

# **NATIONAL GAMBLING IMPACT AND POLICY COMMISSION ACT**

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## **HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES**

**ONE HUNDRED FOURTH CONGRESS**

**FIRST SESSION**

**ON**

**H.R. 497**

**NATIONAL GAMBLING IMPACT AND POLICY COMMISSION ACT**

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**SEPTEMBER 29, 1995**

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On September 21, 1994, the House Committee on Small Business held a hearing on the socio-economic impacts of the trend toward increased legalized gambling activities.<sup>3</sup> At the hearing, the committee received testimony from various experts, all of whom criticized the impacts legalized gambling activities inflict upon social-welfare budgets, the criminal justice system, small businesses, and the U.S. economic base. Among other conclusions presented, legalized gambling--as a strategy for economic development--was thoroughly discredited. Indeed, Committee Chair John J. LaFalce expressed his own concerns on the issue, including the need for a national policy.

Despite these expressed concerns, legalized gambling interests are utilizing millions of dollars to misdirect the debate and cause government decisionmakers and the public to reach invalid conclusions. First, there is the incorrect assumption that legalized gambling activities are like other business activities. Instead, legalized gambling activities have large industry-specific negatives, resulting in

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<sup>1</sup>Professor, Univ. Ill. at Urbana-Champaign. B.A. 1972, William & Mary; J.D. 1976, MBA 1977, U. Ga.; LL.M. 1978, SJD 1981, U. Va.; Associate, Program in Arms Control, Disarmament, and International Security, University of Illinois. This Statement should be interpreted as representing only the individual views of the author.

<sup>2</sup>Some new developments and footnotes have been added, but most of this abbreviated Statement was originally published as part of the following article: John W. 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) [hereinafter Strategic Economic Base]. To save space, substantial footnotes and text from the published Article have been omitted from this abbreviated Statement, but the entire text and supporting documentation may be found in the St. Louis University Law Journal.

<sup>3</sup>See generally The National Impact of Casino Gambling Proliferation: Hearings Before the House Comm. on Small Business, 103d Cong., 2d Sess. 1-32 (1994) [hereinafter Cong. Hearing].

a cumulative negative economic impact.<sup>4</sup> Second, the industry's tendency to focus attention on specialized factors provides a distorted view of the localized economic positives, while ignoring the large business-economic costs to different regions of the United States.<sup>5</sup> Third, the extraordinary amount of money which is legally used to overwhelm any opposition leads to unbalanced decisionmaking processes by elected officials, regulatory agencies, and even the court system. Almost by definition, there can be little compromise; that is, either the national economy is a non-gambling one, or it is a legalized gambling economy which will eventually "bust."

Therefore, with the legalization of various types of gambling activities sweeping the United States and much of the international community, the issue is whether this trend constitutes an economic boom, a harmless recreational pastime, or an actual threat to the strategic economic base of the industrialized world, and in particular, of the United States. Business-economic history indicates that the widespread legalization of gambling activities precipitates a classic "boom and bust" economic cycle. Accordingly, there is substantial economic evidence and public policy precedent to conclude that because legalizing gambling activities represents a threat to the U.S. economic base and to stability of expectations,<sup>6</sup> Congress should consider federal legislation to re-criminalize or severely limit legalized gambling

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<sup>4</sup>See generally, ROBERT GOODMAN, LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT (Ctr. Econ. Development, U. Mass.-Amherst 1994) [hereinafter CED REPORT].

<sup>5</sup>See, e.g., CAL. GOVERNOR'S OFF. PLAN. & RESEARCH, CALIFORNIA AND NEVADA: SUBSIDY, MONOPOLY, AND COMPETITIVE EFFECTS OF LEGALIZED GAMBLING ES-1 (Dec. 1992).

<sup>6</sup>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, in particular, 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 W. 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 (1982). 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 Harold Lasswell, 54 VA. L. REV. 662 (1968); The Lasswell-McDougal Enterprise: Toward a World Public Order of Human Dignity, 14 VA. J. INT'L L. 535 (1974).

activity. These conclusions are supported by both cursory and in-depth reviews via the classic McDougal/Lasswell decision-making model for policymakers.<sup>7</sup>

This strategic economic threat to the United States is immediate and should be addressed quickly before newly developing constituencies in the legalized gambling industry become widespread enough to dictate economic policy.<sup>8</sup> For example, the legalized gambling industry drafted a state constitutional referendum in Florida which aimed to "mandate" the introduction of casino-style gambling activities--even into communities which voted unanimously against such activities.<sup>9</sup> It is therefore not surprising that testimony presented at the 1994 congressional hearing indicated that in the future, franchised legalized gambling parlors may be as widespread as fast-food hamburger chains are today.<sup>10</sup>

Thus, the gravamen of the 1994 hearing was that U.S. policymakers need to develop a national policy on increased legalized gambling activities. Testimony at the 1994 congressional hearing estimated that if the current trend toward more legalized gambling activities continues, the net economic effect could result in the equivalent of an additional recession every 8 to 15 years.<sup>11</sup> Combined with regular cyclical recessions, the U.S. economy faces double jeopardy. Furthermore, although legalized gambling has just begun to expand in earnest, its sales already equal approximately two and one-half percent of U.S. Gross Domestic Product.<sup>12</sup>

In any event, macro-economic theories and concomitant economic formulae do not address this growing phenomenon. With the policy changes in the former Soviet Union and elsewhere, the stability and strength of the U.S. economic base will change rapidly in the next few years. The U.S. Bureau of Economic Analysis (and its economic "multipliers" which could easily be negligible or even negative with

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<sup>7</sup>See id.

<sup>8</sup>For an authoritative analysis supporting this recommendation, see CED REPORT, supra note 4, at 18. Many policymakers are concerned that legalized gambling interests have large budgets to support efforts to legalize various forms of gambling throughout the United States. For example, New Jersey has restrictions prohibiting political contributions from casinos. Id.

<sup>9</sup>See Martin Dyckman, Misleading the Public, ST. PETERSBURG TIMES, Nov. 1, 1994, at A13.

<sup>10</sup>See Cong. Hearing, supra note 3, at 9-10.

<sup>11</sup>Id. at 73.

<sup>12</sup>Id.

respect to legalized gambling activities),<sup>13</sup> as well as other economic agencies will need to keep pace. Furthermore, U.S. policymakers should query whether an economy which is becoming so heavily influenced and dependent on legalized gambling activities--which do not create new money or goods--is similar to the vulnerable, oil-dependent, U.S. economy of the early 1970s.

In the 1800s, the strategic economic and military consequences of an economic downturn were less destructive and less absolute. However, in the modern world, the United States and its allies cannot afford to experiment with their interdependent economies by elevating legalized gambling activities to the level where an economic "boom and bust" cycle<sup>14</sup> or a classic "speculative economic bubble"<sup>15</sup> could occur.<sup>16</sup> Unfortunately, because of the gambling industry and the vagaries of the U.S. legal system<sup>17</sup> which protects the scope and speed with which the political constituencies supporting the legalized gambling industry develop,<sup>18</sup> such experiments may already be so far advanced that they are beyond the control of U.S. policymakers.

Due to several large socio-economic negatives which are associated with legalized gambling activities but which neither occur in nor accompany other types of industries, it can be concluded that there are substantial business and economic reasons to believe that widespread (and even localized) legalized gambling activities are inherently recessionary in nature. These negatives include: modest increases in infrastructure costs, relatively high increases in regulatory costs, large costs to the criminal justice system, and social-welfare and

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<sup>13</sup>As of 1994, for example, the U.S. Bureau of Economic Analysis had no economic multipliers for the legalized gambling/riverboat industry. The CED Report indicated that the multipliers for legalized gambling activities are negative. CED REPORT, supra note 4, at 49-50; see Cong. Hearing, supra note 3, at 81.

<sup>14</sup>CED REPORT, supra note 4, at 18.

<sup>15</sup>For example, the 1929 U.S. stock market scenario presents such a bubble. See PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, ECONOMICS 204 (14th ed. 1992) ("Speculative Bubbles"); PAUL A. SAMUELSON, ECONOMICS 424-25 (10th ed. 1976). See also Cong. Hearing, supra note 3, at 71-73.

<sup>16</sup>See Steven D. Gold, It's Not a Miracle, It's a Mirage, St. LEGIS., Feb. 1994, at 28.

<sup>17</sup>See generally I. NELSON ROSE, GAMBLING AND THE LAW (1986).

<sup>18</sup>CED REPORT, supra note 4, at 18.



business-economic costs in the billions of dollars.<sup>19</sup> These business and economic costs can easily translate into recessionary pressures and lost jobs from the rest of the economy. Furthermore, the net creation of jobs claimed by the legalized gambling industry is at best a breakeven proposition, and the evidence suggests that regional net job losses can easily occur<sup>20</sup>--primarily because "consumer dollars" are drained from the economy.<sup>21</sup> The literature frequently refers to this process as "cannibalization" of the pre-existing economy--including the pre-existing "tourist" economy.<sup>22</sup>

As of 1993, no state had a plan concerning the statewide development of various legalized gambling activities. The only baseline study was a 1976 federal report by the U.S. Commission on the Review of the National Policy Toward Gambling, entitled Gambling in America.<sup>23</sup> This 1976 report was apparently prompted by the proposed economic development of Atlantic City, New Jersey, via the legalization of land-based casino gambling. Considering that in general the Atlantic City economy has significantly worsened since 1976, serious questions should be raised about extending this experiment nationwide.

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<sup>19</sup>See, e.g., MD. DEP'T HEALTH & MENTAL HYGIENE, ALCOHOL & DRUG ABUSE ADMIN., TASK FORCE ON GAMBLING ADDICTION IN MARYLAND (1990) (Valerie C. Lorenz & Robert M. Politzer, co-chairs 1990). For example, "[p]athological gamblers cost Maryland and its citizens about \$1.5 billion annually in lost work productivity and embezzled, stolen or otherwise abused dollars." Id. at 2. "The total cumulative indebtedness of Maryland's pathological gamblers exceeds \$4 billion." Id.

<sup>20</sup>Grinols, Bluff Or Winning Hand? Riverboat Gambling And Regional Employment And Unemployment, 51 ILL. BUS. REV., Spring 1994, at 8-11 (indicating Illinois riverboats have not created a net increase in employment and may even have cost net jobs). Since gambling activities take jobs from the rest of the economy, the creation of jobs is an illusory claim. This principle is so basic that it is in the WORLD BOOK ENCYCLOPEDIA. WORLD BOOK YEAR BOOK 398 (1994) ("The employment increases resulting from most gambling operations are illusory."). See also Cong. Hearing, supra note 3, at 71.

<sup>21</sup>This business/economic principle is another principle which is so basic that it is in the WORLD BOOK ENCYCLOPEDIA. WORLD BOOK YEAR BOOK 398-400 (1994). See supra note 20, and accompanying text; CED REPORT, supra note 4, at 49-50.

<sup>22</sup>See, e.g., CED REPORT, supra note 4, at 51; Cong. Hearing, supra note 3, at 87-88 (statement of Congressman Frank R. Wolf). See also Cong. Hearing, supra note 3, at 34 (statement of Congressman Richard H. Baker); FLA. DEP'T COM., IMPLICATIONS OF CASINO GAMBLING AS AN ECONOMIC DEVELOPMENT STRATEGY 5 (1994).

<sup>23</sup>U.S. COMMISSION ON THE REV. OF THE NAT'L POL'Y TOWARD GAMBLING IN AMERICA (U.S. Gov't Printing Off. 1976).

Because some demographics can easily allow the initial profit margins of many legalized gambling activities to be extremely large, it should be anticipated that companies will invest millions of dollars to encourage the legalization of gambling activities in various states. In 1994, for example, at least \$16.5 million was spent in a losing campaign to bring casino gambling to Florida,<sup>24</sup> and at least \$15 million was spent during two years on campaigns (including \$8 million in the 1994 winning campaign) to bring video gambling terminals to Missouri.<sup>25</sup> However, skeptical economists emphasize that "any" influx of money to a community will create the appearance of economic development, and the socio-economic costs should not be overlooked.<sup>26</sup>

Several studies by the gambling industry allegedly bolster the claims of economic benefits. To examine these claims the Ford Foundation and the Aspen Institute funded a comprehensive 1994 report by the Center for Economic Development at the University of Massachusetts, which was entitled Legalized Gambling as a Strategy for Economic Development (CED Report).<sup>27</sup> The CED Report analyzed fourteen industry studies, and in general, was highly critical of them. Emphasizing that no state had a comprehensive development plan which analyzed legalizing gambling activities, the CED Report concluded that "hiding the costs" was apparently widespread and that legalizing gambling activities acted as economic "cannibalism" on the pre-existing economy and on other businesses.<sup>28</sup>

In the social-welfare context, legalized gambling is widely-accepted as constituting a regressive tax on the poor.<sup>29</sup> In other words, governmental policies directed toward "legalizing" and encouraging gambling activities make poor people poorer and intensify

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<sup>24</sup>The public relations budget for convincing the voters to approve this referendum question on November 8, 1994, was apparently \$16.5 million--significantly more than the combined budgets of the two gubernatorial candidates, Jeb Bush and Governor Lawton Chiles. Louis Lavelle, Voters Deal Loss to Casinos: Gambling Backers Lose Despite \$16.5 Million Campaign, TAMPA TRIBUNE, Nov. 9, 1994, at 1, 5.

<sup>25</sup>Terry Ganey & Mark Schlinkmann, Hancock II Out: Slot Games In, St. Louis Post-Dispatch, Nov. 9, 1994, at A6.

<sup>26</sup>BETTER GOV'T ASSOC., STAFF WHITE PAPER: CASINO GAMBLING IN CHICAGO (1992) (a comprehensive and well-documented report) (introductory statements by BGA President William Lear and Exec. Dir. Terrence Brunner) [hereinafter BETTER GOV'T ASSOC. REPORT].

<sup>27</sup>CED REPORT, supra note 4.

<sup>28</sup>Id. at 16-19, 39, 51. See also Gold, supra note 16, at 30.

<sup>29</sup>See, e.g., CHARLES T. CLOTFELTER & PHILIP J. COOK, SELLING HOPE (Nat'l Bur. Econ. Research, Harvard Univ. Press 1989).

many pre-existing social-welfare problems. These socio-economic negatives are calculated to be extremely costly, and they parallel the negatives associated with alcohol and drug addiction. Substantial changes and unpredictable consequences can be anticipated throughout the insurance industry (i.e., increased fraud in the billions of dollars), the banking industry (i.e., extended credit losses) and the general business community, including, for example, increased personnel costs, lost work productivity, and bankruptcies.<sup>30</sup>

In the national media, the cost/benefit debate involving increased legalized gambling has been growing in scope. As this trend continues, a 1994 article in the Columbia Journalism Review cautions the news media to "flat out ask [experts, academics, and even other reporters] if they make money off the industry."<sup>31</sup>

Several prestigious U.S. business groups have instinctively responded to these concerns. For example, in September of 1993, the 85-member Greater Washington, D.C. Board of Trade unanimously rejected the Mayor's proposal to bring casino-style gambling to Washington, D.C.<sup>32</sup>

The gravamen of this debate is that state governments, by legalizing gambling activities, are creating large socio-economic problems which did not previously exist. It is well-established that by "legalizing" gambling activities (the "acceptability factor") and making those activities available to the public (the "accessibility factor"), state governments are creating a new population of addicted gamblers--a recognized addictive activity pursuant to the American Psychiatric Association (APA), with parallels to alcohol and drug addictions. From a baseline of .77 percent, the percentage of the adult population who are compulsive gamblers can easily rise to between 1.5 and 5 percent once gambling is legalized. The percentage of teens who become compulsive gamblers generally ranges between 4 and 6 percent, but this range appears to be increasing.<sup>33</sup>

Compulsive gambling will probably hover at approximately .77 percent of the population regardless of the steps taken by ethicists and governments to eradicate or solve this problem. However, the interesting statistic is that once state governments legalize gambling--once gambling receives the imprimatur of government and becomes not only "sociologically acceptable" but also is advertised as such--the number

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<sup>30</sup>Strategic Economic Base, supra note 2, at 580 nn. 96-100.

<sup>31</sup>Stephen F. Simurda, When Gambling Comes To Town, COLUM. JOURNALISM REV., Jan.-Feb. 1994, at 36, 37-38.

<sup>32</sup>Liz Spayd & Yolanda Woodlee, Trade Board Rejects D.C. Casino Plan, WASH. POST, Sept. 25, 1993, at A1.

<sup>33</sup>Strategic Economic Base, supra note 2, at 581, nn. 103-07.

of compulsive gamblers will increase from .77 percent to between 1.5 and 5 percent of the population.

The social, business, economic and governmental costs of this phenomenon are potentially catastrophic. The average socio-economic cost per compulsive gambler per year has been calculated at \$53,000.<sup>34</sup> For example, by "legalizing" land-based casino gambling and VLT's, the business-economic evidence strongly suggests that the South Dakota legislature has created, within 2 years, an additional \$371 million per year in economic and social costs to its citizens.<sup>35</sup> Even if these negative numbers were to overstate the problems, they are still significant enough to predict major problems for U.S. society, business, and government.

#### CONCLUSION

Throughout the twentieth century, the U.S. economy has operated within a pristine economic environment uncontaminated by widespread legalized gambling. However, because pro-gambling philosophies are spreading rapidly throughout the United States, and the governmental infatuation with legalized gambling is so pervasive, the impacts of legalized gambling will soon be felt throughout the local, state and federal governmental systems--regardless of whether a particular state has or has not legalized a particular form of gambling. Academic disciplines will change and the standard economic formulae will have to be modified to accommodate the economic impacts of the gambling industry. Education will suffer both philosophically and fiscally as educational budgets are redirected toward addressing the increasing social-welfare costs.

The criminal justice system will incur not only increased costs, but also new forms of misconduct (such as gamblers unfairly beating the odds or "cheating" the legalized gambling operations). Financial institutions and banks will experience rapid and perhaps destabilizing impacts as pre-existing assets and large proportions of fixed consumer assets are diverted into legalized gambling activities. Bad debts and increased insurance fraud are projected to increase significantly.

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<sup>34</sup>See BETTER Gov't Assoc. REPORT, supra note 26, at 14 (\$53,000/yr. is adjusted for inflation in 1992 dollars) (citing to POLITZER ET AL.). By 1994 the range of cost estimates began to fluctuate between \$13,200 and \$53,000, with most estimates beginning to group around \$13,200 to \$35,000. See Cong. Hearing, supra note 3, at 80 n.12.

<sup>35</sup>For an analysis of this phenomenon, see, e.g., John W. Kindt, The Economic Impacts Of Legalized Gambling Activities, 43 DRAKE L. REV. 51, 73-75 (1994). In 1995 an apparent confirmation of this phenomenon was reported in the case of legalized gambling activities in Iowa. Iowa Dep't Human Services, Gambling And Problem Gambling In Iowa: A Replication Survey (1995).

If the gambling trends of the 1990s continue, the negative impacts will prolong recessionary trends and slow recoveries in local, state and national economies. The economic history of the United States has indicated that the U.S. public has intermittently flirted with gambling and repeatedly rejected it as economically and sociologically unworkable.

If the U.S. public likes the "War on Crime" and the "War on Drugs," then the public will be enthralled with the forthcoming "War on Gambling." The tragedy is that unlike the first two "wars" on social ills, the "War on Gambling" can still be avoided--simply by not legalizing gambling activities. In other words, it will take affirmative government action to magnify a minor social ill into a major socio-economic problem.

Regardless of these considerations, it appears to be widely-accepted that U.S. economic strength constitutes a sine qua non of worldwide economic stability. Any industry which has a growth rate as substantial as that of the legalized gambling industry and which has the potential to cannibalize the pre-existing economy with a potential negative multiplier effect needs to be closely examined. At a minimum, a national commission to investigate the economic claims of the industry is necessary. In the interim, prudent strategic national policy necessitates that the federal government prohibit any increases in the various forms of legalized gambling activities or increases in its geographical expansion.