Legalized Gambling Activities: The Issues Involving Market Saturation

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In his classic book entitled *Economics*,1 Nobel-Prize laureate Paul Samuelson summarized the economics involved in gambling activities as follows:

There is . . . a substantial economic case to be made against gambling. First, 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, where the main purpose after all is to "kill" time, gambling subtracts from the national income. The second economic disadvantage of gambling is the fact that it tends to promote *inequality and instability of incomes.*2

Furthermore, Professor Samuelson observed that "[j]ust as Malthus saw the law of diminishing returns as underlying his theory of population, so is the 'law of diminishing marginal utility' used by many economists to condemn professional gambling."3

The concern of the legalized gambling interests over "market saturation" is largely a non-issue. From the governmental perspective, focusing on this issue misdirects the economic debate, because fears of market saturation are predicated upon the unwarranted assumption that legalized gambling operations constitute regional economic development—which they do not. In reality, legalized gambling operations consist primarily of a transfer of wealth from the many to the few—accompanied by the creation of new socio-economic negatives. From the perspective of the

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* This analysis deals only with discussions and proposals involving "legal" gambling activities and their socio-economic impacts.
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1. PAUL A. SAMUELSON, ECONOMICS 245 (10th ed.).
2. *id.* at 425 (footnote omitted).
3. *id.* at 426.
legalized gambling industry, focusing on fears of market saturation largely constitutes an exercise in arguing over restricting potential competition and/or guaranteeing market segments via state statutes, instead of engaging in "pure competition" like most industries.

These issues should first be examined from the strategic governmental perspective. In this context, the inherently parasitic manner in which legalized gambling activities must apparently collect consumer dollars to survive is frequently described as "cannibalism" of the pre-existing economy--including the pre-existing tourist industry. According to the skeptics of legalized gambling activities, this industry-specific phenomenon means that in comparison with most other industries, legalized gambling activities must *a fortiori* not only grow as rapidly as possible, but also grow as expansively as possible. By 1993, the national business press was beginning to emphasize some of these points and predicted, for example, that "[p]retty soon, investors and lenders will realize that the gambling bubble is about to burst." However, while the "economic bubble" could burst in some local areas, as of 1993 there still remained so many markets and states without extensive legalized gambling activities that the socio-economic negatives of legalized gambling activities could theoretically

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5. Id.

6. Id.

7. See CHARLES T. CLOTFELTER & PHILLIP J. COOK, SELLING HOPE 151-54 (Nat'l Bur. Econ. Research, Harvard Univ. Press 1989). For example, "[i]f lotteries are your only business, then you expand your business by legalizing lotteries, ... or by increasing participation in lotteries." Id. at 154, citing a representative of Scientific Games, *as quoted in* L.A. Times, October 8, 1984. Obviously, any business would tend to reinvest in itself; however, in the instance of concentrated legalized gambling activities, this tendency can intensify the large socio-economic negatives which do not accompany other industries.

8. See Rita Koselka & Christopher Palmeri, Snake Eyes, FORBES, Mar. 1, 1993, at 70, 72. See also Rose, supra note 4, at 70, 82-83.
remain hidden for years until the "bubble burst"—after perhaps 40 years. In California and Nevada: Subsidy, Monopoly, and Competitive Effects of Legalized Gambling, the California Governor’s Office of Planning and Research highlighted in December of 1992 "the enormous subsidy that Californians provide to Nevada through their gambling patronage" and concluded that "Nevada derives an enormous competitive advantage from its monopoly on legal gambling." The report summarized that "[g]ambling by Californians pumps nearly $3.8 billion per year into Nevada, and probably adds about $8.8 billion—and 196,000 jobs—to the Nevada economy, counting the secondary employment it generates" and that this was "a direct transfer of income and wealth from California to Nevada every year."

Thus, the Nevada economy appears to constitute a classic example of a legalized gambling economy "parasitically" draining or "cannibalizing" another economy (primarily Southern California).

Arguably, these processes are intensified by the unique aspects involved in marketing the gambling philosophy, which include "selling hope"—instead of goods and services. Therefore, when legalized gambling organizations are compared with traditional businesses and the industries they represent, the gambling organizations are generally more sensitive to fears of "market saturation." While traditional businesses may aggressively compete for consumer dollars, by comparison, the competition between legalized gambling organizations for consumer dollars can be fierce, because unlike traditional businesses, gambling organizations drain

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9. See Rose, supra note 4, at 65, 70, 82-83.
11. Id.
12. Id.
13. Id.
14. Id.
15. See supra notes 4-6 and accompanying text for further information on the damages legalized gambling can do.
16. See generally CLOTTFELTER & COOK, supra note 7.
17. It appears that the "recreational gamblers" constituting approximately 80% of the market (but spending only 35% of the gambling dollars) are receiving a "service" even if they are receiving no product. See John Warren Kindt, The Economic Impacts of Legalized Gambling Activities, 43 DRAKE L. REV. 51, 60-61 (1994). It should be noted, however, that only approximately 35% of each gambling dollar falls into this category, because the other 20% of gamblers (spending 65% of the gambling dollars) are definitely gambling beyond the limits of "recreation"—with the concomitant economic impacts predicted by Samuelson. Id. at 60-70. See also supra notes 1-3 and accompanying text for further information.
18. See Rose, supra note 4, at 69. "Competition for the gambling dollar is fierce."
local and state economies of consumer dollars by pulling them like an economic "black hole" into gambling parlors and the "cluster services" (i.e., "closely-associated" hotels and restaurants) supporting the gambling parlors. For example, when the legalization of riverboat gambling was debated in Illinois, certain gambling maxims were highlighted to the Illinois Senate Committee conducting hearings.

Our [Nevada] casinos can win because they have long term traditions and years of experience at the game. They can and do entrap the gamers in a total gaming ambiance which includes a full range of complimentary services, not the least of which in effect producing behaviors is a free and unlimited flow of alcoholic beverages. Extensive credit is also provided for players. And the casinos have high stakes games. High stakes can be won by the player. High stakes can be lost by the player. The best gamblers know when to quit. The casinos are designed to persuade the good gamblers not to quit, certainly not to quit when they are ahead, or when behind if they have more resources to gamble. Money management is the obligation of the player, and the casino tries very hard to have the player avoid this obligation. This is why the casinos win from the players. This is why we are building three new casino hotels with 4000 rooms each [in Las Vegas].

These phenomena lend tangential support to arguments that when legalized gambling enters an economy, the consumer dollars spent on gambling activities result in a net drain and are usually not generating net new orders for durable and nondurable goods in the pre-existing traditional economy.

The basic principle at work in most legalized gambling scenarios is that "when local people substitute spending on gambling for their other expenditures, this induced impact has a negative multiplier effect of decreasing spending on other forms of recreation and businesses in the


21. GOODMAN, supra note 4, at 50.
area."22 The gambling interests argue that the dollars they take in are "entertainment dollars" or "recreational dollars." This observation is valid with regard to approximately 35% of the "gambling dollar," but it is invalid with regard to the remaining 65%.

Opponents of legalized gambling argue that there are also differences because the entertainment dollars spent on a movie, for example, largely generate more movies, and recreation dollars spent on a speedboat, for example, largely generate orders for more speedboats. Accordingly, while most entertainment or recreational dollars contribute to a positive multiplier effect, legalized gambling dollars result in a negative multiplier effect.23 This negative impact apparently occurs, in part, because approximately two-thirds of the gambling dollars are not recreationally-oriented, but are spent by a compulsive market segment24 reacting to an addictive activity--probable or possible pathological gambling--as delimited by the American Psychiatric Association.25 Opponents also note that gambling dollars spent in a legalized gambling facility are usually reinvested in more gambling facilities--which just intensifies the socio-economic negatives associated with gambling activities and "reduces the national income" even further.26

Notably, gambling "winnings" to one gambler do not come from the gambling parlor but from the pockets of other gamblers. Since dollar winnings (and not entertainment enjoyments) constitute the rationale for many gamblers to gamble, the gamblers in this category are not provided entertainment per se when they gamble. Furthermore, skeptics question whether a person who earns $30,000 per year really experiences $3,000 worth of "entertainment" when that $3,000 is lost in one night.

A summary of these concepts reveals that when compared to legalized gambling parlors, pre-existing entertainment activities in the United States generally create and contribute to a positive economic cycle, and they do not leave behind the enormous social problems inherent in gambling economies. As previously mentioned, an exception appears to occur when a small gambling economy is subsidized by a large non-gambling economy (for example, Nevada vis-a-vis California).28 However, when viewed from the

22. Id.
23. See Kindt, supra note 17 and accompanying text.
24. GOODMAN, supra note 4, at 50.
25. See, e.g., Kindt, supra note 17, at 60-61.
27. See SAMUELSON, supra note 1, at 425; see also CLOTFELTER & COOK, supra note 7.
28. See, e.g., SUBSIDY, supra note 10.
proper perspective, whether regional or strategic in scope, legalized gambling activities always drain the relevant economic base. For example, it was emphasized to the Illinois Senate Committee on riverboat gambling that "[t]he money spent on riverboats will be drained off other portions of the Illinois economy."29 Similarly, "Iowa [erroneously] thought it would have a monopoly with its riverboat gambling, a parasitic casino industry growing fat off the Chicago market."30

In an economic scenario, dollars spent in gambling parlors are often removed from circulation, and this process contributes to a negative economic impact.31 Most revenues to the legalized gambling organizations must necessarily be directed primarily into attracting new consumer markets or toward increased marketing efforts to keep "selling hope"32 to pre-existing gamblers.33 Gambling organizations argue that spending dollars on, for example, slot-machines is spending money on durable goods, but once again, skeptics counter that the industry is predicated upon policies which keep their dollars "in-house"34 and that even the manufacturing orders for gambling-oriented machines only constitute orders to the "cluster services." Furthermore, it is argued that gambling-oriented machines perform no useful task, and therefore national, as well as local, productive capacity is better directed toward manufacturing appliances or other machines.

Once again, the net result according to Professor Jack Van Der Slik, who echoed the sentiments of much of the academic community, was that

30. Rose, supra note 4, at 69. Theoretically, the negative economic spiral can only be overcome by large numbers of tourists from outside of the localized economy. In Nevada, for example, over 90% of the tourists are from out of state. Hearings, supra note 20, at 5.

This "tourist factor" generally requires that 50-94% of the gambling patrons must come from outside of the localized economy. Moreover, these tourists cannot be pre-existing tourists visiting non-gambling tourist attractions. For example, in Niagara Falls, New York, the introduction of legalized gambling, such as casino gambling would basically thrive off of the 10% of the pre-existing tourist dollars who would definitely gamble and another 42% who would "tend to gamble" in the casinos. In other words, 10-52% of the pre-existing tourist dollars would leave the pre-existing tourist trade and migrate to the casinos. See, e.g., Kindt, supra note 17, at 60-70.
31. See supra notes 19-26 and accompanying text.
32. See generally CLOTTFELTER & COOK, supra note 7; Hearings, supra note 20, at 3.
34. See Hearings, supra note 20, at 3 and accompanying text.
state-sanctioned "gambling produces no product, no new wealth, and so it makes no genuine contribution to economic development." 35 Similarly, in 1989 Professor William Thompson cautioned that Illinois riverboat gambling would "not be a catalyst for general economic development." 36 Of course, if the focus is only on a localized gambling area, such as Las Vegas, instead of the proper perspective on the overall region Las Vegas is draining, there can be the illusion of an overall positive economic impact. 37

Most insidious to traditional businesses and to the rest of the economy, practically all of the dollars flowing into gambling organizations are "reinvested" in more and newer and "harder" forms (i.e., "more thrilling" forms) 38 of gambling, as well as their associated cluster services. This process tends continually to intensify the large socio-economic negatives (as well as the local positives) associated with legalized gambling activities. In other words, the truism "gambling begets gambling" 39 appears accurate, and the gambling dollars are almost exclusively kept "in-house" 40 despite the protestations of the gambling supporters to the contrary. 41

37. See generally SUBSIDY, supra note 10.
39. Rose, supra note 4, at 69.
40. See Hearings, supra note 20, at 3.
41. These economic factors which are unique to legalized gambling organizations, arguably make it inappropriate to utilize the economic multipliers provided by the Bureau of Economic Analysis of the U.S. Department of Commerce. Legalized gambling activities need their own sets of multipliers because legalized gambling activities have special aspects associated with them. In many instances, the nationwide growth of legalized gambling activities during the 1990s has basically started from zero, and therefore, the historical data bases essential for establishing and recalculating the proper economic multipliers are largely unavailable. In the interim, the legalized gambling organizations have had to be viewed as traditional businesses without inculcating the industry-specific negatives unique to legalized gambling, and accordingly, economic multipliers have often been utilized without considering the negatives. See, e.g., ILL. ECON. & FISCAL COMM’N, WAGERING IN ILLINOIS 6 (1992) [hereinafter ILL. ECON. COMM’N]. In this report, for example, more calculations, illustrations, and explanations of the multipliers and input-out models which were utilized should have been presented. Id. at 36, 52-58 (omitting the multiplier calculations, but giving the results). These omissions may have been an oversight, but the tenor of the report reflects a type of uneasiness with the positives that the multipliers tend to highlight. For example, the report opines that "[t]o apply the State multipliers to the Lottery, in our opinion, would tend to overstate its impact on other sectors of the Illinois economy." Id. at 71. This
The drain on economics is real, but obviously, the bigger the economy of the anticipated gambling market, the longer this draining can occur without being noticed by the public. In fact, it could transpire over a course of years if the market was big enough and unsaturated by competition from other gambling interests. These principles highlight some of the reasons that the legalized gambling interests were anxious to locate a $2-billion casino complex in the heart of Chicago, which has a huge economy and a large population base which can be tapped. It also reinforces claims by gambling opponents that these same casino interests were largely

uneasiness adds to the credibility of the report and its authors. This report evidences that it is probably beginning to recognize some of the problems inherent in applying economic multipliers to legalized gambling. For updated analyses relating to this 1992 report, see ILL. ECON. & FISCAL COMM’N, WAGERING IN ILLINOIS: A REPORT UPDATING THE ECONOMIC IMPACT OF GAMBLING ACTIVITIES (1994) [hereinafter ILL. ECON. COMM’N UPDATE 1994].

Accordingly, the standard economic multipliers need to be specialized and recalculated to incorporate the negative as well as the positive economic impacts unique to legalized gambling activities. As of 1993, the relevant data was still in the process of being generated, but in the interim, all economic multipliers applied to legalized gambling activities should be accompanied by a caveat. Id. at 6.

The field research and the computer models in progress by Economics Professor Earl Grinols of the University of Illinois have led the field in these issue areas.

For a localized example recommending that the specialized New Jersey multipliers be updated and indicating the difficulties of accomplishing this task, see N.J. GOVERNOR’S ADV. COMM’N ON GAMBLING, REPORT AND RECOMMENDATIONS (1988) [hereinafter N.J. ADV. COMM’N].

42. See Fran Spielman, Casino Ultimatum, CHI. SUN-TIMES, July 10, 1992, at 1, 34. Among other promises, "casino developers ... offered to offset losses incurred by the horse racing industry by subsidizing a $25 million tax break or by making racetrack owners a ‘fourth partner’ in their proposed $2 billion casino/entertainment complex in downtown Chicago." Id. at 1, 34. It was reported that offers from the casino sponsors not to compete or to waive the sports betting aspects of the casino complex were also apparently conveyed to the legalized racing interests by Caesars World President J. Terrence Lanni. Lanni portrayed the offer as a life preserver to a dying industry.

"If we lose this proposal and you never see me again, the racing industry will be dead in Illinois before the turn of the century," he said. "The racing industry needs something. Our proposal and the money they would make from it would allow that industry to flourish and grow."

Tom Carey, president and general manager of Hawthorne Racecourse, called Lanni’s prediction "ridiculous."

Id. at 34.

43. The relevant populations to be considered would include, for example: Chicago at 2.8 million, Cook County at 5.1 million, DuPage County at .78 million, and nearby populations in other states. BUR. CENSUS, U.S. DEP’T COM., 1990 CENSUS, as reported in THE WORLD ALMANAC 406, 432-33 (1993). Of course, the Chicago population is subsumed in the Cook County numbers.
posturing\textsuperscript{44} when they indicated that they would build a similar project in Milwaukee, Wisconsin,\textsuperscript{45} or Gary, Indiana\textsuperscript{46} if Illinois did not approve a Chicago casino complex. In other words, the population demographics and the size of the local economies were much less favorable than those of Chicago.\textsuperscript{47} According to skeptics, the Chicago casino interests were hesitant about locating scaled-down casinos in Milwaukee or Gary, because the project’s supporters recognized that with enough public relations hyperbole, they would probably eventually gain approval for their Chicago casino complex and they did not want to compete with themselves—at least, initially. Of course, if the Chicago situs was ever ruled out as an option for the foreseeable future, then scaled-down casinos (or even riverboats) in Milwaukee or Northern Indiana would become the only alternatives for the legalized gambling interests.

According to critics, the gambling interests recognize that the proliferation of the gambling philosophy nationwide,\textsuperscript{48} which those interests have spent large public relations dollars to promote,\textsuperscript{49} constitutes a type of salvation for the industry.\textsuperscript{50} Localized gambling organizations have difficulties once they have saturated the local market,\textsuperscript{51} because by definition they almost invariably generate a negative economic spiral.\textsuperscript{52} The negative economic impacts have repeatedly been described as a "black hole" of economics\textsuperscript{53} because legalized gambling organizations can take large dollar amounts out of local and/or regional economies,\textsuperscript{54} such as $1

\textsuperscript{44} See Spielman, supra note 42, at 1, 37.

\textsuperscript{45} The population of Milwaukee, Wisconsin is 628,000. The World Almanac 428 (1993).

\textsuperscript{46} The population of Gary, Indiana is 117,000. Id. at 408.

\textsuperscript{47} Due to its central-location, a casino complex in Chicago could tap all of the relevant population bases, whereas a casino in Milwaukee, Wisconsin or Gary, Indiana would be on the outskirts of the prime population areas. See supra notes 43-46 and accompanying text.

\textsuperscript{48} See generally Rose, supra note 4.

\textsuperscript{49} For example, $16.5 million was spent to promote casino-style gambling in Florida in 1994. Louis Lavelle, Voters deal loss to casinos: Gambling backers lose despite $16.5 million campaign, TAMPA TRIBUNE (Tampa, Fla.), Nov. 9, 1994, at 1, 5; Casinos gamble, and lose, again, FLORIDA SUN, Nov. 9, 1994, § B, at 1, 6 ($16.7 million spent by casino proponents in Florida).

\textsuperscript{50} See generally Rose, supra note 4.

\textsuperscript{51} See, e.g., ILL. ECON. COMM’N UPDATE 1994, supra note 41, at 6, 9-10.

\textsuperscript{52} See SAMUELSON, supra note 1, at 425; see also supra notes 19-26 and accompanying text.

\textsuperscript{53} See, e.g., Alf Siewers, $1 Billion Gambled Away on Riverboats: Ripple Effect of
billion lost on Illinois riverboats in 1994.\textsuperscript{55} For example, when a "casino is located in a closed community [that is, without massive tourism], it acts like a black hole, sucking the money out of the local population."\textsuperscript{56} Furthermore, "[a]round the world and throughout history every society that has allowed casinos to cater to local customers has eventually outlawed gambling."\textsuperscript{57}

Generally, the expansion of gambling is accomplished in two basic ways. Arguably, one method is for the marketing techniques to become increasingly seductive.\textsuperscript{58} However, before employing this methodology, the gambling interests will typically try to go to theoretically "harder and harder" forms of gambling, which can be broadly defined as those forms of gambling which sociologists calculate have more of a "thrill" factor interfacing with mechanisms to "churn" the gambling dollar as quickly as possible in the gambling environment. These forms of gambling run the gambit\textsuperscript{59} to follow "the domino effect"\textsuperscript{60} from the state lotteries to what legalized gambling interests can specifically control; that is, to dog and horse tracks, to off-track betting parlors, to riverboat gambling, to land-based casino gambling, to in-store video-machine gambling, to in-home...
video gambling, to a never-ending process of increased mechanisms to "churn" the gambling dollar faster until it is left within the gambling environment.\textsuperscript{61} Furthermore, it is a fundamental economic principle that: "Actually, in all professional gambling arrangements, the participants lose out on balance. The leakage comes from the fact that the odds are always rigged in favor of the 'house,' so that even an 'honest' house will win in the long run."\textsuperscript{62} Accordingly, if any given gambling interest can control more than one of the major categories of legalized gambling, it is lucrative to do so. If control cannot be maintained over more than one category, the gambling organizations must go "harder and harder" on forms of gambling within each category to increase the "thrill"\textsuperscript{63} by changing or proliferating


\textsuperscript{62} SAMUELSON, supra note 1, at 425 n.6. Despite Professor Samuelson's reference to illegal gambling activities, all references in this analysis are to "legal" gambling activities. Discussions of any allegedly illegal activities and their impacts are beyond the scope of the present analysis.

the games. Some common techniques for increasing the thrill of the gambling itself include raising the betting limits, changing the game slightly, or enhancing the glitz. Techniques for increasing the thrill of the gambling environment include providing shows and promoting open liquor licenses. According to critics of legalized gambling activities, if this process ever stops, the gambling organization stagnates by feeding only

64. This essential process of changing and proliferating the games can be readily demonstrated in state lotteries. ILL. ECON. COMM’N, supra note 41, at 65 (Table); ILL. ECON. COMM’N UPDATE 1994, supra note 41, at 17 (Table).

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<th>50 cents and $1</th>
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<th>Daily</th>
<th>Pick Four</th>
<th>Little Lotto</th>
<th>Total Sales</th>
<th>Lottery Trans.</th>
<th>Profit Margin</th>
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<td>$107</td>
<td>$ 57</td>
<td></td>
<td></td>
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<td>$ 164</td>
<td>$ 344</td>
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<tr>
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<td>$ 50</td>
<td>$ 63</td>
<td></td>
<td></td>
<td></td>
<td>$ 133</td>
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<td>$ 32</td>
<td>$ 58</td>
<td></td>
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<td>$164</td>
<td></td>
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<td>$ 215</td>
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<td>$610</td>
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<tr>
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<td>$588</td>
<td>37.4%</td>
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Regardless of these attempts to keep growing, 11 of the 34 state lotteries existing in 1991 (including Washington, D.C.) showed declines in 1991. Millman, supra note 58, at 2.

65. With regard to the Illinois lottery in 1992, the State commissioned the Bozell Company of Chicago to conduct the first major segmentation study for a state lottery. "The study revealed that even within a category such as instant games, different players gravitate to sports games, casino tickets or the more fanciful instants like a 'treasure hunt' ..." Millman, supra note 58, at 2.

66. Id. For an analysis of how these techniques interface with compulsive gambling, see Henry R. Lesieur, Compulsive Gambling, SOCIETY, May/June 1992, at 43, 43-44.

67. See id.; Hearings, supra note 20, at 3.
off of problem gamblers who will eventually lose everything and be financially exhausted. 68

Typically, a state lottery constitutes the softest form of legalized gambling, because the time-lag between placing a bet and learning the results is often measured in days. 69 However, even in a state where the lottery is the only form of legalized gambling, the "pots" must keep increasing and the "lottery games" must keep changing to attract the 52 percent (or more) of the public which can be enticed into gambling. 70 Even so, a percentage of the public can be initially enticed to gamble regardless of the games available and these "compulsive economic gamblers" constitute 1.5-5% of the public after the "legalization" of gambling, but only .77% of the public if there is no legalized gambling. 71

In 1979, for example, Governor James Thompson of Illinois publicly suggested that the state lottery which had been selling tickets since July of 1974 would have to be eliminated if more people did not gamble. 72 The so-called "salvation" of the Illinois state lottery was the initiation in 1980 of a daily numbers game, 73 which was followed by "Pick Four" in 1982, "Lotto" in 1983, and "Little Lotto" in 1988. 74

This simple illustration demonstrates how even the softer forms of gambling must continually expand to survive because gambling interests are really selling nothing but "hope," and this hope is never realized in the long-term because "the house always wins eventually." 75 Importantly, it should also be noted that the states directly and indirectly hide the true odds of winning from the public. 76 This policy hurts the credibility of elected governmental officials and of government in general. 77 The advertising

68. "[M]any players go broke, a mathematical certainty known as 'gambler's ruin.'" Rose, supra note 53, at 4.

69. The less the time-lag between the bet and the results, the more the money "churns" and the faster it stays with the house. Generally, more of the "thrill" factor or "chase" factor is also present. Therefore, state lotteries will tend toward reducing the time-lag and permitting more "instant games" and video lottery terminals, which minimize the time-lag.

70. ILL. Econ. Comm'n, supra note 41, at 65 (Table); ILL. Econ. Comm'n Update 1994, supra note 41, at 17 (Table); See Clotfelter & Cook, supra note 7, at 92-93; See also Mark Edward Stover, Contiguous State Lotteries: Substitutes or Complements?, 9 J. Pol'y Analysis & Mgmt. 565 (1990).

71. See Clotfelter & Cook, supra note 7, at 124-25; Kindt, supra note 17, at 64-65.

72. Clotfelter & Cook, supra note 7, at 5-6.

73. Id. at 6.

74. ILL. Econ. Comm'n, supra note 41, at 65 (Table); ILL. Econ. Comm'n Update, supra note 41, at 17 (Table).

75. Rose, supra note 53, at 4.

76. See Kelley, supra note 58.

77. Id.
associated with state lotteries also directly attacks the principle that "a public office is a public trust." 78 However, the advertising for all types of legalized gambling interests must necessarily become harder and increasingly misleading. 79 By definition, this process can never stop until the legalized gambling once again becomes illegal, or until the relevant economy is so completely drained that the economy sinks into a recession, or even a localized depression.

The process of a state deceiving its own citizenry was again demonstrated by the State of Illinois in its 1992 campaign to entice the public into playing a revised "game": namely, Little Lotto. This game was touted by the marketing gimmick, "the Wizard of Odds," who breathlessly announced "the odds be with you." 80 Of course, this was untrue. The odds are never with the gambler. 81 This example re-emphasized that state governments must utilize more and more deceit and harder and harder gimmicks to keep the public "playing." 82

From the perspective of public policy, state-sanctioned methods of misleading the public involving the odds of winning lotteries undermine the basic tenets of good government. But for legalized gambling to survive, these techniques must necessarily continue to increase in scope and intensity. 83 As distinguished from this state-sanctioned advertising of the lotteries, any "business person" utilizing such advertising would allegedly be engaged in fraud. 84 Gambling and the gambling philosophy, and the marketing techniques which must be utilized to support these philosophies, are directly opposed to sound business principles and economic development. Accordingly, elected governmental officials need to re-examine their infatuation with gambling and the gambling philosophy.

Since the inception of the Flamingo casino in 1942, 85 major legalized

78. President Grover Cleveland, in JOHN BARTLETT, FAMILIAR QUOTATIONS 771 n.1 (14th ed. 1968). The Cleveland Administration utilized this phrase as its motto. Id. This principle was also referenced by Matthew Henry, Edmund Burke, Thomas Jefferson, Henry Clay, John C. Calhoun, and Charles Sumner. Id. at 386, 454, 472, 538, 545, 659.
79. See supra notes 58-67 and accompanying text.
80. Millman, supra note 58, at 1, 2. See also Kelley, supra note 58; Shenk, supra note 58, at 22-25.
81. See generally Jeryl L. Mumpower, Lottery Games and Risky Technologies: Communications About Low-Probability/High-Consequence Events, 8 RISK ANALYSIS 231 (1988).
82. Id.; Rose, supra note 4, at 67-69.
83. See Rose, supra note 4, at 67-69.
84. See Kelley, supra note 58; Shenk, supra note 58, at 22.
85. Various forms of gambling were first legalized in Nevada in 1931. See CLOTFELTER & COOK, supra note 7, at 41. See generally Mark H. Haller, The Changing
gambling in Nevada has usually helped that state's economy, because until
1977 Nevada was the only place for legalized casino gambling in the United
States. Nevada attracted many "tourists," including compulsive gamblers
(77-5% of the population), problem economic gamblers86 (10%),87 and
others (42%).88 Due to the geographic distances involved, the 1976 advent
of casino gambling in Atlantic City, New Jersey, probably impacted only
slightly on the Nevada economy--except for the impact of losing the
compulsive gamblers then being generated in the areas of Pennsylvania,
New Jersey, and New York.

However, the proliferation of state lotteries during the 1980's generated
real fears among the Nevada gambling interests of "market saturation,"
because persons inclined to gamble and the newly-generated gamblers could
stay in their geographic areas and gamble (known as the "accessibility"
factor). These real fears escalated in 1991, when it became apparent that
casino gambling on the California Indian reservations could intercept and
destroy 10% (and probably impact another 42%) of the "tourists" coming
from Southern California to Las Vegas and from Northern California to
Reno, Nevada.89 To combat this trend toward market saturation, the
Nevada gambling interests immediately looked to expand to Chicago, New
Orleans, Washington, D.C., and other U.S. population centers.90

There was one enormous plus which would assist not only the Nevada
gambling organizations, but also all gambling interests. Once gambling was
legalized in a state, even in the soft format of a state lottery, a whole new

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86. The term "problem economic gamblers" (PEGs) is not synonymous with the
sociological definition for "problem gamblers," and these terms should not be confused.
Kindt, supra note 17, at 60. 77-78.

87. The percentage of the population who will become compulsive gamblers after
gambling is "legalized" is 1.5-5%, and the 10% who will become problem economic
gamblers includes this 1.5-5%. Id.; see also CLOTFELTER & COOK, supra note 7, at 92-94.

88. The total percentage of the public which will gamble once gambling is legalized is
52%. See CLOTFELTER & COOK, supra note 7, at 92-94. These percentages are apparently
moving upward as legalized gambling activities continue to gain sociological acceptance.
See Lesieur, supra note 66, at 43 (stating movement up from 61% in 1974, 71% of the public
was gambling by 1989). These percentages refer to the local populations which will
definitely gamble. The interface between the number of so-called "tourists" which fall into
these categories vis-a-vis the percentages of the resident population which fall into these
categories, become convoluted in the case of Nevada.

89. See, e.g., BETTER GOV'T ASSOC., STAFF WHITE PAPER: CASINO GAMBLING IN
CHICAGO app. R (1992) (copies available from Better Gov't Assoc., Chicago, Ill.).

90. Id. apps. O, P, Q.
gambling public was being generated. 91 By enacting legislation which stated that legalized gambling was sociologically acceptable (known as the "acceptability" factor), the percentages of the public which could be persuaded to gamble could be expected to increase by at least 100-6,600% to include up to 52% of the total population. 92 Despite the new elements of the population being introduced to gambling, the 1964-1984 proposals to enact a California state lottery93 drew large protests from Nevada and its gambling interests94—even though a lottery was a "softer" form of gambling than the segments which were prevalent in the Nevada gambling markets. This scenario was compounded by the proposals of the Indian reservations in California to initiate various forms of hard gambling, including casino gambling. In other words, the potential competition from California was becoming too proximate to the traditional market. 95 Thereafter, this fear of "market saturation" was poignantly emphasized to the Nevada gambling interests,96 because for basically the first time, many Nevada casinos were facing long-term financial trouble and the national press was aware of this—as may have been exemplified by some Las Vegas examples. "Old-line gambling dens like the Riviera, the Aladdin and the Dunes, once the lairs of high rollers brandishing pinkie rings while running up big losses on the tables, all recently have been in and out of bankruptcy . . . ." 97 By comparison, within a year after land-based casino gambling began in three Colorado mining towns in 1991, four of the smaller casinos had closed and several others were for sale.98 By 1993, of the approximately 100 casinos which had opened since 1991, 33 were closed or had been bought by competitors.99 "Some 50% . . . [were] probably losing money."100 Within 2 years after casino gambling began in Deadwood, South Dakota on

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91. CLOTFELTER & COOK, supra note 7, at 124-25; see also ILL. ECON. COMM'N, supra note 41, at 66-67; ILL. ECON. COMM'N UPDATE 1994, supra note 41, at 17-19; Rose, supra note 4, at 66-69.
92. The range calculation is: (1.5-.77) + .77 → (52-.77) + .77 = 95% → 6,650%.
93. CLOTFELTER & COOK, supra note 7, at 151-54.
95. See generally SUBSIDY, supra note 10, at ES-4.
96. Id.; see also James Coates, Vegas' Tip To Chicago: Casino is Family Fun, CHI. TRIB., Apr. 10, 1992, § 1, at 1, 10. Those casinos which were still thriving, and there were several, were placing large dollar amounts into marketing to attract the gambling dollars. See id.
97. Coates, supra note 96, at 10.
99. Koselka & Palmeri, supra note 8, at 70, 71.
100. Id. at 71.
November 1, 1989, half of the casinos were in financial trouble. Furthermore, only 5 of the 12 Atlantic City casinos were profitable in 1990 and by 1991 and 1992, half of the casinos were in financial trouble and seven (out of thirteen) had been through bankruptcy. Market saturation was apparently not only occurring, but also occurring more quickly in those "isolated" community areas with casino gambling. By January 1994, three of Iowa's five riverboats had left. Some state legislators were becoming disgruntled and disenchanted. "We're in a race to the bottom with each state requiring the stakes to be raised and taxes lowered," says Iowa state representative Robert Rafferty. "We're all now competing for a lower class of gambler, the ones who can't afford it." Even so, Las Vegas still had several thriving casinos, especially those casinos which had redirected their marketing efforts toward "children" and "families" by providing family entertainment to lure these previously unexploited market segments into the casino gambling environment.

To both the financially troubled and the solvent casinos, the handwriting was on the wall, but the solution was fairly obvious. Unfortunately for the financially troubled casinos, only the solvent casino interests had the resources to meet the problem of market saturation by expanding into other geographic areas. The solution was for the casinos to take their particular forms of gambling as "quickly" as possible to the "largest population" areas possible, particularly to the unexploited population bases. Serendipitously for the casino interests, by 1993 most states (37 including Washington, D.C.) had already pre-conditioned their populations to the acceptance of "legalized gambling" by fostering and encouraging state lotteries.

Interestingly, over 25% of the state lotteries were reporting declining revenues by early 1993, which would theoretically be expected not only

103. See Rose, supra note 101, at 13.
106. Koselka & Palmeri, supra note 8, at 71.
107. See generally Rose, supra note 4, at 67-69.
108. Koselka & Palmeri, supra note 8, at 71; see also Millman, supra note 58, at 2.
109. Koselka & Palmeri, supra note 8, at 71-72 (referencing USA Capital, a Las Vegas
from saturation of the lottery markets, but also from the partial migration of the gambling dollars to the harder forms of gambling. For example, in January of 1994, the Illinois Economic and Fiscal Commission reported that for the Illinois lottery:

In FY 1993, total lottery sales declined $64 million, the second decline in three years. It cannot be determined at this time if the drop was due to additional competition from riverboats, the lack of rollovers in FY 1993, or simply a signal that lottery sales have matured and may be on the verge of eroding.  

Whether this trend in the Illinois lottery continues, it is indicative of what would theoretically be expected--particularly the migration of the gambling dollar from the "softer" lottery to casino-style gambling. Interestingly, the State of Illinois receives approximately 40 cents in tax revenue for every dollar spent in the lottery, but only 15 cents in tax revenue if that same dollar is spent on riverboat gambling. Therefore, by legalizing riverboat gambling, the State of Illinois may have hurt its pre-existing tax revenues from gambling by $40 million (or more), while at the same time creating more costs to the taxpayers by creating more compulsive gamblers. In this context, an Illinois candidate for Attorney General, Martin Oberman, proposed that "the state take over riverboat gambling and its estimated gross of $600 million [actually $1 billion] a year and pay a 10% management fee to boat owners."  

In any event, by first locating their casinos in large population centers, the casino organizations would be virtually assured of being successful. The casinos knew that in any population base (given some variables), the starting point for calculating projected gambling dollars was at least 10% of

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12. The calculation is $64 million - (15/40 * $64 million) = $40 million.
13. See, e.g., BETTER Gov’t ASSOC., STAFF WHITE PAPER: CASINO GAMBLING IN CHICAGO 2, 5, 14 (1992) (copies available from Better Gov’t Assoc., Chicago, Ill.).
the public within a certain geographic range as guaranteed problem economic gamblers spending 65% of the total gambling dollars.116 The two major conditioning factors that the casinos preferred were: (1) being in large population bases and (2) being first into the given market area with their particular form of gambling. Although pro forma advertising could be conducted to attract tourists, there would be little incentive initially to advertise beyond the local geographic market, because if the two major conditioning factors were substantially satisfied, the gambling facilities would probably not need a single tourist to break even, because there would be no prohibitions on gambling by local adult citizens--thereby, draining the local population base.117 For example, although the 1992 proposal for a $2-billion casino complex in Chicago was hyped and sold to the public as bringing 21-26 million118 "visits" or tourists119 to the Chicago area, most of those tourists were coming already120 and spending their dollars in traditional pre-existing businesses. In actuality, it appeared that Chicago had 9.3 million tourists in 1990121 and 3.2 million business visitors in 1990.122 The business visitors for the entire Chicago metro-area were projected at approximately 3.9 million for 1991.123 Overall, only 2.9 million "new" tourists could be expected.124 This minor projected influx of new tourists raised the problem of the "50-percent rule," which provides generally that for a local economy to break even, over 50% of the patrons

116. See Clotfelter & Cook, supra note 7, at 92-94; see also supra notes 87-88 and accompanying text.
117. See supra notes 51-57 and accompanying text.
118. Skidmore, Owings & Merrill, CHICAGO INTERNATIONAL ENTERTAINMENT CENTER 4-5 (June 1992) (predicting 21 to 26 million visits as total annual attendance but not defining "visits" per se as tourists, the local public, or both).
119. Since 70% of the "visits" were presumably "Out of Town," the tourist estimate is probably 15-18 million tourists. The terms and calculations are nebulous. Id.
120. See Deloitte & Touche, CHICAGO GAMING COMMISSION, ECONOMIC AND OTHER IMPACTS OF A PROPOSED GAMING, ENTERTAINMENT AND HOTEL FACILITY (May 19, 1992).
121. Id. at 45.
122. Id. at 50.
123. Id. at 51. The total number of tourists and business visitors for 1991 was estimated at 16.8 million. Id. at 6. The subtotals, however, totaled only approximately 13 million and this 4 million discrepancy is difficult to pinpoint. See supra notes 118-20 and accompanying text.
124. See Deloitte & Touche, supra note 120, at 45-51. Even though this report was criticized as being sponsored by supporters of the casino complex (i.e., Mayor Richard Daley), these tourist numbers appear to be accurate. Economically, casinos are a good bet, CHI. TRIB., May 24, 1992, § 4, at 2 (reporting 2.9 million new visitors to Chicago) [hereinafter Economically].
cannot be either from the local population or from pre-existing tourists.125 Faced with the 50-percent rule, the supporters of the casino complex suddenly revised their estimates up to "10.2 million new tourists"126—a highly questionable number. It should be noted that Nevada's economy receives over 90% tourists from outside the state, thereby benefiting the local economy.127 By comparison, a 1992 report indicated that only two (out of seven) casinos in Minnesota received more than 50% tourists, and tourist patrons of horse racing and the lottery were only 2-3% and 4%, respectively.128

Although public information on tourist patrons for the Illinois riverboats was somewhat sketchy, the Peoria riverboat's own exit polls conducted between November 20 and December 1, 1991 reported only 44% of the patrons were from outside the Peoria area.129 What proportion of these patrons were "new tourists from outside the state" was unclear. However, in 1993 the same riverboat released indirect information indicating that only approximately 8% of its patrons were from out-of-state130 (with no indication of the proportion of "new" tourists).131 The apparently low number of "new out-of-state tourists" meant that theoretically the Illinois regional economy was not benefiting from this particular facility.

In similar economic scenarios involving concentrated legalized gambling activities, enormous quantities of the current tourist dollars and consumer dollars could be pulled away from the pre-existing economy and into the casinos, where those dollars would become part of the new

125. See, e.g., John W. Kindt, Statement to the Task Force on Gaming in Illinois 2-3 (Apr. 7, 1993). According to Professor William Thompson at the University of Nevada at Las Vegas, "When more than 50 percent of gambling is by locals ... gambling is a sure loser." Peter Passell, The False Promise of Development by Casino, N.Y. TIMES, June 12, 1994, at F5.
127. See, e.g., Hearings, supra note 20, at 5. See also 1994 THE WORLD BOOK YEARBOOK 398 (stating that there are "more than 80 percent [tourists] in the case of Nevada").
128. MINN. PLAN. OFF., HIGH STAKES: GAMBLING IN MINNESOTA 14 (1992) (reporting on 7 of 16 casinos) [hereinafter MINN. PLAN.]. It should be noted that in 1993 there were 16 tribal casinos in Minnesota. MINN. PLAN. OFF., MINNESOTA GAMBLING 6 (1993).
129. Hernandez, supra note 111, at 5.
131. Even academics commissioned by the industry have been "not able to obtain hard data on the number of new tourists." Id.
gambling cycle. Since these dollars would generally be respent on in-house marketing gimmicks, cluster services, and more and newer gambling paraphernalia, the real resources lost\(^{132}\) would only tend to intensify over time. Without ever bringing in a single tourist, however, just the local population demographics in Chicago were and remained perfect for the success of a casino complex. Such success would be at the expense of the pre-existing Chicago economy without taking into account the enormous drain on the Illinois taxpayers combined with the projected social-welfare costs. The salient points were that tourists were unnecessary and that drawing tourists was irrelevant to the financial success of the proposed casino complex.

Unfortunately for the proponents of the casino complex, the pre-existing legalized gambling interests in Illinois also understood these basic tenets of gambling and the impacts on market saturation. The pre-existing "softer" forms of legalized gambling, especially the horse tracks,\(^{133}\) the off-track betting parlors (OTBs),\(^{134}\) and the riverboat gambling interests,\(^{135}\) apparently did not want to compete with the "harder" forms of gambling represented by typical forms of land-based casino gambling,\(^{136}\) because it was understood that gambling dollars would tend to "migrate" from the softer to the harder forms of gambling.\(^{137}\) This migration of dollars and the concomitant reduction in the market shares of

\(^{132}\) See generally Samuelson, supra note 1, at 425 (stating that "gambling does . . . absorb time and resources.").

\(^{133}\) See Ill. Horse Racing Act of 1975, 230 ILCS 5/2. (1992). In 1992, there were seven horse racing tracks operating in Illinois:

(1) Arlington International Racecourse, Arlington Heights, Ill.; (2) Hawthorne Race Course, Cicero, Ill.; (3) Sportsman’s Park, Cicero, Ill.; (4) Fairmount Park, Collinsville, Ill.; (5) Balmoral Park, Crete, Ill.; (6) Quad-City Downs, East Moline, Ill.; and (7) Maywood Park, Maywood, Ill.

\(^{134}\) As of 1992 the Illinois Horse Racing Act permitted 30 OTBs. By the end of the summer of 1991, 21 OTBs were open. Ill. Econ. Comm’n, supra note 41, at 26, 28; Ill. Econ. Comm’n Update 1994, supra note 41, at 6, 12.


\(^{137}\) Ill. Econ. Comm’n, supra note 41, at 41-46. In 1992, after only a year of limited riverboat gambling, the Illinois "gambling dollars" were definitely migrating from the horse tracks to riverboat gambling. For analyses of the elasticity issues involved in gambling activities, see Donn R. Pescatrice, The Inelastic Demand for Wagering, 12 Applied Econ. 1 (1980); Daniel B. Suits, The Elasticity of Demand for Gambling, XCI (1979).
various segments of legalized gambling were reflected in the anticipated overall decrease in tax revenues to the state of Illinois.


Edgar predicted the state’s overall take from legalized gambling would actually drop by nearly $20 million if the proposed megaproject in Chicago . . . [became] reality. Moreover, additional law enforcement and regulatory demands would cost the state as much as $60 million per year.138

Based on estimates by Mayor Richard M. Daley’s gambling commission,139 the state would realize $82.5 million in gambling taxes from the casino in its first full year. But Edgar said lottery profits likely would drop by nearly $35 million, riverboat gambling revenues would be cut by about $40 million and horse racing taxes are expected to lag by $26 million . . .

Further, riverboat gambling revenues could drop even more as they lose market share to the megaproject.140

Although they historically refused to release their in-house data, the legalized gambling organizations indirectly admitted recognizing this tendency for the dollars to migrate.141 Interestingly, the president of Circus, Circus, one of the corporate sponsors of the Chicago complex, “predicted that, within five years, riverboat casinos would have saturated

138. See Terrance W. Gainor, Address at the Annual IAODAPCA Luncheon (May 8, 1992) at 10 (IAODAPCA stands for Illinois Alcoholism and Other Drug Abuse Professional Certification Association). The Illinois State Police estimates that police services for casino-related crime would exceed $100 million per year. Id.

139. See generally CHICAGO GAMING COMMISSION, REPORT TO THE MAYOR (June 10, 1992) [hereinafter GAMING COMMISSION].


their market to such an extent that they would be offering coupons to entice customers." It should be noted that this five-year time frame corresponds to the predicted five years during which gambling organizations generate their largest revenues and saturate the market, as well as the same five-year time frame for which tax waivers and concessions are traditionally sought.

In Illinois, the Illinois Economic and Fiscal Commission recognized that "[a]s the State nears its saturation point, it is likely that competition for the gambling dollar will increase among the various forms of gambling." The Commission also recognized that the "difficulty lies in determining the degree to which they currently compete as well as how they will compete in the future, especially when there is very little history of competition between the forms of gaming to study." However, the Commission reported several results that supported the "migration" of gambling dollars. For example, the Commission reported that "the racing handle [gross monies wagered] has shifted from on-track to off-track wagering," as would theoretically be expected. It was also concluded that "OTB facilities in close proximity to a riverboat can expect to sustain a decline in total handle of approximately 5-15%." Furthermore, in the context of riverboats, "[t]hose tracks in relatively close proximity to riverboats seem to have suffered greater declines, approximately 10% to 15% greater than those tracks further from riverboats." Also with regard to riverboats, the Commission noted that lottery sales decreased in 1991 and 1993 and "to the degree the competition does exist between the two forms of gambling, lottery sales would likely decrease."

These results paralleled a 1994 report by Dr. Robert Lawrence and Dr. Robert Thalheimer in the College of Business and Public Administration at the University of Louisville. This report summarized some general

142. Id. at 6.
143. Kindt, supra note 17, at 52 n.3.
144. Id.; see also Reardon & Pearson, supra note 141, at 6.
146. Id.
147. Id. at exec. summary.
148. Id. at 8.
149. Id.
150. Id. at 9.
151. Id.
trends in some of these issue areas and concluded that the "evidence from
changes in handle in markets where casinos have recently been introduced,
... produces estimates of -31% to -39%"153 declines in the amounts
wagered at racetracks. Obviously, this impact was "expected to vary
depending on the location of the casino relative to population centers in the
racetrack market and to the price and quality of the product being offered
at the casino relative to the racetrack."154

It is also interesting to note that the first two Illinois riverboats (and
one Iowa riverboat) opened in 1991 near three pre-existing Illinois horse
tracks, and within one year all three of the tracks experienced large
decreases in the gross monies wagered.155 Furthermore, one track, the
Quad City Downs, requested termination of racing within seven months after
the opening of a nearby riverboat.156 These examples simply confirmed
what was already well-established; specifically, that the dollars tend to
migrate from the softer to the harder forms of gambling.157 What is
surprising was the speed and degree to which the gambling dollars moved.158

After the Illinois OTBs had proliferated pursuant to legislation in 1989
and again in 1991, and after riverboat gambling began operations in 1991,
those interests monitoring the gambling dollars knew that the 1991 Illinois
state lottery revenues decreased by $14 million.159 By comparison, the
California lottery revenues were predicted to decline up to fifty percent in
1991 and 1992.160 In Illinois, however, the gambling interests also
recognized that certain types of gambling activities tended to take gambling
dollars from many softer gambling areas—probably including dog tracks in
nearby geographic areas.161 Sometimes within a period of only a few

153. Id. at 58.
154. Id.
155. ILL. ECON. COMM’n, supra note 41, at 44-46; see Reardon & Pearson, supra note 141, at 6.
156. See ILL. ECON. COMM’n, supra note 41, at 44-45.
157. Id. at 42-43.
158. Id. at 41-46.
159. ILL. ECON. COMM’n, supra note 41, at 65. These revenues were expected to
rebound somewhat in 1992, but not back to the 1990 level. Id. Revised figures in 1994
reported that the drop in 1991 was only $4 million. The lottery rebounded in 1992 by $70
million, but then fell by $64 million in 1993. ILL. ECON. COMM’n UPDATE 1994, supra note
41, at 17.
160. Virginia Ellis, Lottery Office Expenses Exceed Limit Set by Law, L.A. TIMES, June
17, 1992, § B, at 1, 4.
161. See Cary Spivak, Dog tracks running into financial problems, MILWAUKEE
ANNUAL REPORT (successor organization as of Oct. 1, 1992, consolidating the Wis. Lottery
months, it appeared as if the dollars were already transmigrating from the softer forms of gambling to the OTBs and riverboats. It also appeared that the OTBs and riverboats were opposed to the potential Chicago casino complex because they did not want those gambling dollars to move into another harder category of gambling; namely, land-based casino gambling in Chicago.

In Wisconsin in 1992, the gambling dollars were already apparently migrating from the "softer" forms of gambling such as the five dog tracks, which had just received their licenses in 1989, to the "harder" forms of gambling such as casino gambling. For example, "[w]hen the Oneida tribe opened its casino near Green Bay . . . [in 1991, the] Fox Valley [dog] track business dropped about 50% . . . " Statewide in 1992, the Wisconsin Legislature Reference Bureau predicted a 32% drop in state pari-mutual tax revenue for the fiscal year ending June 30, 1992. The process of market saturation also appeared to be occurring in the Wisconsin economy.

Dog Track 1991 Profit/Loss

Dairyland $2.8 million
Kenosha, Wis.

St. Croix Meadows ($4.3 million)
Hudson, Wis.

Geneva Lakes ($2.4 million)
Delavan, Wis.


166. This dog track opened June 20, 1991 and the calculated loss was through December 31, 1991. Spivak, supra note 161, at 9.
The response of the dog track owners to the increased competition was predictable—the owners demanded the legalization of "harder" forms of gambling. Specifically, the track owners argued that "for the tracks to survive they need[ed] unlimited simulcasting and the ability to offer the same games and gambling machines—that is, blackjack, slot and video betting machines—available at Indian casinos."168 By definition, gambling must continually become "harder" and/or expand into new population areas in order to survive.169 Business-economic history indicates that this expansion process will never stop until the gambling activities are recriminalized.170 Apparently, some governmental officials are beginning to realize what really happens with legalized gambling activities, and there have been some interesting public statements:

[Former Wisconsin] Racing Board Chairman David C. Mebane is openly hostile to expansion.

"It looks like these gambling lobbyists and fixers want to have casinos and whorehouses on every corner," Mebane said.

Mebane dismisses the track owners' complaints as "whining," saying they should put their time and money into marketing their tracks.

"All of the people in this business are extremely greedy and they want more and more and more all of the time," Mebane said. "They're making plenty of money with the strictest enforcement in the country.

167. This dog track had in reality, a negative cash flow. Id. It is perhaps significant that these financial problems apparently went unreported and unaddressed by the governing state agency. See Wis. Ann. Rep. 1991-92, supra note 161; Spivak, supra note 161, at 9.
169. See Rose, supra note 4, at 67-69.
170. Id. at 82-83.
"The state would be better off if there wasn't gambling at all," Mebane added. "The gambling industry and gambling proponents have an insatiable desire to corrupt every public office holder they come in contact with."171

Similarly, Governor Lowell Weicker of Connecticut, "a vocal opponent of casino gambling in his home state"172 has a standard rejoinder: "[i]f you lie down with dogs, you get up with fleas . . . "173 These observations are simply part of the normal processes which occur when state legislatures become infatuated with legalizing gambling activities.

In Iowa, the first state to begin riverboat gambling in 1991, similar problems were apparent.174 State Senator William Dieleman, chairman of the Iowa Senate Ways and Means Committee observed, "We are losing control of the monster we have created with gambling in this state."175 The 1993 Annual Report of the Iowa Racing and Gaming Commission is replete with references involving loss of market share between different operations conducting casino-style gambling.176 Of the six authorized riverboats, competition apparently caused two riverboats to leave during 1992, one boat to close in 1993, and another boat to struggle for market share.177 The Iowa Commission reported that only one boat was successful.178 With regard to the three greyhound tracks and the one horse track, the migration of the gambling dollars was apparently impacting all of the tracks, with three of the four racetracks losing money and perhaps facing bankruptcy.179 The tracks' supporters pushed for but failed to get several new tax concessions for the state's three dog tracks at Bluffs Run, Dubuque, and Waterloo, Iowa, and for the horse track at Prairie Meadows near Des Moines, Iowa.180 This horse track was projected to be further subsidized by the taxpayers and to remain open during the 1992 "season without having

173. Id.
177. Id. at 1; Petroski & Fuson, supra note 104, at A1, A2. See Fogarty, supra note 105, at A1, A2; Petroski, supra note 105, at A2.
179. Id. at 2.
180. Id.; Losing control, supra note 175, at 4.
a single horse circle the track; Prairie Meadows would only simulcast races.\textsuperscript{181} In fact, Prairie Meadows did not have live horse racing from the summer of 1991 until May of 1993.\textsuperscript{182} As Iowa State Senator Linn Fuhrman summarized the problem of legalized gambling, "Enough is enough."\textsuperscript{183}

In Minnesota, a study sponsored by the state strongly suggested that U.S. market saturation was beginning to occur--particularly with regard to land-based casino gambling.\textsuperscript{184} Once the Indian casinos opened near Minneapolis-St. Paul, many of the 7,675 passengers in 1989 who had flown to Atlantic City from the Twin Cities were captured by the local gambling market.\textsuperscript{185} Only 1,556 passengers flew to Atlantic City in 1990 and by 1991 the number of passengers was zero.\textsuperscript{186} Similar declines in flights to other out-of-state gambling destinations were also documented for the years 1989 to 1991.\textsuperscript{187} The "accessibility" of the Indian casinos, as well as their social "acceptability," were cutting into the traditional casino markets.\textsuperscript{188} Even so, these new Indian casinos were also creating a new market of compulsive gamblers and problem economic gamblers, and thereby, substantially increasing the socio-economic costs to the State of Minnesota.

However, in another development, the Illinois state government finally recognized in 1992 what the internal data of the legalized gambling interests had revealed years earlier: specifically, that every local and state economy has an overall "market saturation point" for gambling dollars. The overall data of the Illinois Economic and Fiscal Commission implied:

\begin{quote}
\begin{center}
\text{a saturation point where the introduction of a new form of gaming no longer increase[d] spending for wagering. This saturation point . . . [was] difficult to project because most of the states that have legalized new forms of gambling were already below the national averages for spending on wagering . . . Moreover, the saturation point probably varies for each state. Illinois may be close to the saturation point as . . . [1992 wagering in Illinois was] above the national average, above the national average for}
\end{center}
\end{quote}

\textsuperscript{181} Losing control, supra note 175, at 4; see IOWA ANN. REP. 1993, supra note 161, at 2; IOWA ANN. REP. 1992, supra note 161, at 1.
\textsuperscript{182} IOWA ANN. REP. 1993, supra note 161, at 2.
\textsuperscript{183} Losing control, supra note 175, at 4.
\textsuperscript{184} See MINN. PLAN., supra note 128, at 16-17.
\textsuperscript{185} Id. at 16.
\textsuperscript{186} Id.
\textsuperscript{187} MINN. PLAN., supra note 128, at 16.
\textsuperscript{188} See Rose, supra note 101, at 15.
the Midwest, as well as other geographical regions, and above the average for states which offer[ed] the same forms of gaming.\textsuperscript{189}

Unfortunately, the governmental officials were still being misdirected in the debate. The goals seemed to be a question of how much could be drained out of the pre-existing economy of the state and which of the legalized gambling interests would get most of the money. Apparently, little or no thought was being given to the strategic economics of overall lost jobs and lost consumer dollars, as well as the projected increases in tax rates, crime rates, court costs, incarceration costs, social welfare costs, and associated costs.

Given the undue haste with which the casinos were proposed and which resulted in the resignation of the original chair of Mayor Daley's Chicago Gaming Study for alleged conflicts of interest,\textsuperscript{190} the Illinois Economic and Fiscal Commission did not have the time to analyze land-based casino gambling as part of its 1992 report, \textit{Wagering In Illinois}.\textsuperscript{191} Even so, the Commission had examined potential impacts of riverboat casino-gambling in the Cook County area which "could cause a 10-15\% decline in racing handle in that vicinity, and less decline as distance grows."\textsuperscript{192} Arguendo, this supports the observation that the gambling dollars tend to migrate to harder forms of gambling, and emphasizes the anxiety of the various legalized gambling interests for guaranteed "geographic distribution."\textsuperscript{193}

In another example, the Fiscal Commission estimated that an Illinois "video lottery would generate $185 million in profits, offset by ... [a] $98 million loss to the state lottery ... ."\textsuperscript{194} "In South Dakota, every dollar

\textsuperscript{189} ILL. ECON. COMM’N, supra note 41, at 15.
\textsuperscript{190} Alf Siewers, Disarray of panel blamed on haste, CHI. SUN-TIMES, Apr. 12, 1992, at 67.

Critics of the mayor’s gambling Commission said the resignation of its chairman Friday over a potential conflict of interest underscores concern that Mayor Daley is rushing too fast in a move to legalize casinos.

Meanwhile, an attorney for the Commission said it will bar the public from some meetings.

[The] Commission Chairman ... announced that he was resigning because a 35-acre tract north of Grant Park estate co-owned by his company may be offered as a casino site.

\textit{Id.}

\textsuperscript{191} ILL. ECON. COMM’N, supra note 41, at 7.
\textsuperscript{192} \textit{Id.} at 3 (emphasis added).
\textsuperscript{193} See \textit{id.}
\textsuperscript{194} \textit{Id.} The following table indicates video lottery’s projected impact on the lottery.
spent on video lottery represented a 25% decrease in instant ticket sales, for

<table>
<thead>
<tr>
<th>Game</th>
<th>Before Estimated Gross</th>
<th>Estimated Net Revenue</th>
<th>Estimated Cannibalization Factors</th>
<th>After Estimated Gross</th>
<th>Estimated Net Revenue</th>
<th>Change in Net Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily</td>
<td>$385.0</td>
<td>$143.7</td>
<td>15%</td>
<td>$327.3</td>
<td>$122.1</td>
<td>-$21.6</td>
</tr>
<tr>
<td>Pick-4</td>
<td>$115.0</td>
<td>$42.6</td>
<td>15%</td>
<td>$97.8</td>
<td>$36.2</td>
<td>-$6.4</td>
</tr>
<tr>
<td>Lotto</td>
<td>$610.0</td>
<td>$216.3</td>
<td>10%</td>
<td>$549.0</td>
<td>$194.7</td>
<td>-$21.6</td>
</tr>
<tr>
<td>Little Lotto</td>
<td>$140.0</td>
<td>$50.9</td>
<td>15%</td>
<td>$119.0</td>
<td>$43.3</td>
<td>-$7.6</td>
</tr>
<tr>
<td>Instant</td>
<td>$430.0</td>
<td>$136.4</td>
<td>30%</td>
<td>$301.0</td>
<td>$95.5</td>
<td>-$40.9</td>
</tr>
</tbody>
</table>

Subtotal: $1,680.0 $590.0 $1,394.0 $491.9 -$98.1

Video: N/A N/A $2,574.0 $185.3 $185.3

TOTAL: $1,680.0 $590.0 $3,968.0 $677.2 $87.2

LOSS TO LOTTERY = $98.1
STATE NET GAIN = $87.2

Table Notes:
The following assumptions were made in arriving at the estimate:

1. The net State revenue of the lottery before the introduction of video lottery is $590 million.

2. Each of the lottery games would be affected by the following cannibalization factors (cannibalization factors are the estimated percent decrease in gross ticket sales):

<table>
<thead>
<tr>
<th>Game</th>
<th>Cannibalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily</td>
<td>15%</td>
</tr>
<tr>
<td>Pick-4</td>
<td>15%</td>
</tr>
<tr>
<td>Lotto</td>
<td>10%</td>
</tr>
<tr>
<td>Little Lotto</td>
<td>15%</td>
</tr>
<tr>
<td>Instant</td>
<td>30%</td>
</tr>
</tbody>
</table>

3. Video lottery terminals (45,000) would experience a $1,100 per week gross resulting in a total annual gross of $2,574 billion. South Dakota is currently experiencing a gross of $1,070 per week.

4. A State tax rate of 20% applied to the net machine income (net machine income: total played minus 64% walk-away = 36%).

Id. at 74.
a total decrease (erosion) in instant [lottery game] sales of 35-40%. These examples not only confirmed that gambling dollars generally tend to migrate to harder forms of gambling, but also raised the spectre that the process leading to market saturation was accelerating, particularly in Illinois and South Dakota. "Some of those involved in the gambling industries fear that Illinois is at or near the saturation point for spending on wagering." To combat the casino interests, the OTBs and horse racing interests commissioned a study and hired experts who indicated that the horse racing interests would lose 20-30% of their wagers (handle) to the casinos. These results paralleled those of the Illinois Economic and Fiscal Commission, which predicted that in a similar hypothetical case of Chicago riverboat gambling, instead of land-based casino gambling, 10-15% or more of the handle of nearby racetracks would be lost. By comparison, a 1981 study by Peat, Marwick, Mitchell, and Company "determined that the markets for on-track betting and casino gambling overlapped and, if authorized [in New York state], casino gambling would have a negative impact on on-track betting." It was projected that the New York race tracks would experience an overall 13% decline in attendance and a 20% decline in the amounts wagered. Professor Richard Thalheimer's study of New Jersey casino gambling reported that the race tracks experienced a

195. Id. at 73.
196. Id. at 42-46. The speed with which market saturation was apparently occurring in some local economies was within one year, and it could easily be argued that the Illinois communities in question were already saturated. Id.
197. Id. at 7.
198. The study sponsored by the proponents of the Chicago casino complex admitted that the Illinois horse racing interests could see a revenue decline of 20-30% once the Chicago casinos were in operation. Deloitte & Touche, supra note 120, at 204-05. See generally GAMING COMMISSION, supra note 139. Economics Professor William Bryan of the University of Illinois and Director of the Bureau of Economic and Business Research calculated "a 25 percent loss of handle to the racing industry." RCF, INC., EFFECTS OF CHICAGO CASINOS ON THE HORSE RACING INDUSTRY, 2 (May 26, 1992) [hereinafter RCF]. According to Deloitte and Touche, the Illinois riverboats would still "prosper," but "the horse-racing industry could suffer a 20 percent to 30 percent decrease in revenue." Economically, supra note 124, at 2; see R. Bruce Dold, How Chicago should cut the cards, CHI. ENTERPRISE, May 1992, at 7. In a similar scenario which had occurred earlier in Nebraska, skeptics claimed that the Nebraska legislature "wanted to protect eastern Nebraska's only horse-racing track from competition," so 10 communities were banned from operating video games. Id.
199. ILL. ECON. COMM’N, supra note 41, at 42-43.
200. Id. at 41.
201. Id. at 42.
7% decline in attendance and a 34% decline in the amounts wagered per person in 1988. The New Jersey lottery, initiated in 1971, had caused the racetracks to experience a 17% decline in the gross monies wagered.

In the Chicago scenario, the three companies promoting the casino complex released a study which they had commissioned and which argued that the migration of dollars from the racetracks would only be 4%, and when that argument did not persuade the horse racing interests, the casino interests started making legitimate proposals "to cut the horse racing interests in on the action." Furthermore, it is perhaps significant that the study concluded that "only about [10% of] patrons surveyed at Arlington International Racecourse would go to the tracks less frequently if land-based casinos were in Chicago," when it is remembered that this 10% of patrons could easily represent 33% of the gambling dollars. In this context, Illinois State Senator Laura Kent Donahue indicated after the 1992 spring hearings of the Illinois State Legislature that it was obvious that to get the casino complex, the casino interests would promise anything to anybody. This observation was affirmed by the lobbying efforts of the casino interests during the 1992 fall legislative session. During the fall session, Illinois State Senator Earlean Collins of Chicago also indicated that the projected social costs were of great concern despite the promises of the


203. Wagering, supra note 202, at v. 30.

204. RCF, supra note 198, at 1 (critiquing the study pamphlet). The sample size is quite small. This pamphlet reflects a typical "battle of the experts." Id. at 2. This pamphlet was apparently paid for by the three companies sponsoring the Chicago casino complex. Ray Long, Arlington would lose few patrons, study finds, CHI. SUN-TIMES, May 19, 1992, at 5 [hereinafter Study finds]. It is interesting to note that this newspaper article predates by 7 days the actual pamphlet to which it cites.


206. Study finds, supra note 204, at 5.

207. See supra notes 17, 87-88 and accompanying text.

casino interests. This concern was echoed by an influential Illinois public interest coalition, specifically the Public Welfare Coalition.

The casino interests indicated to the State of Illinois that they could "be persuaded" to build a $2-billion euphemistically-named "Family Entertainment Center" in Chicago and to guarantee that only 20% of the Center would be devoted to casino gambling—although they apparently declined to build anything at all without the gambling component (which should tell the public something). The gambling interests were obviously promising "everything to everyone," which undermined their credibility. Some of the lobbying efforts of the casino interests were also challenged by Illinois Common Cause as being illegal.

Given these scenarios, there were questions involving what motivated the casino interests to be so driven and so careless in their lobbying activities. The answer was largely economic: "Government-regulated casino and slot machine operations, with limited licenses for operators, can be immensely profitable." For example, in 1990 Circus, Circus, one of the sponsors of the Chicago casinos, had opened the Excalibur hotel in Las...
Vegas, as the largest hotel in the country, but by fall of 1991 "the company stunned market analysts by announcing it had already paid off the Excalibur mortgage from operating revenues."218 A gambling establishment which could generate this scale of revenues while the United States was in a recession should frighten the pre-existing Chicago businesses with the spectre of economic cataclysm, because those pre-existing businesses would be in direct competition for most of the local consumer dollars being spiraled into the casinos. Field research indicates that from a conservative perspective, most of the dollars going into the proposed casinos could constitute a total drain out of the Chicago economy. This statistic presumes that the casinos are making their best efforts to attract tourists who would not otherwise be traveling to Chicago. For the casinos to "imply" that they would attract enormous numbers of new tourists per year219 to the Chicago area is unsubstantiated—particularly since "market saturation" has been occurring in several gambling jurisdictions across the country. Using the casinos' own base-line data,220 the casinos would definitely take 1.25 million tourists of the normal pre-existing tourists from other tourist attractions221 and businesses and would "strongly attract" an additional 5.25 million away from other businesses.222

In 1984, for example, ten Nebraska communities with legalized gambling via video-machines became saturated and their economies declined (regardless of the large social costs), and thereafter, the Nebraska legislature banned their video-machine gambling.223 In this instance, the rapid economic impacts, including the illusion of bona fide local tax revenues, were to be expected, because video-machine gambling is widely-known as "the crack-cocaine" for creating new compulsive gamblers amongst the general public.

The base-line principle is that because of eventual "market saturation" gambling has to keep finding new competitive advantages to survive within the gambling environment. Historically, these competitive advantages are larger than those typically granted to or enjoyed by more traditional businesses. Critics of legalized gambling suggest that one of the most insidious and well-hidden unfair competitive advantages which the legalized

218. Coates, supra note 96, at 10 (emphasis added).
219. Skidmore, supra note 118, at 4-5.
220. See supra notes 30, 121-22 and accompanying text.
221. Id. For example, the 1990 baseline calculation would be: (9.3 million tourists + 3.2 million business visitors) x 10 percent = 1.25 million.
222. Id. For example, the 1990 baseline calculation would be: (9.3 million tourists + 3.2 million business visitors) x 42 percent = 5.25 million.
223. Dold, supra note 198, at 7.
gambling organizations are usually granted consists of disproportionately large direct and indirect tax breaks.\textsuperscript{224} In many ways, taxpayer dollars directly and indirectly subsidize the legalized gambling interests.\textsuperscript{225}

One of the most authoritative 1994 non-industry studies was conducted by the Florida Department of Commerce and the Florida Division of Tourism which analyzed the research from across the United States.\textsuperscript{226} The report, \textit{Implications Of Casino Gambling As An Economic Development Strategy},\textsuperscript{227} noted that as of 1994 there were 24 states that had authorized casino-style gambling and that "by the year 2000, 95% of all Americans . . . [were] expected to live within a 3-4 hour drive from a casino."\textsuperscript{228} Accordingly, "market saturation" by casino-style gambling was identified as a concern.\textsuperscript{229} Interestingly, the Florida Department of Commerce emphasized a study indicating that "being able to gamble" was "a low motivator of tourism by Americans (18%)."\textsuperscript{230} This Department of Commerce also questioned the credibility of several standard industry claims in this issue area\textsuperscript{231} and then summarized the authoritative research as follows: "Evidence suggests that casino gambling would not bring in new dollars or tourists, but instead exploit what already exists in the state. A consistent result of the introduction of casino gambling has been the cannibalization of pre-existing tourism industry."\textsuperscript{232}

\begin{footnotes}
\item[224] See, e.g., Kindt, supra note 17, at 52 n.3; \textit{Hearing}, supra note 4, at 77; Rock Island gives tax rebate to floundering riverboat casino, (AP), \textit{JOURNAL COURIER} (Jacksonville, Illinois), June 28, 1995, at 1; Rock Island to give casino tax break, (AP), \textit{JOURNAL STAR} (Peoria, Illinois), June 28, 1995, at B6.
\item[225] Id.
\item[226] FLA. DEP'T COM. REPORT, supra note 4; see Fla. Dep't Com. Press Release, supra note 4, at 1.
\item[227] FLA. DEP'T COM. REPORT, supra note 4.
\item[228] Id. at 3; see id. at 6.
\item[229] Id.
\item[228] Fla. Dep't Com. Press Release, supra note 4, at 9 (citing the 1994 \textit{National Travel Monitor} by Yankelovich Research).
\item[231] The Florida Department of Commerce addressed some of the casino-industry's claims as follows: Proponents say casinos would boost tourism through incremental rises in the number of visitors, the length of their stays in Florida and reduction of Floridians' traveling out of state for casino gambling opportunities. Despite analysis of in-state and national casino research, the Department has been able to find no data to support these claims and substantial research and documentation that refutes them.
\item[232] FLA. DEP'T COM. REPORT, supra note 4, at 2 (emphasis added). See also \textit{Hearing}, supra note 4, at 57 (statement of Professor Robert Goodman) (Decision makers "should avoid reliance on information by researchers who work for pro-gambling constituencies.").
\end{footnotes}
Despite the concerns involving market saturation expressed by individual states and even the legalized gambling industry, the U.S. national economy is so large that it has the ability to inculcate various and numerous legalized gambling activities before and after the year 2000. Some locales could allow overbuilding in relation to the potential market for gambling dollars, but overall saturation of the U.S. market appears unlikely for the foreseeable future. As governments continue to embrace legalized gambling activities for the initial tax revenues generated and to ignore the enormous social and economic costs which will eventually arise to haunt them, issues involving market saturation will probably pale in significance.

These governments are developing new partnerships with businesses in some of the most unproductive and destructive sectors of the economy, helping to expand an industry whose success increasingly depends on cannibalizing dollars from other businesses and whose expansion will create serious future problems for other businesses and governments to deal with.

State and local governments have in effect created a regressive industrial policy with the gambling industry.

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233. Gary Putka, *New England States Step Up Wagering On New Casinos*, WALL ST. J., Sept. 2, 1994, at A2. New England's six states are "far from oversaturation" according to the chairman of Capital Gaming International. *Id.* "Foxwoods' revenue (gambiers' losses) will reach $1 billion" in 1994 according to a reported analysis by Arthur D. Little and Co., but the analyst:

notes that the projected new jobs at each [proposed] casino won't be a net gain for the region, as many will come at the expense of attractions that will lose revenue to gambling. Of the $4.1 billion in gambling revenue that Little sees under its most expansive scenario, ... [the analyst] reckons that 50% to 90% would be spent regionally even if the casinos weren't built.

*Id.*

234. "The market will have to double and double again before the market gets close to saturation, according to ... [industry insiders]" at the November 1994 Riverboat Gaming Congress and Exposition held in New Orleans. Ed Bierschenk, *Analysis say casino market not saturated*, ST. JOURNAL-REGISTER (Springfield, Ill.), Nov. 19, 1994, at 5.

235. *Hearing, supra* note 4, at 64 (statement of Professor Robert Goodman).