon*).

237. *Cabazon*, 480 U.S. at 226–27. (Stevens, J., dissenting). "The State's policy concerning gambling [was] to authorize certain specific gambling activities that compl[ie]d with carefully defined regulation and that provide[d] revenues either for the State itself or for certain charitable purposes, and [prohibited] all unregulated commercial lotteries that [were] operated for private profit." *Id.* at 224. Until prohibited by Congress, "a State [could] enforce its laws prohibiting high-stakes gambling on Indian reservations within its borders. . . . While gambling provide[d] needed employment and income for Indian tribes, these benefits [did] not . . . justify tribal operation of [otherwise] unlawful commercial activities." *Id.* at 222.

238. Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701–2721.

239. See *United States v. E.C. Invs.*, 77 F.3d 327, 330 (9th Cir. 1996) (applying 18 U.S.C. § 1166 (Supp. 1995) [of the IGRA] such that Pub. L. 280, on which the public policy test set forth in *Cabazon* relied, no longer applied).

240. See *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535 (9th Cir. 1994), *cert. denied* 516 U.S. 912 (1995).

241. See 25 U.S.C. § 2703 (2000).

relief against illegal gambling activities occurring on Indian lands.²⁴²

Despite these developments, the IGRA did not cure all regulatory failures related to gambling on Indian lands. Since *Cabazon*, the regulation of Indian gambling has deteriorated markedly. By 1996, the National Indian Gaming Commission ("NIGC") reported that "84 percent of Indian gambling activities were in 'non-compliance' [,] [meaning they] were violating federal regulations The NIGC was so embarrassed by the results the report's readers were left to do the calculations themselves."²⁴³

During the 1990's, other Indian groups also dodged gambling regulations in various ways. For example, Santee Sioux members operated a small casino in Nebraska without proper authorization, and refused to obey a federal court order to close it down.²⁴⁴ Tribal Chairman Arthur Denny "vowed to go to prison rather than obey [the] court order to close the casino."²⁴⁵ One tribal leader resigned from the Santee Tribal Council; the remaining eleven members risked being sentenced to prison.²⁴⁶ In Arizona, "the Salt River Pima-Maricopa Indian Community acknowledged it [was] employing felons for [a poker] hall, Casino Arizona at Salt River, as a way to help the tribe's members."²⁴⁷ Upon inquiry, "[t]ribal officials [stated] they d[id]n't know how many of the hall's 350 employees ha[d] criminal records, having been too busy getting the hall ready to bother keeping count."²⁴⁸ Arizona appeared to have had difficulties establishing the applicability of state laws to the site: "The state want[ed] to regulate reservation poker the same way it ha[d] authority under federal law to regulate reservation casinos."²⁴⁹ Nonetheless, under the IGRA, both a poker hall and a casino constituted establishments for "Class III" gambling,²⁵⁰ and were thus subject to federal enforcement of "all state

242. See *id.*; *United States v. Santee Sioux Tribe*, 135 F.3d 558, 562 (1998), *cert. denied* 525 U.S. 813 (1998) (also noting, at 565, that for purposes of enforcement, "IGRA's incorporation of 'all State laws' include[d] both state statutory and case law"); *United States v. Seminole Tribe of Fla.*, 45 F. Supp. 2d 1330, 1331 (M.D. Fla. 1999).

243. *Follow the Money*, *supra* note 18, at 92 (1998).

244. Robert Dorr, *Casino May Lead to Jail Terms*, WORLD-HERALD (Omaha, Neb.), Aug. 3, 1999, at 9, 12 [hereinafter *Casino May Lead to Jail Terms*]. See generally *Santee Sioux Tribe*, 135 F.3d at 558.

245. *Casino May Lead to Jail Terms*, *supra* note 244, at 9.

246. *Id.* at 12.

247. *Indian Poker Casino in Arizona Acknowledges Hiring Felons*, LAS VEGAS REV. J., June 19, 1998, at D2.

248. *Id.* Gary Husk, the State Gaming Director, commented that "putting felons on a payroll invite[d] corruption and threaten[ed] public safety." *Id.*

249. *Id.*

250. 25 U.S.C. § 2703 (2000).

laws.”²⁵¹ In general, situations such as these underscored the need for consistent regulation of gambling, including on tribal lands. Ad hoc regulation based on the site of the operation, the types of gambling activities conducted, or any other variables would have invited even more rampant non-compliance.

When the state law did not permit actions desirable to Indian gambling interests, they simply obtained a change in the unfavorable statute through extensive political lobbying and exorbitant financial contributions. For example, “California’s gambling tribes ha[d] spent about \$100 million on state campaigns [between 1998 and 2000], far more than was spent by any other interest in California”²⁵² ‘The Indians ha[d] bought Sacramento,’ said Assemblyman Bruce Thompson. . . . ‘They paid good American dollars for these votes. They [could] have whatever they want.’”²⁵³ In this incident, which reflected a pattern of the industry in general,²⁵⁴ “[a]n Indian tribe made wealthy by its casino won swift legislative approval . . . to operate a gambling cruise ship” between San Diego and Baja, California.²⁵⁵ This legislation was “approved with almost no public discussion. . . . [It] sailed through the full Senate. . . . The quick action underscore[d] the gambling tribes’ considerable political power.”²⁵⁶ This pattern was repeated at the federal level when “Democratic Rep. George Miller sponsored a three-sentence amendment that was buried in the 150–page-plus Omnibus Indian Advancement Act [which put] a 10–acre parcel [in the San Francisco urban area] into reservation status for the Lytton Rancheria band of 220 Indians.”²⁵⁷ The Indians planned to set up a casino with 2000 slot machines, capable of “generat[ing] a quarter-billion dollars in revenue annually.”²⁵⁸

In another troubling trend, beginning in the year 2000, more than a dozen Indian groups filed lawsuits over ancient land claims in thinly-veiled attempts

251. *United States v. Santee Sioux Tribe*, 135 F.3d 558 (1998); *United States v. Seminole Tribe of Fla.*, 45 F. Supp. 2d 1330 (M.D. Fla. 1999).

252. *Legislature Quickly OKs Casinos*, *supra* note 48, at A3.

253. *Id.*

254. See generally discussion under “Compromising the Opposition,” *supra* Part V.A3.

255. *Legislature Quickly OKs Casinos*, *supra* note 48, at A3. State law prohibited gambling in California waters and cruises that sailed to international waters to permit gambling, but then returned to port. *Id.* In this case, however, “state officials [had] no authority over the casino once it le[ft] California waters.” *Id.*

256. *Id.*

257. *Indian Tribe Gets Clause to Facilitate Casino Plan*, NEWS-GAZETTE (Champaign, Ill.), Feb. 5, 2001, at A3.

258. *Id.*

to get permission to run land-based casinos.²⁵⁹ This trend included the Illinois lawsuits claiming 15 counties which were filed by the Miami Tribe of Oklahoma, in which the tribe offered to settle for a gambling compact about the time they filed the suits.²⁶⁰ In Kansas, the Wyandotte Tribe blatantly wanted "two acres next to City Hall in downtown Kansas City deemed a reservation so they [could] open a casino."²⁶¹ These land-grabbing schemes were audacious. First, the land claims were frivolous, and it was immediately clear from the pattern of lawsuits that Indian groups could not be appeased. Second, if an Indian group succeeded in its land-grabbing efforts, the state lacked jurisdiction under the IGRA to regulate the eventual Indian casino. Therefore, because Indian gambling interests have targeted states and individual landowners using the pretext of the ancient land claims, new protective laws are needed to prevent these costly, frivolous, and vexatious lawsuits.²⁶²

2. *Underreported Income*

During its expansion in the 1980's and 1990's, the gambling industry fondly listed tax revenues as a benefit to its target communities. Not only was the net benefit of these revenues largely or completely wiped out by the enormous social costs inherent in gambling, the net benefit was further reduced by under-reporting revenue. For example, former South Carolina Revenue Commissioner A. Crawford Clarkson Jr. stated that "some operators [reported] less than a third of their revenue."²⁶³ In early 1995, he estimated that \$4.4 billion per year flowed through video gambling machines.²⁶⁴ The industry collectively reported only \$1.4 billion.²⁶⁵ In 1997, Commissioner Burnet Maybank III stated that South Carolina had "the most unregulated gambling in America The video poker crowd [was] lying like a rug about the profitability of the business."²⁶⁶ However, enforcement was difficult because "[gambling] operators often intimidate[d] revenue agents tracking the illicit cash flow. One auditor found himself facing a shotgun."²⁶⁷ Such

259. John Kelly, *Tribal Land Claims Often a Battle for Casinos*, ST. J. REG. (Springfield, Ill.), Jan. 29, 2001, at 1-2.

260. *Id.*

261. *Id.* at 1.

262. *See id.* at 2.

263. *Billion-Dollar Video Poker Industry Dodges Weak State Laws*, *supra* note 192, at 2.

264. *Id.*

265. *Id.*

266. *Id.* at 1.

267. *Id.* at 2.

situations illustrate how uncontrolled the gambling industry was.

VI. POLICY ALTERNATIVES AND RECOMMENDATIONS

The best policy approach from a social welfare perspective is to simply re-criminalize or substantially limit all types of legalized gambling activity at the state and national levels. Alternatively, states could set the tax rate on gambling operations to between 65% and 90% of all revenue entering the gambling operation or device to curb the impact from the social costs of gambling. Such a tax structure is still generous to the industry when compared to the arrangement it accepted in Canada, where the government pays a fee to casino management and takes all of the gambling revenues. With faster forms of gambling, such as in casinos and with video gambling devices, higher tax rates within the 65 to 90% range are especially necessary to cover the enormous social costs imposed by the new addicted gamblers and the accompanying bankruptcy, crime, and corruption problems. Should the industry decide not to operate under those tax rates, states would enjoy a decrease in the net social costs associated with legalized gambling in their jurisdiction.

Increased oversight is essential to competently enforce existing gambling regulations. Loss limits of no more than \$500 per gambling session are needed in jurisdictions lacking them. Such regulations should require gamblers to be present and competent to participate in gambling activities of any kind. This encompasses an absolute ban on internet gambling, and helps address the impossibility of enforcing regulations through cyberspace. Compliance checks must become a routine occurrence at all gambling sites, with fines up to 10% or more of the average yearly revenue for that type of site—in the millions of dollars at minimum for serious violations.

Like federal judgeships, gambling regulators need to undergo rigorous background checks for ethical conflicts of interest, as well as have safeguards which remove political influence from the regulatory process. For example, within days of his inauguration in 1999, newly-elected Iowa Governor Tom Vilsack targeted three of the five members of the Iowa Racing and Gaming Commission (“IRGC”) for removal because they had “repeatedly angered the gambling industry . . . [with] tough regulatory stances.”²⁶⁸ Chairman Brad Peyton of the Iowa Commission reported the developments as follows:

268. Jonathon Roos & William Petroski, *Vilsack Targets Gaming Panel*, DES MOINES REG., Feb. 10, 1999, at A1 [hereinafter *Vilsack Targets Gaming Panel*].

[Peyton said] he has never questioned whether Vilsack can legally remove him or any other commissioner. But Peyton, whose term doesn't expire until 2000, said he refuses to quit, and Vilsack will have to fire him to get rid of him. "I know why this is happening. He is getting incredible pressure from the gambling lobbyists to get rid of the three troublemakers," Peyton said.²⁶⁹

After talking with gambling industry lobbyists, Governor Vilsack declined to meet with members of the IRGC or listen to the viewpoint of the Iowa regulators.²⁷⁰ Apparently, any Commissioner who was actually regulating the gambling industry was vulnerable to dismissal for arguably exceeding their authority.²⁷¹

Those "troublemakers," Peyton said, include himself and Commissioners Harold White, an Estherville Democrat, and Jackie Allen of Lamoni, who is politically independent. All three have repeatedly taken stances contrary to the wishes of the gambling industry. Their actions have included efforts to tightly regulate casino expansions and to restrict gamblers' use of credit and casino-customers' access to automated teller machines.²⁷²

Faced with a large campaign debt, Governor Vilsack was criticized for the speed with which he catered to a group with deep financial pockets.²⁷³

Peyton said the gambling industry stands to reap millions of dollars in additional profits by having Vilsack fire state regulators who take stances against casino expansions. Prairie Meadows Racetrack and Casino in Altoona is suing the Racing and Gaming Commission in Polk County District Court in an effort to add 350 slot machines. And Harveys and Ameristar riverboat casinos in Council Bluffs have huge expansion projects planned.²⁷⁴

Within days Governor Vilsack removed the "three troublemakers" regulating the Iowa gambling industry, and by 2002 the gambling industry was dominating Iowa's political landscape.²⁷⁵

To address certain issues of corruption, campaign finance reforms are necessary to limit unduly large political contributions from gambling interests.

269. *Id.*

270. *See id.*

271. *Id.*

272. *Id.*

273. *See id.*

274. *Vilsack Targets Gaming Panel*, *supra* note 268, at A1.

275. *See, e.g.* William Petroski & Bert Dalmer, *Miller Wants Tax Refund for Racetracks Overturned*, DES MOINES REG., Nov. 7, 2002, at B1 (showing 2002 vote totals and problems with pro-gambling interests).

Additionally, to solve the problem of the “revolving door,” a mandatory one-year cooling-off period remains needed for all persons who switch from employment as a gambling regulator to employment in the gambling industry within the same jurisdiction.

VII. CONCLUSION

The problems of regulating gambling interests and the types of violations seemed to be intensifying as the 21st century began. In April, 2001, for example, the St. Louis–based President Casino was fined “\$107,000 for giving illegal campaign contributions to city officials and for not following proper state procedures at the casino.”²⁷⁶ Also in April, a minuscule \$150,000 fine settled charges from the Missouri Gaming Commission that the “Harrah’s North Kansas City Casino and Hotel had received what amounted to cash kickbacks,”²⁷⁷ prompting the press to dub Harrah’s “Missouri’s Teflon gambling company.”²⁷⁸ At the same time, Missouri’s Commission Chair L. G. Ullery “instructed staff members to explore seeking a change in state law . . . that would permit . . . [allowing] ex-felons to work in casinos.”²⁷⁹ In October 2001, the Grand Victoria Casino in Elgin, Illinois, was hit with a “\$7.2 million fine for [allegedly] doing business with mob-connected firms and other troubles.”²⁸⁰ President Glenn Schaeffer of the casino’s managing partner Mandalay Resort Group predicted eventual vindication.²⁸¹ However, from a regulatory perspective, regulators were troubled by the increasing seriousness of the trend in alleged violations, the conflict in interest in regulators suggesting potentially allowing ex-felons as casino employees, and the increasing ineffectiveness of fines (e.g., \$7 million amounting to only a few days profits).

A substantial body of evidence demonstrates that gambling causes addiction, bankruptcy, crime, corruption, and all of the social costs associated with those problems. Furthermore, from a strategic or regional perspective, the magnitude of the social costs far outweigh any potential benefit from tax revenues, or from whatever economic development occurs in the immediate

276. Carolyn Tuft, *President Casino is Fined \$107,000*, ST. LOUIS POST DISPATCH, Apr. 26, 2001, at B1.

277. Rick Alm, *Missouri Gaming Officials Let Harrah’s Off Cheap*, KAN. CITY STAR, May 1, 2001, at D14.

278. *Id.*

279. *Id.*

280. Douglas Holt, *Casino Fined \$7.2 Million Says it Rejected State Deal*, CHI. TRIB., Oct. 19, 2001, §2, at 5.

281. *Id.*

financial resources can corrupt public officials, a serious and effective regulatory regime became practically impossible to maintain by the end of the 20th century. An analysis of the historical cycles during which gambling has been legalized demonstrates that the only effective method to regulate gambling is to criminalize it via state constitutional provisions, state statutes, and federal statutes.