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THE INTRODUCTION OF CASINO GAMBLING:
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I. INTRODUCTION

In 1992 there were two legal "riverboat" casinos in Mississippi. By mid-1994 the State was home to at least thirty casinos, and applications were on file for up to fifty more.¹ In fact, at one time a new casino opened in Mississippi about every two weeks.² Mississippi recently passed the \$1 billion mark in gambling revenue to make it the third-largest casino gaming jurisdiction in the United States, trailing only Nevada and New Jersey.³ Mississippi already has more casinos and more square feet of casino floorspace than Atlantic City⁴ and may

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¹ Laurel Campbell, *Declining Casino Profits, Building Plans at Odds*, COM. APPEAL (Memphis), July 24, 1994, at A1, A10. Although the revenue growth has been strong, growth is expected to exceed demand in the next 12 to 18 months. *Id.* At present, several corporations are taking a wait-and-see position. *Id.*

² Alan Sayre, *La. Casino Industry Stumbling*, CLARION-LEDGER (Jackson, Miss.), Sept. 6, 1994, at B5. Of course, several casinos are also beginning to close. See, e.g., Laurel Campbell, *Treasure Bay Files for Bankruptcy*, COM. APPEAL (Memphis), Jan. 11, 1995, at B4 (discussing financial woes of both Treasure Bay and Biloxi Belle).

³ Campbell, *supra* note 1, at A1.

⁴ According to the Mississippi Gaming Commission, the State now has twenty-nine casinos with a total of 1,270,502 square feet of floorspace. 1994 MISS. GAMING COMM'N ANN. REP. TO THE LEG. 34 [hereinafter GAMING REPORT]; see also Margaret Litvin, *Floating Casinos Gambling With the Environment; Mississippi Riverboats Under Fire*, USA TODAY, July 7, 1994, at A8 (Atlantic City has 797,155 square feet of casino floorspace and Las Vegas has 4,501,129).

surpass Las Vegas in the not too distant future.

Gambling casinos have changed the appearance of the Mississippi Gulf Coast, enriched very poor communities, and provided much-needed funds for state,⁵ county, and city treasuries.⁶ Tourism has benefited, unemployment is down, a few lucky gamblers have made a great deal of money, and many retail businesses have prospered.⁷ On the negative side, personal bankruptcy is up, more Mississippians are becoming addicted to gambling, and crime is on the upswing.⁸ In some parts of the State the cost of living is on the rise, there are housing shortages, traffic problems have multiplied, drainage and sewage systems are strained, and social services are struggling to keep up with a growing homeless population.⁹ All the while the gaming industry is facing problems relating to over-saturation and is bracing for the impact of legalized gambling in neighboring states.¹⁰

⁵ In addition to increased tourism, employment, and business activity, Mississippi imposes an annual license fee of \$5000. *See* MISS. CODE ANN. § 75-76-183(2) (1991). This is in addition to a \$5000 application fee. *Id.* § 75-76-183(1). There is also a fee determined as a percentage of the amount of monthly gross revenues. *Id.* § 75-76-177(c). The State receives four percent of gross monthly revenues up to \$50,000; six percent for amounts between \$50,000 and \$134,000; and eight percent for amounts over \$134,000. *Id.* § 75-76-177(1). Mississippi also requires additional licensing fees, determined by the number of games offered for play. MISS. CODE ANN. § 75-76-191 (1991). Unlike many other states, Mississippi does not provide for the collection or imposition of an admission fee. James R. Swanson, Presentation at the Gaming Seminar, Tulane Law School (Sept. 8-9, 1994). *But see* MISS. CODE ANN. § 27-109-11(3) (1990) (imposing boarding fee of \$3.50 per person on cruise vessel in general, not just gambling vessels).

⁶ The locality where the ship is moored may impose a fee of 0.4% on gross monthly revenues up to \$50,000; 0.6% for amounts between \$50,000 and \$134,000; and 0.8% for amounts over \$134,000. MISS. CODE ANN. § 75-76-195 (1991); *see also* INTERNATIONAL CASINO LAW 78 (Anthony N. Cabot et al. eds., 1993) [hereinafter CASINO LAW] (explaining tax and fee system in Mississippi).

⁷ *See infra* notes 116-74, 182-207 and accompanying text.

⁸ *See infra* notes 267-390 and accompanying text.

⁹ *See infra* notes 391-441 and accompanying text.

¹⁰ *Weekend Edition: Biloxi, Mississippi, Enjoys Boom From Legal Gambling*, (National Public Radio broadcast, Mar. 20, 1994) [hereinafter *Weekend Edition*]. Louisiana will soon have a land-based casino in New Orleans, and Alabama officials are trying to get legalized gambling in their state. *Id.* Tourism officials in Mississippi, however, believe that their head start, combined with the other attractions Mississippi has to offer, will lead to continued growth. *Id.*

Despite the enormous profits, some residents and legislators are afraid that the State's rush to gambling was a mistake.¹¹ Biloxi and Harrison County approved gambling, but it required two votes and only passed with a 57.4% majority.¹² Many doubt that it would pass if put to a vote again.¹³ "[A] lot of [gambling supporters] are changing their tune."¹⁴ The questions to be answered, of course, are: Why might people be changing their minds? What can we expect in the future? How can the legal process effectively respond to the needs of the people as legalized gambling continues to play an increasingly important role in the lives of us all?

There are so many variables to examine, and the status of the industry is so fluid, that it is quite difficult to evaluate the impact that the gaming industry has had on Mississippi and other areas of the country. It is even more difficult to make projections about the future. Nevertheless, if we are to properly evaluate our public policy toward gambling, it is necessary to look at the ramifications of legalized gambling. Fortunately, we have a long history upon which to draw.

¹¹ See Bartholomew Sullivan, *Do Casinos Threaten Natchez's Charms of Time and the River?*, COM. APPEAL (Memphis), Aug. 1, 1994, at A1, A10 (explaining that some Natchez residents fear legalized gambling may be mistake); *The Gamble, Part 3 - Gaming in Mississippi* (CNN television broadcast, July 24, 1994) [hereinafter *The Gamble*] (talking with legislators who formerly supported gambling and now oppose it).

¹² Michael Beebe, *Biloxi Shows Benefits, Banes of Gambling: Boom Brings Changes*, BUFF. NEWS, July 17, 1994, at A1. Emily Senseney, who voted to approve gambling in Harrison County, cites the traffic as why she would now vote otherwise. *Id.* The four-lane Route 90 along the beach will be widened in some places to accommodate the traffic that has doubled since the casinos arrived. *Id.*

¹³ Beebe, *supra* note 12, at A1; see also Laurel S. Walters, *Casino Invasion Stirs Up Mississippi's Gulf Coast*, CHRISTIAN SCI. MONITOR, May 25, 1994, at 11. Mayor A.J. Holloway of Biloxi said that residents voted for legalized gambling, but "[t]hat was before it intruded on people's lives." *Id.* He also stated that he would not recommend any more zoning for gaming. *Id.*

¹⁴ Lonnie Williamson, *A Dicey Development*, OUTDOOR LIFE, Apr. 1994, at 44. Initially, hunters in the Tunica County area did not feel that casinos were a threat. *Id.* at 46. Since then, the editor of *Mid-South Hunting and Fishing News* has formed the Mississippi River Coalition to make sure that existing laws designed to protect wetlands are followed. *Id.*

II. A BRIEF HISTORY OF GAMBLING AND GAMBLING REGULATION

Gambling consists of three elements: consideration, chance, and reward.¹⁵ Lotteries are perhaps the best example of pure gambling. A typical lottery, which involves a person purchasing one or more chances to win a prize based on a random drawing, clearly involves all three elements. Consideration is found in the cost of the ticket. Tickets are randomly drawn, or numbers are randomly selected, rendering a result clearly based on chance. The reward is the prize that the lucky ticket holder will win.

Gambling is nearly as old as civilization itself. Various games of chance existed among ancient Egyptians, Chinese, Japanese, Hebrews, Greeks, Romans, and the early Germanic tribes.¹⁶ Excavations in London uncovered the remnants of a

¹⁵ See Ronald J. Rychlak, *Video Gambling Devices*, 37 UCLA L. REV. 555, 556-58 (1990) (describing each element of gambling); see also Martin Fox, *DA Is Dealt a Defeat In Three-Card Monte*, NAT'L L.J., Aug. 29, 1994, at A23 (ruling three-card monte as game of skill and therefore not gambling). See generally Frank Garcia, *DON'T BET ON IT: THE REAL SECRETS OF 3 CARD MONTE* (1978) (revealing how "suckers" can never win at three-card monte).

¹⁶ See JOHN ASHTON, *THE HISTORY OF GAMBLING IN ENGLAND* 3-12 (Patterson Smith Publ. Co. 1969) (1889) (describing gambling practices through time); see also Howard J. Shaffer, *Conceptual Crises in the Addictions: The Role of Models in the Field of Compulsive Gambling*, in *COMPULSIVE GAMBLING: THEORY, RESEARCH, AND PRACTICE* 3, 4 (Howard J. Shaffer et al. eds., 1989) [hereinafter *COMPULSIVE GAMBLING*] (stating "[t]he Babylonians, Etruscans, and the ancient Chinese were among the first civilizations to participate in organized gambling"). A drawing found on the wall of a burial vault in Beni Hasan, Egypt (circa 2500 B.C.), shows what appears to be a ball hidden under one of several cups. MILBOURNE CHRISTOPHER, *THE ILLUSTRATED HISTORY OF MAGIC* 9-11 (1983). Magicians have speculated that this was an early magic trick. *Id.* I have previously speculated that this may have been an early record of gambling activity. Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 15 (1992). It now appears that the drawing actually depicts a bread-making process. Chuck Romano, *The Art of Deception or the Magical Affinity Between Conjuring and Art*, 74 THE LINKING RING, Nov. 1994, at 59, 60. In Egypt, archaeologists recently discovered a bakery that dates back to the building of the pyramids. *Id.* This time period corresponds directly with that of the Beni Hassan tomb. *Id.* The archaeologists found bread molds and flat trays that almost certainly are what the drawing depicts. *Id.*

2000-year-old dice game.¹⁷ Perhaps more interestingly, "loaded" dice were found in the Pompeii excavation.¹⁸ In fact, some authorities have suggested that artifacts dating from the Stone Age were used for gambling.¹⁹

Governments have also been regulating gambling practically since its inception. Records from India indicate that in 321 B.C. there was a governmental department to regulate gambling, with a Superintendent of Public Games who supplied dice and collected a fee of five percent of the receipts.²⁰ In 1190, during the Crusades, Richard the First of England and Phillip of France issued joint regulations to control gambling in the Christian Army.²¹ In England alone, proclamations or legislative enactments designed to control gambling were set forth in 1388,²² 1477,²³ 1494,²⁴ 1503,²⁵ 1511,²⁶

¹⁷ Donna Foote, *A Treasure Hunt in London*, NEWSWEEK, Aug. 1, 1988, at 49. The dice game discovered in London was left by the Romans. *Id.*

¹⁸ E. BENSON PERKINS, *GAMBLING IN ENGLISH LIFE* 8 (1950). A tavern in Pompeii is decorated with an ancient painting of a quarrel breaking out between two men playing dice. *Id.* The final result is both men being pushed out of the establishment, presumably as a result of one man's cheating. *Id.*; see also Shaffer, *supra* note 16, at 5 (discussing early examples of excessive behavior associated with gambling).

¹⁹ GILBERT GEIS, *NOT THE LAW'S BUSINESS: AN EXAMINATION OF HOMOSEXUALITY, ABORTION, PROSTITUTION, NARCOTICS, AND GAMBLING IN THE UNITED STATES* 226 (1979). Although Stone-Age people were known to have tossed painted pebbles and casted knucklebones, it is not certain that this was done as a means of gambling. *Id.* These activities may have been based on religious ceremony. *Id.*

²⁰ WILL DURANT, *OUR ORIENTAL HERITAGE* 444 (1954); see also Shaffer, *supra* note 16, at 9 ("Governments first attempted to control gambling as early as 300 B.C.").

²¹ This edict limited gambling based upon class distinction. 2 *A HISTORY OF THE CRUSADES* 60 (Kenneth M. Setton ed., 1962). Persons below the rank of knight were prohibited from playing any sort of game for money unless officers were present. *Id.* Knights and clergymen could play for money, but were not permitted to lose more than 20 shillings per day, under penalty of 100 shillings. *Id.* The two monarchs could play for any amount they pleased, but their attendants were restricted to the sum of 20 shillings. *Id.* If a soldier violated these rules, he was to be stripped naked and whipped through the army for three days; sailors found in violation were keel hauled for three days. *Id.* For a description of gambling games that were popular with soldiers during the Crusades, see THOMAS A. ARCHER & CHARLES L. KINGSFORD, *THE CRUSADES: THE STORY OF THE LATIN KINGDOM OF JERUSALEM* 284-90 (5th ed. 1919).

²² 12 Rich. 2, ch. 6 (1388) (Eng.).

²³ 17 Edw. 4, ch. 3 (1477) (Eng.).

1535,²⁷ 1541,²⁸ 1664,²⁹ and 1699.³⁰ Yet gambling continued to be a serious problem.³¹

In the seventeenth and eighteenth century, gambling among the British gentry was rampant.³² One commentator observed, "Unless one gambled freely it was quite impossible to be counted a gentleman, or, for that matter, a lady of fashion."³³ The large transfers of property that often accompanied this gambling disrupted England's land-based aristocracy.³⁴ Accordingly, in 1710, Queen Anne signed the Statute of Anne

²⁴ 11 Hen. 7, ch. 2 (1494) (Eng.).

²⁵ 19 Hen. 7, ch. 12 (1503) (Eng.).

²⁶ 3 Hen. 8, ch. 25 (1511) (Eng.).

²⁷ 27 Hen. 8, ch. 25 (1535) (Eng.).

²⁸ 33 Hen. 8, ch. 9 (1541) (Eng.).

²⁹ 16 Car. 2, ch. 7 (1664) (Eng.).

³⁰ Wm. 3, ch. 17 (1699) (Eng.).

³¹ For a discussion of these English statutes, see Rychlak, *supra* note 16, at 16-19.

³² The government's ability to regulate gambling had been severely limited by the decision in *The Case of Monopolies*, 77 Eng. Rep. 1260 (1602). That case held that all games were legal unless expressly made illegal by Parliament *Id.* at 1264. This meant that a slight modification to a prohibited game would make the game legal until Parliament was able to respond. Rychlak, *supra* note 16, at 17-20. With so many ways to gamble, and the numerous modifications that could be made to games once they were declared illegal, it was no longer realistically possible to outlaw gambling. *Id.* at 17. Instead, subsequent legislation, such as the Statute of Anne, was directed at controlling fraud and limiting the amounts that could be wagered. *Id.*

³³ CYRIL H. HARTMANN, INTRODUCTION TO GAMES AND GAMESTERS OF THE RESTORATION xi (F. Isaacs ed., 1930) (referring to court of Charles II, 1660-85); see also 1 ANDREW STEINMETZ, THE GAMING TABLE: ITS VOTARIES AND VICTIMS 16 (Patterson Smith Publ. Co. 1969) (1870) ("[T]here was no European nation among which gambling did not constitute one of its polite and fashionable amusements - with the exception of the Turks.").

³⁴ NAT'L INST. OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, LAW ENFORCEMENT ADMINISTRATION-U.S. DEPT. OF JUSTICE, THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776-1976, at 12, 15 (1977) [hereinafter DEVELOPMENTS]; see also 1 STEINMETZ, *supra* note 33, at 20 ("[S]ome have played first all their money, then their rings, coach and horses . . . and then, such a farm; and last, perhaps a lordship.") (citation omitted). Later, in the Old South of the United States, many plantations changed hands over poker games. HENRY CHAFETZ, PLAY THE DEVIL: A HISTORY OF GAMBLING IN THE UNITED STATES FROM 1492 TO 1955, 188 (1960); see also MARGARET MITCHELL, GONE WITH THE WIND 47-49 (Avon Books 1973) (1936) (explaining how Gerald O'Hara won Tara playing poker).

to stabilize British society by refusing to enforce large gambling debts.³⁵ Nevertheless, gambling continued, and like many other European governments, the English government conducted annual lotteries to raise revenue throughout much of the eighteenth and nineteenth centuries.³⁶

³⁵ I. NELSON ROSE, *GAMBLING AND THE LAW* 73 (1986). "The Statute of Anne was passed to protect the landed gentry from the consequences of their own folly." *Id.* Under the Statute of Anne, "all Notes, Bills, Bonds, Judgments, Mortgages, or other Securities or Conveyances whatsoever" given in payment of gambling debts of ten pounds or more were deemed "void, frustrate, of none Effect to all Intents and Purposes." 9 Anne, ch. 14, § 1 (1710) (Eng.). In addition, the loser of any sum over ten pounds could sue within three months to recover his loss, and if he did not sue, anyone could sue the winner for three times the amount lost. *Id.* § 2. One half of the amount recovered went to the Crown. *Id.* Persons convicted of fraud in gambling were subject to forfeiture of five times the sum won and to corporal punishment. *Id.* § 5.

Even with the restrictions imposed by the Statute of Anne, not all gambling was curtailed. Rychlak, *supra* note 16, at 19-20. The Statute of Anne did not affect gambling debts for less than ten pounds, which remained fully enforceable in court. *Id.* at 20. Nonetheless, by making large gambling debts unenforceable, the Statute of Anne had the desired effect of curtailing the large transfers of wealth and land that had taken place prior to its enactment. *Id.* As the New World developed, the Statute of Anne, along with other common law doctrines, became part of the law of every state in the United States. *Id.*

³⁶ DAVID WEINSTEIN & LILLIAN DEITCH, *THE IMPACT OF LEGALIZED GAMBLING: THE SOCIOECONOMIC CONSEQUENCES OF LOTTERIES AND OFF-TRACK BETTING* 8 (1974); see also 1 STEINMETZ, *supra* note 33, at 399-400 (referring to first parliamentary lottery in 1709). Shakespeare mentioned lotteries in several of his works. See WILLIAM SHAKESPEARE, *ANTONY AND CLEOPATRA* act 2, sc. 2, lines 247-48 (Sylvan Barnet ed., 1988) ("If beauty, wisdom, modesty, can settle the heart of Antony, Octavia is a blessed lottery to him."); WILLIAM SHAKESPEARE, *JULIUS CAESAR* act 2, sc. 1, lines 118-19 (Sylvan Barnet ed., 1988) ("So let high-sighted tyranny range on, Till each man drops by lottery."); WILLIAM SHAKESPEARE, *TROILUS AND CRESSIDA* act 2, sc. 1, line 138 (Sylvan Barnet ed., 1988) ("I know not; 'tis put to lottery."); see also WILLIAM SHAKESPEARE, *CORIOLANUS* act 5, sc. 2, line 10 (Sylvan Barnet ed., 1988) ("[I]t is lots to blanks."). While the other Shakespearean references to lotteries might not indicate a gambling game, the phrase in *Coriolanus*, which means winning tickets to losing tickets or a better than even chance (a similar modern phrase would be "dollars to doughnuts"), seems clearly to indicate the type of lottery that European governments were then beginning to conduct. It is interesting to note that all of these references are in tragedies that date from 1599 to 1608, indicating that it was around this time that lotteries were becoming popular throughout England. See WILLIAM SHAKESPEARE, *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* 770, 862, 1071, 1108 (Hardin Craig & David Begington eds., rev. ed. 1973) (discussing dates of various plays).

Gambling and the regulation of gambling also have long histories in this country. The Puritans drafted the earliest gambling regulations in the New World.³⁷ These laws were designed to attack the unproductive use of time—idleness, not gambling in and of itself.³⁸ "The instinct of the people for gambling was thought of as a natural one, and opposition to it was not strong or widespread."³⁹ Idleness, however, was a great sin. Ben Franklin, who enjoyed playing cards,⁴⁰ once received a letter questioning this idle waste of time. He replied:

I have indeed now and then a little compunction in reflecting that I spend time so idly; but another reflection comes to relieve me, whispering, "*you know that the soul is immortal; why then should you be such a niggard of a little time, when you have a whole eternity before you?*" So, being easily convinced, and, like other respectable creatures, satisfied with small reason, when it is in favour of what I have a mind to, I shuffle the cards again, and begin another game.⁴¹

³⁷ DEVELOPMENTS, *supra* note 34, at 39-42.

³⁸ See Alfred N. King, *Public Gaming and Public Trust*, 12 CONN. L. REV. 740, 740 (1980) ("It is further ordered that noe pson howse holder or othr, shall spend his time idely or unpffitably under paine of such punishment as the court shall thinke meets to inflicte . . .") (citation omitted).

The early version of baseball also was restricted by regulations designed to prevent idleness. GEORGE F. WILL, *MEN AT WORK: THE CRAFT OF BASEBALL* 295 (1990). Will suggests that baseball helped change the nation's attitude about idleness by emphasizing the virtues of play. *Id.* at 307.

³⁹ HARRY B. WEISS & GRACE H. WEISS, *THE EARLY LOTTERIES OF NEW JERSEY* 10 (1966); see also G. Robert Blakey & Harold A. Kurland, *The Development of the Federal Law of Gambling*, 63 CORNELL L. REV. 923, 1015 n.430 (1978) ("Indeed, only after the Puritan Devines lost their political power did a biblical justification for antigambling legislation develop."). The Catholic Church still does not view gambling as inherently wrong unless it involves the violation of moral norms. *Catechism Addresses Gambling*, *MISS. TODAY*, Oct. 28, 1994, at 6 (citing *Catechism of the Catholic Church*).

⁴⁰ See 2 W. BRUCE, *BENJAMIN FRANKLIN SELF-REVEALED* 21 (2d ed. rev. 1923) ("He was always ready for a friendly game of cribbage, cards or chess."); see also DAVID LOUIS, 2201 *FASCINATING FACTS* 68 (1983) (describing Franklin as one of earliest printers of playing cards in New World).

⁴¹ Letter to Mrs. Mary Hewson (May 6, 1786) in 9 *THE LIFE AND WRITINGS OF BENJAMIN FRANKLIN* 510, 512 (Albert H. Smyth ed., 1906) (emphasis in original).

When gambling could be put to a good use, the colonists were not reluctant to employ it. For instance, early Americans often relied on lottery proceeds to finance public works.

Because the colonies had no central government, hence no power to tax, they were at first dependent on help from England.⁴² In 1612, King James I chartered the Virginia Company of London to raise revenue for the benefit and support of the Jamestown settlement.⁴³ One authorized means of raising money was by conducting lotteries throughout England.⁴⁴ As one early American colonist noted, these lotteries were the "real and substantiall [sic] food, by which Virginia hath been nourished."⁴⁵ That nourishment, however, came at the expense of the British, who purchased the tickets but did not benefit from the profits. As such, they soon became a drain on the British economy.⁴⁶ When the Virginia Company's charter was revoked in 1624, colonists soon turned to domestic lotteries.⁴⁷

Between 1746 and the Civil War, American lotteries were authorized for such projects as the establishment or improve-

⁴² DEVELOPMENTS, *supra* note 34, at 660. Prior to 1790, business in America was still in its infancy. *Id.*

⁴³ VA. CHARTER OF 1612, reprinted in 10 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 37, 44 (William F. Swindler ed., 1979) [hereinafter CONSTITUTIONS].

⁴⁴ A.R. SPOFFORD, LOTTERIES IN AMERICAN HISTORY, S. Misc. Doc. No. 57, 52d Cong., 2d Sess. 173 (1893) [hereinafter SPOFFORD]. These lotteries were promoted as Christian endeavors, and two of the first three winning tickets were held by Anglican churches. GEORGE SULLIVAN, BY CHANCE A WINNER: THE HISTORY OF LOTTERIES 13 (1972); see also John Crigler et al., *Why Sparky Can't Bark--A Study of the Ban on Broadcast Advertisements*, 2 COMM. LAW CONSPICUOUS 43, 46 (1994) (describing early Virginia lottery as respectable).

⁴⁵ JOHN S. EZELL, FORTUNE'S MERRY WHEEL: THE LOTTERY IN AMERICA 8 (1960) (quoting member of Virginia Company).

⁴⁶ See WEISS & WEISS, *supra* note 39, at 4 ("It did not take long for the [English] towns and cities to complain of the demoralization of business and industry by the competition of the lottery.").

⁴⁷ King, *supra* note 38, at 741. It has been suggested that most tickets in the early American lotteries were purchased by the gentry, who regarded participation in the lottery as a civic duty. *Id.* Early American lotteries operated differently than modern lotteries do. For a detailed explanation of the process, see SULLIVAN, *supra* note 44, at 17-18.

ment of Harvard, Yale, Kings College (Columbia University), Princeton, Rutgers, Dartmouth, Rhode Island College (Brown University), the University of Pennsylvania, the University of North Carolina, and the University of Michigan; the benefit of the Masons; the fortification of New York City and Philadelphia; the construction of roads, hospitals, lighthouses, and jails; the promotion of literature; the improvement of navigation on rivers; the development of industry; and even the construction of churches.⁴⁸ During this period, lotteries provided funds to 47 colleges, 300 lower schools and 200 church groups (including most minor denominations and every major denomination except the Quakers).⁴⁹ The Continental Congress even authorized a national lottery to help fund the Revolutionary War.⁵⁰ By 1776, a lottery wheel existed "in every city and town large enough to boast of a courthouse and a jail."⁵¹

By the 1830s, most of the revolutionary era lotteries had been outlawed due to massive fraud and a perception that they eroded the moral fabric of the society.⁵² There was, however, a brief revival of state run lotteries in the late 1860s. Expenses stemming from the Civil War and Reconstruction created a great need for funds to finance government projects, primarily in Southern and Western states.⁵³ Mississippi's lottery of this

⁴⁸ Approximately 158 lotteries were chartered between 1744 and 1774. See DEVELOPMENTS, *supra* note 34, at 662-63 (identifying general nature of benefited entities). For citation to several of the acts authorizing these lotteries, see Rychlak, *supra* note 16, at 25 n.83.

The most interesting lottery from this time period (or any time period) may have been the proposed 1747 New York "Charitable Lottery" for virgins and widows, which would offer prizes ranging from "Beauties" and "Pretty girls" to "Good conditioned" and "Good card-players." CHAFETZ, *supra* note 34, at 24-25.

⁴⁹ JOHN DOMBRINK & WILLIAM THOMPSON, *THE LAST RESORT: SUCCESS AND FAILURE IN CAMPAIGNS FOR CASINOS* 8 (1990); see also HERBERT ASBURY, *SUCKER'S PROGRESS: AN INFORMAL HISTORY OF GAMBLING IN AMERICA FROM THE COLONIES TO CANFIELD* 73-74 (Patterson Smith Pub. Co. 1969) (1938) (discussing various uses of early American lottery proceeds).

⁵⁰ See *Horner v. United States*, 147 U.S. 449, 458 (1893) (mentioning Revolutionary War era lottery). Few tickets were sold, and the lottery was ultimately declared a failure. CHAFETZ, *supra* note 34, at 25-26.

⁵¹ EZELL, *supra* note 45, at 53.

⁵² See Rychlak, *supra* note 16, at 32-38 (setting forth reasons for downfall of early American lotteries).

⁵³ WEINSTEIN & DEITCH, *supra* note 36, at 10. Often these lotteries appeared

era gained special recognition in that it ended up having its fate decided by the United States Supreme Court.⁵⁴ In 1867, the Mississippi Legislature passed an act incorporating the Mississippi Agricultural and Manufacturing Aid Society and granting that corporation the right to conduct lotteries within the State for twenty-five years.⁵⁵ Two years later a new state constitution was adopted. The new constitution declared that "[t]he legislature shall never authorize any lottery, nor shall the sale of lottery tickets be allowed, nor shall any lottery heretofore authorized be permitted to be drawn, or tickets therein to be sold."⁵⁶ Acting pursuant to this constitutional mandate, the 1870 legislature passed an act prohibiting all lotteries within the State.⁵⁷ When the State sought to prohibit any further drawings of the previously authorized lottery, the corporation argued that contractual rights granted by the 1867 statute could not be abrogated by a later state constitution or legislation.⁵⁸

The unanimous opinion of the Supreme Court began by acknowledging that a charter to a private corporation falls under the protection of the Contract Clause.⁵⁹ The Court, however, also noted that unless a valid contract was entered into there would be nothing for the Contract Clause to protect.⁶⁰

disguised as gift companies in order to avoid legal difficulties. *Id.* These illegal lotteries were successful for several years but were eventually forced out due to pressure from all areas of the government. *Id.* at 11; see also COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING, GAMBLING IN AMERICA 145 (1976) (discussing need for government regulation).

⁵⁴ See *Stone v. Mississippi*, 101 U.S. 814 (1879).

⁵⁵ Act of Feb. 16, 1867, ch. 256, 1867 Miss. Laws 349.

⁵⁶ MISS. CONST. art. XII, § 15 (1890) reprinted in 5 CONSTITUTIONS, *supra* note 43, at 389.

⁵⁷ *Stone*, 101 U.S. at 815 (citing "An Act Enforcing the Provisions of the Constitution of the State of Mississippi Prohibiting All Kinds of Lotteries within Said State and Making it Unlawful to Conduct One in this State").

⁵⁸ *Id.* at 816; cf. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 624 (1819) (holding state's interference with previously granted charter violates contract clause of United States Constitution); *State v. Hawthorn*, 9 Mo. 389, 396-97 (1845) (holding revocation of charter from previously authorized lottery violates contract clause of United States Constitution).

⁵⁹ *Stone*, 101 U.S. at 815.

⁶⁰ *Id.* at 817. The alleged contract allowed the company to sell subscriptions

Thus, "[w]hether the alleged contract exists . . . or not, depends on the authority of the legislature to bind the State and the people of the State in that way."⁶¹ Although the pre-1869 constitution did not prohibit the legislature from granting the right to conduct lotteries, "[a]ll agree that the legislature cannot bargain away the police power of a State."⁶² Without attempting to define the limits of the police power, the Court stated that all matters affecting the public health and public morals, including lotteries, were properly subject to regulation under state police powers.⁶³ Consequently, a contract by which the legislature purported to give up the right to regulate or prohibit a lottery was invalid and unenforceable.⁶⁴ As such, the lottery in question was prohibited by the new Mississippi constitution.⁶⁵

By 1878, all states except Louisiana prohibited lotteries, either by statute or constitution.⁶⁶ When Louisiana politicians were unwilling or unable to close down the lottery in that state, the federal government finally got involved and passed legislation that effectively killed that lottery as well.⁶⁷

which entitled the holder to a chance to win various valuable items. *Id.*

⁶¹ *Id.* The Legislature cannot impair its power to regulate such activities. *Id.*

⁶² *Id.*

⁶³ *Id.* at 818.

⁶⁴ *Stone*, 101 U.S. at 821. The Court stated that any company accepting a lottery charter must forfeit it when the people decide it is better for the public good. *Id.*

⁶⁵ Interestingly, the Mississippi Constitution still prohibits lotteries. MISS. CONST. art. IV, § 98 (1890). Thus, in permitting riverboat casinos, the Legislature had to define the Constitution in such a way as not to prohibit casino-style gambling. MISS. CODE ANN. §§ 75-76-3(6), 75-76-5(k) (1991). A similar situation in Missouri caused that state's supreme court to rule that Missouri riverboats could not offer games of chance, only games of skill. See *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 64 (Mo. 1994). In November, 1994, Missouri voters approved a provision which will permit games of chance to be offered. *Gaming Industry Wins Some, Loses Some in '94*, SACRAMENTO BEE, Dec. 18, 1994, at A3.

⁶⁶ WEINSTEIN & DEITCH, *supra* note 36, at 11. During this period, Delaware and Vermont recognized the right of their legislatures to authorize lotteries, but none were so authorized. H.R. REP. NO. 787, 50th Cong., 1st Sess. pt. 2, at 2 (1888).

⁶⁷ See Rychlak, *supra* note 16, at 40-44 (detailing problems and setting forth federal legislation).

From the turn of the century until the mid 1960s, there was fairly little legalized gambling and no state sponsored gambling in the United States.⁶⁸ Nevada, of course, was notorious for its legal gambling,⁶⁹ and some areas had parimutuel betting on race horses or greyhound dogs. Overall, however, legal gambling was at a historic low in this nation. Then, in 1964, more than a century after most states had banned all lotteries, New Hampshire reintroduced America to the state run lottery.⁷⁰ New York followed by introducing a lottery in 1967 and New Jersey introduced one in 1970.⁷¹ By 1974, eleven states were on the lottery bandwagon.⁷² In 1977, legal casino gambling came to Atlantic City, New Jersey.⁷³ As more and more states seek to take advantage of the enormous profits that can be derived from legalized gambling, new games, locations, and variations have swept across the nation.⁷⁴

Some form of legalized gambling is now found in every

⁶⁸ In 1910, a year in which New York outlawed gambling and Nevada banned casinos, "the nation became virtually free of legalized gaming." DOMBRINK & THOMPSON, *supra* note 49, at 11. A few states briefly experimented with legalized slot machines during this period. See Rychlak, *supra* note 15, at 562-63 (discussing projects in Florida and Maryland).

⁶⁹ Gambling was legalized in Nevada in 1931, but it really came of age in 1946 when Benjamin Siegal built the Flamingo Hotel just outside Las Vegas. JEROME H. SKOLNICK, *HOUSE OF CARDS: THE LEGALIZATION AND CONTROL OF CASINO GAMBLING* 109-11 (1978).

⁷⁰ See N.H. REV. STAT. ANN. §§ 287-F:1 to 287-F:19 (1987) (New Hampshire's lottery legislation).

⁷¹ CHARLES T. CLOTFELTER & PHILLIP J. COOK, *SELLING HOPE: STATE LOTTERIES IN AMERICA* 145 (1989); see N.J. STAT. ANN. §§ 5:9-1 to 5:9-25 (West 1988); N.Y. TAX LAW §§ 34-1600 to -1606 (McKinney 1987) (State Lottery for Education, which replaced earlier New York State Lottery); see also *New York State Broadcasters Ass'n v. United States*, 414 F.2d 990, 991 (2d Cir. 1969) (discussing New York's adoption of lottery in 1966-67), *cert. denied*, 396 U.S. 1061 (1970).

⁷² WEINSTEIN & DEITCH, *supra* note 36, at 16.

⁷³ Joseph F. Sullivan, *As Casinos Profit, So Do Lawyers in a New Field*, N.Y. TIMES, Sept. 30, 1994, at A29.

⁷⁴ The Clinton Administration proposed (and then dropped) a four percent tax on the industry's gross revenue to finance changes in welfare. Sullivan, *supra* note 73, at B10. The newest proposals relate to interactive computer gambling. See Julie Schmitt, *Iacocca Bets In-Flight Gambling Will Take Off*, USA TODAY, Oct. 10, 1994, at B3 (discussing Lee Iacocca's venture capital group which seeks to place interactive gambling devices on airplanes).

state except Hawaii and Utah. As of mid-1994, lotteries were conducted in thirty-seven states and the District of Columbia;⁷⁵ twenty-four states had gambling on Indian reservations;⁷⁶ six states had riverboat gambling;⁷⁷ and twenty-three states had authorized casinos.⁷⁸ Other states have various forms of parimutuel betting or other licensed or state sponsored gambling.⁷⁹ In fact, casinos had ninety-two million visitors in 1993, twice as many as three years ago and more than admissions to major league baseball games.⁸⁰ Americans spent more than \$30 billion on games of chance in 1993, more than on films, books, recorded music and other entertainment combined.⁸¹ Whatever the form of the game,⁸² with this much

⁷⁵ Ian Brodie, *Tunica County Gets Lucky as Gambling Sweeps US*, THE TIMES (London) Apr. 11, 1994, at 38; see also *The Gamble, Part 1 -- A Fast-Growing Industry* (CNN television broadcast, Mar. 27, 1994) (discussing pros and cons of state lotteries).

⁷⁶ Sullivan, *supra* note 73, at A29.

⁷⁷ The six states that have riverboat gambling are Illinois, Indiana, Iowa, Louisiana, Mississippi and Missouri. See Illinois Riverboat Gambling Act, ILL. ANN. STAT. ch. 230, para. 10/1-10/23 (Smith-Hurd 1993 & Supp. 1994); Indiana Riverboat Gambling Statute, IND. CODE ANN. §§ 4-33-2-1 to 4-33-15-4 (Burns Supp. 1994); Iowa Excursion Boat Gambling Statute, IOWA CODE ANN. §§ 99F.1 to -18 (West Supp. 1994); Louisiana Riverboat Economic Development and Gaming Control Act, LA. REV. STAT. ANN. §§ 4:501-562 (West Supp. 1995); Mississippi Gaming Control Act, MISS. CODE ANN. §§ 75-76-1 to -281 (1991 & Supp. 1994); Missouri Excursion Gambling Boats Statute, MO. ANN. STAT. §§ 313.800 to .850 (Vernon 1994). Bills have also been proposed in Ohio, Pennsylvania, Texas, and Virginia. See H.R. 93, 120th Leg., Reg. Sess. (Ohio 1993); H.R. Res. 345, 178th Leg., Reg. Sess. (Pa. 1993); S. 1217, 73d Leg., Reg. Sess. (Tex. 1993); H.R. 1242, Virginia 1994-1995 Reg. Sess.

⁷⁸ Brodie, *supra* note 75, at 38 (including Indian reservation gambling). Not counting Indian reservations, there are now eleven states that have casinos. Laurel Campbell, *Casinos Hope Florida Votes Yes*, COM. APPEAL (Memphis), Nov. 6, 1994, at C1 (identifying ten states). Florida actually voted no in the November 1994 election, as did Wyoming, but Rhode Island voted to approve casino gambling. *Final Election Results*, USA TODAY, Nov. 10, 1994, at A10, A13. Gambling issues of one form or another appeared on ballots in 15 states in elections that month. *Id.*

⁷⁹ See *Riverboat Casinos Continue Economic Boom, Say Experts*, DAILY MISSISSIPPIAN, Sept. 27, 1994, at 1 (warning that boom will slow when other states attempt to mimic Mississippi).

⁸⁰ Brodie, *supra* note 75, at 38.

⁸¹ *Id.* By one report, \$394.3 billion was bet in this country in 1993. Sullivan, *supra* note 73, at A29 (citing GAMING AND WAGERING BUS. Magazine's annual

money at stake, it is clear that gambling will continue to be an important part of the political and economic landscape well into the future.⁸³

III. THE MISSISSIPPI APPROACH

Unlike the majority of states which looked first to lotteries as a "mild" form of gambling,⁸⁴ Mississippi opted for riverboat

survey on gambling).

⁸² One recent innovation is the video lottery. ROSE, *supra* note 35, at 2 (describing video as "[t]he latest thing in lotteries"). This lottery is played on machines similar to the video games teenagers play (like Pac Man), but the game is one of chance, not skill. Rychlak, *supra* note 16, at 247 n.235. With interactive television now on the horizon, this game might soon be available within the average home.

⁸³ See CLOTFELTER & COOK, *supra* note 71, at 9, 140 ("[I]n state after state the people have endorsed state-run lotteries in public referenda. Once in place, no lottery has yet been seriously challenged or threatened with termination."). In addition to being popular, gambling interests have also been willing to spend great sums to sway public opinion when there is a referendum. *Id.* at 141, 236.

Church groups, which tend to oppose gambling, rarely have the political clout to defeat movements toward gambling. *Id.* at 47, 174.

⁸⁴ See Pauline Yoshihashi, *Gambling: Luck is Running Out at Some Lotteries, As Competition and Boredom Take Toll*, WALL ST. J., Feb. 12, 1991, at B1, B6 (noting that some people fear that video gambling blurs "the line between traditional lotto and 'hard' gambling"). But see *Stone v. Mississippi*, 101 U.S. 814, 818 (1879). In *Stone* the Court stated:

Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the wide-spread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; and it plunders the ignorant and simple.

Id. at 818 (quoting *Phalen v. Virginia*, 49 U.S. (8 How.) 163, 168 (1850)); *Champion v. Ames*, 188 U.S. 321, 356 (1903) (quoting same language); *Lee v. City of Miami*, 163 So. 486, 489 (Fla. 1935) (adopting "widespread pestilence" definition); *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 61 (Mo. 1994) (recognizing lotteries as being more dangerous than other forms of gambling); *Ex Parte Pierotti*, 184 P. 209, 210-11 (Nev. 1919) (adopting "widespread pestilence" definition); *Lucky Calendar Co. v. Cohen*, 117 A.2d 487, 492-93 (N.J. 1955) ("Of all the forms of gambling, lotteries have been the most condemned by the courts. Over a century ago the United States Supreme Court unanimously condemned their anti-social effects in comparison with ordinary gambling. . . ."); see also Rychlak, *supra* note 16, at 60-63 (arguing that lotteries force states to promote gambling, thereby magnifying adverse social consequences).

gambling.⁸⁵ This was likely based on a romanticized perception of riverboat gamblers on the Mississippi River during the 1800s. An author wrote in 1870:

The town of Vicksburg, on the Mississippi, was formerly notorious as the rendezvous of all sorts of desperadoes. It was a city of men; you saw no women, except at night; and never any children. Vicksburg was a sink of iniquity; and there gambling raged with unrestricted fury. It was always after touching at Vicksburg that the Mississippi boats became the well-known scene of gambling—some of the Vicksburghers invariably getting on board to ply their profession.⁸⁶

As suggested by this passage, the time period when gambling was rampant on the Mississippi was violent, dangerous, and not at all romantic.⁸⁷

Casino-style gaming came to Mississippi on December 19, 1987, aboard the *Europa Star*, a cruise ship docked in Biloxi that sailed into waters where its operators claimed Mississippi had no jurisdiction and, thus gambling could take place.⁸⁸ The water in question was ultimately determined to be under Mississippi jurisdiction,⁸⁹ but in 1989 Mississippi became the first

⁸⁵ Iowa started the move toward riverboat gambling in 1989 when that state's legislature authorized low-stakes (\$5.00 per hand and a maximum loss per player of \$200 per riverboat trip) gaming on riverboats. *CASINO LAW*, *supra* note 6, at 1. Illinois then gave its riverboats an advantage by allowing high-stakes games in January, 1990. *Id.* Mississippi legalized high-stakes riverboat gaming on March 23, 1990. *Id.* In 1994, the Iowa statute was amended to remove the low-stakes restrictions, but the amendments are subject to approval in local referenda. *Id.*

⁸⁶ 1 STEINMETZ, *supra* note 33, at 249.

⁸⁷ See generally ASBURY, *supra* note 49, at 203-61 (discussing cheating, riots, murders, and reactions of concerned citizens trying to restore order).

⁸⁸ *CASINO LAW*, *supra* note 6, at 65. The *Europa Star* conducted "cruises to nowhere" and afforded passengers the opportunity to play slot machines, roulette and bingo. *Id.*

⁸⁹ *Id.* The *Europa Star* conducted its cruises in the Mississippi Sound, a channel between the coast of Biloxi and the barrier islands located eight to ten miles offshore from Biloxi. *Id.* The ship operators claimed that the Panamanian-registered vessel was in international waters and free from United States and Mississippi law when it was three miles out to sea from the Biloxi shore. *Id.* The State disputed the three mile jurisdictional limit and filed anti-gambling charges against the ship operators. *Id.* The courts ruled that international waters began beyond

state to allow gambling aboard cruise ships in state waters provided the ships were in transit to or from international waters.⁹⁰ The following year the State repealed the 1989 statute and passed much more comprehensive legislation which created a state gaming commission⁹¹ and legalized dockside gambling aboard approved vessels of a minimum size while in state waters.⁹²

The approved vessels are called "riverboats," but that term is misleading.⁹³ In Mississippi, a "cruise vessel" is defined as "a vessel which complies with all U.S. Coast Guard regulations, having a minimum overall length of one hundred fifty (150) feet and a minimum draft of six (6) feet which is certified to carry at least two hundred (200) passengers."⁹⁴ The general prohibitions on betting, gaming, or wagering do not apply when gambling takes place on a cruise vessel which

is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming, or

the barrier islands in the Gulf of Mexico. *Id.* The Europa Star ultimately left the State in November, 1988. *Id.* Its owners claimed it was not commercially viable to continue its Mississippi cruises with gaming permitted only after the ship was beyond the Sound. *Id.*

⁹⁰ Ships capable of carrying 400 passengers overnight could now offer gaming in Mississippi waters if they were at least 300 feet long and had a minimum draft of 15 feet. MISS. CODE ANN. § 97-33-1 (Supp. 1989), amended by MISS. CODE ANN. § 97-33-1(a)-(c) (Supp. 1990). The ships would still have to go into international waters, but gaming could begin when the ships left their Mississippi ports. *Id.* § 97-33-1(a)-(c).

⁹¹ MISS. CODE ANN. §§ 75-76-1 to -281 (1991). The Mississippi Gaming Commission is specifically created by MISS. CODE ANN. § 75-76-7(2) (1991).

⁹² MISS. CODE ANN. § 97-33-1 (1994).

⁹³ Many states have restrictions, not present in Mississippi, on the appearance of their riverboat casinos, requiring them to resemble 19th century riverboats. See, e.g., ILL. ANN. STAT. ch. 230, para. 10/6(f) (Smith-Hurd 1993) (mandating that ships be either 19th century replicas or casino cruise ship design); IND. CODE ANN. § 4-33-6-6(b) (Burns Supp. 1994); IOWA CODE ANN. § 99F.7(3) (West Supp. 1994); LA. REV. STAT. ANN. § 4:504(23)(d) (West Supp. 1994).

⁹⁴ MISS. CODE ANN. § 27-109-1(2) (1990).

wagering on cruise vessels.⁹⁵

In addition, a "vessel" is defined as "a vessel having a minimum overall length of one hundred fifty (150) feet."⁹⁶ The general prohibitions on betting, gaming, or wagering do not apply when gambling takes place on a vessel which

is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming, or wagering on vessels.⁹⁷

Thus, as long as the voters within a qualified county do not disapprove, gambling can take place on a vessel or a cruise vessel.

Unlike every other state except Louisiana,⁹⁸ the Mississippi statute is worded so that riverboat gaming is legal in all the qualified counties, unless the voters of a county take affirmative steps to block it.⁹⁹ The voter disapproval provision works as follows. When an applicant files an application for a state gaming license to conduct gambling on a vessel or cruise vessel, notice must be published in a newspaper of general circulation, and objections may be filed within thirty days. If twenty percent of the registered voters or fifteen hundred people, whichever is less, sign a petition, then an election must be scheduled to determine whether that county will allow gambling.¹⁰⁰ If a vote takes place and the voters disapprove of gambling, a new

⁹⁵ MISS. CODE ANN. § 97-33-1(a) (1994).

⁹⁶ MISS. CODE ANN. § 27-109-1(2) (1990).

⁹⁷ MISS. CODE ANN. § 97-33-1(b) (1994).

⁹⁸ Swanson, *supra* note 5. Most states provide for some form of local option elections before gambling boats may be allowed to dock in a city or county, but it is usually a matter of voter approval, not voter disapproval. *Id.*; see, e.g., IOWA CODE ANN. § 99F.7(1) (West Supp. 1994) (authorizing issuance of gambling license only if county voters approve).

⁹⁹ MISS. CODE ANN. § 19-3-79 (Supp. 1994). The notice must be published within 10 days of the application, and if no petition is filed within 30 days after the required third publication then gaming is considered approved. *Id.* § 19-3-79.

¹⁰⁰ *Id.* § 19-3-79(3).

election may not be scheduled for one year.¹⁰¹ Once a casino is docked in a county, either without a petition and election or with an affirmative vote for the docking of a casino, no other election is to be held in that county.¹⁰² In the fourteen counties on the Mississippi River and Gulf Coast where casinos are sanctioned, voters by mid-1994 had ratified casinos in nine counties and defeated the proposal in two.¹⁰³

The original rationale for confining gambling to the water was that it would limit the impact on local communities while gambling would still be accessible.¹⁰⁴ In addition, if casinos did not succeed, they could pull anchor and sail away without leaving empty buildings behind.¹⁰⁵ Another concern expressed was that inland casinos would cause too much congestion and disruption in nearby residential areas.¹⁰⁶ With the economic boom experienced by some counties, there is already pressure to drop the waterborne requirement altogether.¹⁰⁷

Casino builders have been very inventive as they have tried to meet the requirement that casinos be on the Coast, the Mississippi River, or on navigable waters with access to those

¹⁰¹ *Id.* § 19-3-79(4).

¹⁰² *Id.* § 19-3-79(5).

¹⁰³ Ernest Blum, *Mississippi Tourism Hits Jackpot With Casinos (Tunica County)*, TRAVEL WKLY, Mar. 28, 1994, at 1. On December 4, 1990, 51% of Harrison County voters and 61% of Jackson County voters rejected floating casino-style gambling, while 51% of Hancock County voters approved it. Richard J. McLaughlin & Lonnie T. Cooper, *The Impact of Legalized Dockside Gaming on Mississippi Coastal Management Agencies*, 14 WATER LOG, No. 3, at 12 (1994). Harrison County citizens voted again in 1992 and approved dockside and cruise ship gambling for Gulfport and Biloxi. *Id.*

¹⁰⁴ Blum, *supra* note 103, at 1. Mississippi has regulations which, unlike other states with riverboat gambling, allow the casinos to be located on stationary dockside platforms rather than waterborne which increases accessibility. *Id.*

¹⁰⁵ Beebe, *supra* note 12, at A1. This could be viewed as a benefit or a detriment. *Id.* In Fort Madison, Iowa, the city borrowed \$2.2 million for waterfront improvements, then the boat left for Biloxi. *Id.* The city is suing the boat's owner. *Id.*

¹⁰⁶ McLaughlin & Cooper, *supra* note 103, at 12-13.

¹⁰⁷ Curtis Wilkie, *Casinos Raise Money, Doubts in Mississippi*, BOSTON GLOBE, Jan. 30, 1994, at 1, 14. Recently, State Sen. David L. Jordan of Greenwood promoted legislation to open up gambling in landlocked counties across the State. *Id.* The Silver Star casino, operated by the Choctaw Indians, is land based. *See infra* notes 184-207 and accompanying text.

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water bodies. "The definitions [structuring the waterborne requirements] were written loosely and the developers have exploited every ambiguity" in the law.¹⁰⁸ Most of the casinos in Tunica County are miles from the Mississippi River. Jim Hasslocher, a former Navy Seabee engineer, came up with the plan which has been copied by most casino builders in that area.¹⁰⁹ Developers dredge a channel from the river or the Coast into the flood plain, fill it by pumping water in or by relying on flood waters, then float in barges, close off the channel, and build a casino on and around the barges.¹¹⁰ While they qualify as vessels, they have no engine, no wheelhouse, and there is no truly navigable water.¹¹¹

Interestingly, only the gambling equipment needs to float, other parts of the casino can be on dry land.¹¹² The "floating" casinos often have more square footage on land than on water.¹¹³ In fact, most of the casinos in Tunica "look about as seaworthy as Sears Tower."¹¹⁴ Tunica County's only true riverboat, the President, closed in the summer of 1994 because it lost too much business to the barges.¹¹⁵

The impact of these barges is much more significant than that which may have come to mind when people originally envisioned and approved riverboat gambling. To consider an example, plans for the Sheraton Tunica Corporation call for barges supporting a 91,900 square-foot casino, but the land-

¹⁰⁸ Wilkie, *supra* note 107, at 14 (quoting Wilson Carroll, director of the Mississippi Casino Operators Association).

¹⁰⁹ Wes Smith, *A Winning Hand: A Poor Delta Town Floats High on Gambling's Inflating Tide*, CHI. TRIB., June 30, 1994, § 5 at 1.

¹¹⁰ Smith, *supra* note 109, at 1. By following this development plan, casino owners are technically able to comply with the State's requirement that the casinos be located on the Mississippi River or navigable water with access to the river. *Id.*

¹¹¹ Wilkie, *supra* note 107, at 14. According to Wilkie, the "boats" are "huge buildings erected on barges floating on man-made ponds." *Id.*

¹¹² Rob Karwath, *On Riverboats, The River is Almost Ignored*, CHI. TRIB., June 5, 1994, § 2, at C1.

¹¹³ Walters, *supra* note 13, at 11. Often the bulk of the facilities of a casino includes restaurants and offices, both of which may be on dry land. *Id.*

¹¹⁴ Smith, *supra* note 109, at 1.

¹¹⁵ Litvin, *supra* note 4, at A8.

based portion part of the complex will consist of a 45-acre parking lot for 4000 vehicles, a four lane divided highway, and a ten-acre lake, among other facilities.¹¹⁶ According to company figures, Sheraton will spend more than \$200 million building the casino.¹¹⁷ The casinos will also contribute in excess of \$20 million per year into the state and county tax coffers. The vision of gentlemen playing poker on a paddleboat steaming up the river bears little resemblance to the floating casinos along the Coast and in Tunica County today.

IV. GAMBLING AS A MEANS TO GENERATE REVENUE

The modern state's reason for permitting gambling to take place is to increase state revenue.¹¹⁸ Gambling is a popular source of revenue because, unlike taxes, participation is voluntary.¹¹⁹ Ideally, a source of revenue should be predictable, in-

¹¹⁶ Williamson, *supra* note 14, at 46. In addition, ultimately the complex is intended to include a hotel with 300 rooms, a dance hall, restaurants, retail outlets and administrative offices. *Id.*

¹¹⁷ *Id.* Once completed, the development will provide 2000 jobs with a yearly payroll of approximately \$46 million, and an additional 1000 jobs will also be generated due to indirect impacts. *Id.*

¹¹⁸ See DOMBRINK & THOMPSON, *supra* note 49, at 176 (suggesting that different motivations—personal liberty and inability to enforce vice laws—had once been dominant).

¹¹⁹ Thomas Jefferson is often cited as having favored lotteries because he called it a tax "laid on the willing only." 17 THE WRITINGS OF THOMAS JEFFERSON 450 (Andrew A. Lipscomb ed., 1903). However, at that time, Jefferson was lobbying for special treatment and actually had expressed dislike for lotteries earlier in his life. THOMAS JEFFERSON, WRITINGS 1222 (Merrill D. Peterson ed., 1984). Jefferson once refused an offer to become a lottery agent, stating he had "made it a rule never to engage in a lottery." *Id.*

In his later years, Jefferson fell on hard times and owed \$80,000 to his creditors. ASBURY, *supra* note 49, at 74. Other than Monticello itself, the lands around it were his most valuable assets, but he was unable to find an individual buyer willing or able to pay his asking price. *Id.* Accordingly, he sought permission to conduct a lottery with the grand prize being some of the real estate surrounding Monticello.

The nation had only recently weaned itself from reliance on lotteries, and Jefferson's early efforts to obtain approval were met with defeat. SARAH N. RANDOLPH, THE DOMESTIC LIFE OF THOMAS JEFFERSON 413-14 (1978). The pain of this early rebuke was evident when he wrote:

It is a part of my mortification to perceive that I had so far overvalued

expensive and easy to collect, and should not place a disproportionate burden on the poor. Gambling has raised enormous amounts of money and has eased the burden on state taxpayers. Gambling has not, however, proved to be an ideal source of revenue.

When the Mississippi Legislature approved the casino bill, economists predicted modest returns.¹²⁰ Those projections have been far surpassed. Statewide, casinos netted \$428 million in revenue in fiscal 1993, the first full calendar year of casino operation in Mississippi.¹²¹ That number is expected to continue to climb.¹²² This revenue impacted tremendously on the State's fiscal situation. In 1993, casino gambling generated \$100 million in taxes for state and local government in Mississippi,¹²³ and the state budget surplus grew to more than \$300 million.¹²⁴ According to officials at the Mississippi Department of Economic & Community Development, gaming was responsible for approximately thirty-five percent of the sur-

myself as to have counted on [approval of the lottery] with too much confidence. I see, in the failure of this hope, a deadly blast of all my peace of mind during my remaining days. . . . I am overwhelmed at the prospect of the situation in which I leave my family.

Id. at 415 (quoting letter written by Jefferson). His supporters, however, were able to give Jefferson a gift of \$16,500, which relieved his immediate needs. ASBURY, *supra* note 49, at 75. Approval was ultimately attained, but the drawing did not take place until after Jefferson's death. SPOFFORD, *supra* note 44, at 188. By then debts had mounted, interest in the lottery had waned, and Monticello itself had to be included among the prizes. See NILES' WKLY. REGISTER (Baltimore), July 29, 1826, reprinted in ASBURY, *supra* note 49, at 75. Even with this new grand prize, lottery proceeds were insufficient to cover Jefferson's debts. *Id.* at 76. His remaining estate was disposed of in a forced sale. *Id.* "Happily, he died unconscious that the sales of his property would fail to pay his debts, that his beautiful home would pass into the hands of strangers, and that his 'dear and beloved daughter' would go forth into the world penniless. . . ." RANDOLPH, *supra*, at 418. The Legislatures of Virginia and South Carolina each later made gifts of \$10,000 to Jefferson's daughter. ASBURY, *supra* note 49, at 76.

¹²⁰ Wilkie, *supra* note 107, at 14.

¹²¹ Alan Salomon, *Gambling is Winner for Mississippi*, ADVERTISING AGE, July 18, 1994, at 10.

¹²² Salomon, *supra* note 121, at 10.

¹²³ *The Gamble*, *supra* note 11.

¹²⁴ Salomon, *supra* note 121, at 10. In 1993, the budget surplus increased for the second consecutive year. *Id.*

plus.¹²⁵ The Mississippi budget also saw a nineteen percent increase in spending, fueled largely by casino gambling.¹²⁶

According to some economists, Mississippi is now the number two state in the sunbelt in terms of economic outlook.¹²⁷ The gaming industry has brought new life to Mississippi's industry.¹²⁸ Unemployment in the state is at a twenty-two year low.¹²⁹ According to officials at the Mississippi Department of Economic & Community Development, gaming represented twenty-five to thirty-three percent of the new jobs created in the State during 1993.¹³⁰ Officials estimate that the legalization of gaming has created over 12,000 jobs in Mississippi as of March 1994,¹³¹ and with each casino employing about 1000 personnel and with 4000 new construction jobs,¹³² it is projected that the gaming industry will have created 37,000 new

¹²⁵ *Id.* At least one national publication has credited Governor Kirk Fordice's spending reductions and opposition to tax increases for the surplus. See *The Week*, NAT'L REV., Apr. 4, 1994, at 10, 12.

¹²⁶ *Gambling in America: Coming Soon Near You? It's a Safe Bet*, American Political Network, Apr. 13, 1994, available in LEXIS, Legis. Libr., APN File [hereinafter *Safe Bet*].

¹²⁷ Salomon, *supra* note 121, at 10. According to the Federal Reserve Bank of Atlanta, gambling has been the primary force in Mississippi's improved economic outlook. *Id.*

¹²⁸ Blum, *supra* note 103, at 1. In only 18 months, tourism has increased its economic impact from \$1.2 billion to \$3.5 billion. *Id.*

¹²⁹ Leslie A. Williams, *State's Jobless Rate Dips*, CLARION-LEDGER (Jackson, Miss.), Oct. 27, 1994, at A1. The jobless rate for November, 1994 was 5.3% which was the lowest since September, 1972 when it was 3.6%. *Id.* The U.S. rate is 5.6%, and Mississippi had dropped below that in September, 1994. *Id.*

¹³⁰ Salomon, *supra* note 121, at 10. Of course, it has been pointed out that job creation alone might not be sufficient justification for legalized gambling. One author noted:

Ten thousand . . . construction jobs are supposed to be created by this project. This may very well be true. However, we could create plenty of construction (and permanent) jobs by building brothels and opium dens. If job creation is the aim of local government, why hasn't the mayor proposed such a project?

John W. Kindt, *The Economic Impacts of Legalized Gambling Activities*, 43 DRAKE L. REV. 51, 54 (1994) (quoting Mark M. Quinn, *Social Costs of Casino Proposal Are Too High*, CHI. SUN-TIMES, Apr. 4, 1992, at 16).

¹³¹ *Weekend Edition*, *supra* note 10. The jobs created range from dealers and waitresses in the casinos to security personnel and construction workers. *Id.*

¹³² Wilkie, *supra* note 107, at 14.

jobs by the end of the fiscal year 1994 while adding \$130 million to the State's general fund.¹³³

The economic impact of gambling in Mississippi has been statewide, but there are regional differences. Retail sales in 1993 were up across the state, but were especially strong in the areas that have gambling. There was a fifteen percent increase in sales on the Gulf Coast, a thirteen percent increase in the northwestern corner of the state, and in the northeastern corner of the state, where there is no gaming, sales were up eleven percent.¹³⁴ Banks from both Jackson and Memphis are trying to move into the new gambling economies.¹³⁵ Tunica County has received most of the attention, but Harrison County, on the Gulf Coast, has also undergone a great deal of casino development. In order to get a better picture of the economics of casino gambling, it is wise to look at some of the specific areas where casinos are located.

V. TUNICA COUNTY

In 1982, the United States Department of Commerce identified Tunica County as the poorest county in the nation.¹³⁶ The Reverend Jesse Jackson once proclaimed Tunica as "America's Ethiopia."¹³⁷ In 1992, both presidential candidates visited the county to witness rural poverty at its worst.¹³⁸ Its

¹³³ *Id.* (citing report by Mississippi Center for Policy Research and Planning).

¹³⁴ Salomon, *supra* note 121, at 10. One might use the 11% figure as a background against which to measure the impact of casino gambling on economic activity. On the other hand, it may be that gambling had an impact on the economic activity even in those regions where there is no gambling. In that case, an 11% background would under-estimate the impact that casinos have had on economic activity.

¹³⁵ *1st Tennessee Buying Bank in Casino Town*, AM. BANKR., Mar. 30, 1994, at 2. First Tennessee National Corporation of Memphis purchased the Planter's Bank of Tunica as part of a "flurry of acquisition activity" set off by the growth of the casinos. *Id.*

¹³⁶ Salomon, *supra* note 121, at 10.

¹³⁷ Smith, *supra* note 109, at 1; see also David Snyder, *Tunica Trades its Rags for Riches*, TIMES-PICAYUNE (New Orleans), Feb. 20, 1994, at A1, A8 (discussing deplorable conditions of Tunica's "Sugar Ditch").

¹³⁸ Snyder, *supra* note 137, at A8. Before the casinos arrived, Tunica was only known as Sugar Ditch to outsiders. *Id.* Today, the Sugar Ditch shacks are gone.

notoriety as an impoverished area was even acknowledged by John Grisham in one of his works of fiction.¹³⁹ Today the situation has changed dramatically.

In 1993, Tunica casinos attracted 1.7 million tourists who contributed in excess of \$140 million to the local economy.¹⁴⁰ On weekends, over 50,000 people per day visit the Tunica County casinos to gamble.¹⁴¹ By the end of 1994, Tunica County had twelve casinos and employed about 13,500 workers.¹⁴² Land values have increased from \$500 an acre to \$50,000 an acre,¹⁴³ and some land has been sold for more than \$160,000 per acre.¹⁴⁴ Unemployment and illiteracy, estimated at seventy percent before casinos, spanned generations in a town dependent on farming for survival.¹⁴⁵ Unemployment might even have been higher, but thousands moved away as the county population dropped from 28,000 to 8000 over the course of about thirty years.¹⁴⁶ Many county residents had never held a full-time job.¹⁴⁷

Since casinos have come, unemployment has dropped to virtually zero. In fact, there are now more jobs than there are available workers in Tunica.¹⁴⁸ The median family income of

Id. In their place are brick public housing apartments. *Id.* One formerly unemployed resident now working for Splash Casino said delightedly, "I just bought a new house. Everything is positive." *Id.*

¹³⁹ JOHN GRISHAM, *THE CHAMBER* 63 (1994). Adam Hall, Grisham's fictional character, "listened to an old Muddy Waters cassette as he entered the infamous county of Tunica, said to be the poorest in the nation." *Id.*

¹⁴⁰ Helene Cooper, *Mixed Blessing*, WALL ST. J., June 22, 1994, at A1.

¹⁴¹ Wilkie, *supra* note 107, at 14.

¹⁴² GAMING REPORT, *supra* note 4, at 34.

¹⁴³ Wilkie, *supra* note 107, at 14.

¹⁴⁴ Smith, *supra* note 109, at 1.

¹⁴⁵ Snyder, *supra* note 137, at A8.

¹⁴⁶ Snyder, *supra* note 137, at A8. According to Tunica's mayor, the town was simply "drying up" with no end in sight to the stream of residents leaving to find a better future. *Id.*

¹⁴⁷ Snyder, *supra* note 137, at A8. Before the casinos, Tunica residents often worked part-time minimum wage jobs to survive. *Id.*

¹⁴⁸ *The Gamble*, *supra* note 11. One Tunica businessman has been unable to hire enough new workers to extend his operating hours because of all the jobs available. *Id.*

\$7600 has tripled.¹⁴⁹ The number of food stamp recipients has dropped by more than 1000.¹⁵⁰ At the Planters Bank in Tunica, deposits have increased twenty-five percent since gambling was introduced.¹⁵¹ Those who once struggled on minimum wage now have their choice of good jobs offering competitive salaries and full benefits.¹⁵² Additionally, jobs created by the casinos have helped other businesses increase sales, magnifying the impact of the casinos.¹⁵³

The financial benefit to the county government is projected to double in fiscal 1994, when a tax based on a percentage of the gambling revenues replaces the current boarding fee arrangement.¹⁵⁴ The county budget has already quadrupled due to the increased tax revenue,¹⁵⁵ and it may soon have an additional \$40 million per year to add into its budget.¹⁵⁶ Twenty percent of the county's gambling revenue is earmarked for Tunica's education system, which had been placed on financial probation by the State due to its desperate need for funding.¹⁵⁷

The town of Tunica receives no money directly from the casinos, but the indirect effects, such as increased sales tax

¹⁴⁹ Brodie, *supra* note 75, at 38.

¹⁵⁰ Snyder, *supra* note 137, at A8.

¹⁵¹ Wilkie, *supra* note 107, at 14.

¹⁵² *Weekend Edition*, *supra* note 10.

¹⁵³ Thomas Swick, *For Better or Worse: Mississippi's Casino Boom May Be a Bust for its Old South Charm*, CHI. TRIB., June 12, 1994, § 12 at C7. One business owner summed up the impact by saying that now people have "more money than time" and so business has improved. *Id.*

¹⁵⁴ Snyder, *supra* note 137, at A8. Tunica County presently receives approximately \$12 million per year from the casinos. *Id.*

¹⁵⁵ Wilkie, *supra* note 107, at 14. The economic strides made by Tunica County are so impressive that other predominantly Southern Baptist towns have taken notice. *Id.* Mayor Don Brasfield of Aberdeen, a town of approximately 7000 located on the Tennessee-Tombigbee waterway, told a hearing in Jackson, Mississippi, that he now was forced to consider gambling as a possible source for revenue. *Id.*

¹⁵⁶ Snyder, *supra* note 137, at A8. The increase in Tunica County's assets are amazing to residents and government officials alike, but the money is much needed to remedy long-standing problems in the impoverished county. *Id.*

¹⁵⁷ *Id.* But see Rychlak, *supra* note 16, at 51-54 (arguing that earmarking is unwise approach for dealing with gambling proceeds).

receipts, have been marked.¹⁵⁸ The town plans to use the increased flow of revenue to construct a new municipal building, grant county employees a raise, and improve law enforcement with increased funding for the sheriff's department.¹⁵⁹ Before the first casino opened, Tunica had gone nine years without building a new home.¹⁶⁰ Now there is tremendous construction activity, with construction crews working long hours to complete an estimated \$3 billion in construction.¹⁶¹ At a cost of millions of dollars, casino developers are even working on a project to build a private access road to provide a shorter route from nearby Memphis.¹⁶²

This growth has come at an unprecedented pace. Not long ago, Tunica County had no functioning hotel.¹⁶³ Tunica still does not have a permanent police department, and the mayor's office is in his furniture showroom.¹⁶⁴ According to Tunica Mayor, Bobby E. Williams, "It's taxing everything we've got, but it hurts so good."¹⁶⁵

VI. BILOXI AND THE GULF COAST

In 1991, Biloxi was six months behind on its bills and nearly bankrupt.¹⁶⁶ In the first two years of legalized gambling, the city received approximately \$25 million in new reve-

¹⁵⁸ Snyder, *supra* note 137, at A8.

¹⁵⁹ *Id.* One of the hotels in Tunica is doubling its capacity only six months after opening. *Id.* Also, both banks have remodeled. *Id.*

¹⁶⁰ *Id.* Today, housing and rental property are scarce. *Id.* Homes that were at one time rented for \$100 per month now command in the neighborhood of \$400. *Id.*

¹⁶¹ Smith, *supra* note 109, at 1. Estimates are that over 4000 workers spend 12 hours per day working on casino-related construction. *Id.*

¹⁶² Wilkie, *supra* note 107, at 14. The current route to Tunica from Memphis, where many workers live, is a two-lane road. *Id.*

¹⁶³ Blum, *supra* note 103, at 1. A full-scale resort, complete with two golf courses and two hotels with over 2000 rooms is reported to be in the plans of three companies. *Id.*

¹⁶⁴ *The Gamble*, *supra* note 11.

¹⁶⁵ Smith, *supra* note 109, at 1. Tunica is "probably going from being the poorest county in the United States to one of the richest in a few years." *Id.*

¹⁶⁶ Beebe, *supra* note 12, at 1. Biloxi was trying to survive as a "low-rent vacation resort" with serious money problems. *Id.*

nues.¹⁶⁷ A report from the Harrison County Development Commission for the 1993 fiscal year concluded that gambling has provided economic stimulus "unequaled in modern times."¹⁶⁸ According to the Casino Operator's Association, the casino industry produced approximately \$86 million per casino in total capital investments in the Gulf Coast economy in 1994.¹⁶⁹

With 2000 new hotel rooms being built along Biloxi's casino row, local water and sewer systems are overtaxed, but the city now has new money to pour into infrastructure improvements.¹⁷⁰ Harrison County officials report that gaming has already produced a ten percent increase in the number of jobs there and a twenty-eight percent increase in gross sales tax collections.¹⁷¹ Additionally, unemployment in Biloxi has been cut in half.¹⁷² The effect on jobs, however, is not limited to the casino employees. For example, after local banks began losing their tellers to the better-paying casino jobs, the banks were forced to raise their salaries.¹⁷³ Fishermen and some small businesses are suffering due to competition and loss of dock space,¹⁷⁴ but in terms of the general economy, Biloxi seems to be prospering.

¹⁶⁷ *Id.* The \$15 million in revenue expected in 1994 was one-third of the city's budget. *Id.*

¹⁶⁸ Salomon, *supra* note 121, at 10.

¹⁶⁹ Telephone interview with Beverly Martin, Executive Director, Casino Operator's Association (Feb. 1995).

¹⁷⁰ Walters, *supra* note 13, at 11. Mayor A.J. Holloway of Biloxi feels that the city needs to be allowed to "catch its breath." *Id.* With the progress going so rapidly, Holloway fears that Biloxi will be unable to consider thoughtfully the direction which it should take. *Id.*

¹⁷¹ Salomon, *supra* note 121, at 10.

¹⁷² Beebe, *supra* note 12, at A1.

¹⁷³ Walters, *supra* note 13, at 11. John Albert, a limousine driver for The Grand in Gulfport, pointed out that "[p]eople are even coming here from other states to get employment because of the gambling." *Id.*

¹⁷⁴ See *infra* notes 252-61 and accompanying text.

VII. NATCHEZ

The Natchez experience illustrates the need to keep a close eye on casino development. Merely allowing a casino or riverboat to open will not guarantee success. The Natchez riverboat in question is the Lady Luck. According to Natchez Mayor Larry W. "Butch" Brown, the city made "the poorest deal" in terms of revenue that would be received by the city.¹⁷⁵ Other communities "went to school on the Natchez package."¹⁷⁶ Anxious to cut a deal and get in on the casino bandwagon, Natchez agreed to collect a gaming tax far smaller than that collected in every other Mississippi gambling town.¹⁷⁷ Moreover, the city sold the dock where the Lady Luck casino is moored to a private landowner.¹⁷⁸ He, in turn, leased the dock and a parking lot to the casino for forty years at \$500,000 per year.¹⁷⁹ The landowner then returned the ownership of the dock to the city, but the city is paid only \$7000 per year as its share of the rent.¹⁸⁰ In addition, to accommodate the casino, the city took away the docking space of the Mississippi and Delta Queen, meaning that the city had to spend \$250,000 in tax-payer dollars to build a replacement dock.¹⁸¹ To a great extent, the expenses associated with this deal have nullified the profits that Natchez had hoped to reap.

All is not bad, even in Natchez. Lady Luck provides about 500 jobs, and on weekends it attracts many out-of-state gamblers to the area, so that money is brought into the community.¹⁸² In addition, work is underway to restructure the agreement with Lady Luck so that the city will reap a more lucra-

¹⁷⁵ Sullivan, *supra* note 11, at A1.

¹⁷⁶ *Id.* (quoting Natchez Mayor Larry W. "Butch" Brown).

¹⁷⁷ See *The Gamble*, *supra* note 11 (noting that gaming tax will increase in mid-1995).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *The Gamble*, *supra* note 11.

tive financial reward in the future.¹⁸³ Moreover, because the Lady Luck looks like a traditional riverboat, Natchez has been able to maintain the appearance of its riverfront. Still, it is important to recognize the necessity of carefully evaluating any sweetheart deals designed to lure casinos into an area. The gaming industry is usually lucrative enough to be profitable without special consideration.

VIII. CHOCTAW INDIAN RESERVATION

The Indian Gaming Regulatory Act of 1988 helped give tribes new power to win state approval of gambling operations.¹⁸⁴ Since then, Native-American tribes have opened about ninety casinos nation-wide.¹⁸⁵ About another eighty are in various stages of development.¹⁸⁶ The Choctaw Indians recently opened the "Silver Star," Mississippi's only land-based casino,¹⁸⁷ on a fifteen-acre piece of reservation land near Philadelphia, about eighty-five miles northeast of Jackson.¹⁸⁸ The \$37 million dollar resort offers 56 table games, 1000 slot machines, a 766-seat high stakes Indian bingo parlor, live Keno, 100 hotel rooms and three restaurants.¹⁸⁹ The Silver Star is

¹⁸³ *Id.*

¹⁸⁴ Sullivan, *supra* note 73, at A29. The passage of the Indian Gaming Regulatory Act of 1988 alone did not give tribes enough power to win approval of gambling operations in all states. *Id.* The success of Foxwoods, the world's largest casino, run by the Mashantucket Pequots also aided in giving the Indians the power they needed. *Id.*

¹⁸⁵ See *The Gamble, Part 2--Gaming on the Reservation* (CNN television broadcast, July 24, 1994) (noting that there were 88 Indian casinos as of mid-1994, with more to come).

¹⁸⁶ Brodie, *supra* note 75, at 38. Indians across the United States see gambling as salvation from poverty. *Id.* Unfortunately, according to Herb McMillan, the manager of one of Mississippi's first casinos, "[T]here's so much competition now that I'm afraid we may all be starving because there's not enough volume." *Id.*

¹⁸⁷ The tribe is not limited by the same state laws that control other gaming establishments. For a detailed discussion of the State's role in regulating Indian affairs, see Richard L. Barnes, *Indian Gaming: Congress Sends the Tribes Into a Constitutional Fray, But Did It Intend To?*, 64 MISS. L.J. 591 (1995).

¹⁸⁸ Sarah C. Campbell, *Choctaws Set for Land-Based Casino's Debut*, COM. APPEAL (Memphis), July 1, 1994, at B1.

¹⁸⁹ *Boyd Gaming Corp. to Expand California Hotel in Las Vegas; Two Openings*

the closest casino to Birmingham, Montgomery, and Tuscaloosa, Alabama.¹⁹⁰ Plans call for shuttle buses running from Birmingham and Montgomery as well as surrounding cities in Mississippi.¹⁹¹ Within one month of its opening, crowds were so far above expectations that officials were already working on expansion.¹⁹² The casino employed 1000 people when it opened, but that number has already reached 1200, and more are being hired.¹⁹³ By January 1, 1996, the hotel will be enlarged from 100 rooms to 300 rooms, more slot machines will be added, and a new bingo room may also be built.¹⁹⁴

The Choctaws, who number about 6000 on a 21,000-acre reservation spread across nine counties, will split the profits from the 40,000 square-foot casino with the Nevada-based Boyd Gaming Corporation (Boyd), which will operate the facility.¹⁹⁵ The tribe must first pay for the \$37.5 million casino, which was built with a loan from Boyd.¹⁹⁶ The tribe hopes to have the debt paid within five years.¹⁹⁷ Tribe profits will be used to pay for college scholarships for Choctaw high school graduates, to improve health care and to build houses.¹⁹⁸

Announced, PR Newswire, July 7, 1994, available in LEXIS, News Library, PRNEWS File [hereinafter *Boyd Gaming*].

¹⁹⁰ *Boyd Gaming*, *supra* note 189. Race track operators in Birmingham are already worried about the competition. Campbell, *supra* note 188, at B1.

¹⁹¹ Campbell, *supra* note 188, at B1.

¹⁹² *Booming Casino Plans Expansion*, COM. APPEAL (Memphis), July 27, 1994, at B2 [hereinafter *Expansion Plans*]. William Richardson, director of economic development for the Choctaw tribe, said, "[w]hen we opened, I would have settled for the kind of play we're getting on a Tuesday night to be our Friday night business." *Id.*

¹⁹³ *Expansion Plans*, *supra* note 192, at B2.

¹⁹⁴ *Id.*

¹⁹⁵ Campbell, *supra* note 188, at B1. Boyd Gaming Corporation owns and operates six casino entertainment properties in Las Vegas. *Id.* Boyd Gaming Corp. also owns and operates Sam's Town Hotel and Gambling Hall in Tunica, Miss., and is currently developing a project in Kansas City, Missouri. *Id.*

¹⁹⁶ *Id.* Choctaw Chief Phillip Martin explained that the casino would not be a "significant boost to the budget until we pay off our indebtedness." *Id.*

¹⁹⁷ *Id.* (citing William Richardson, director of economic development for the Choctaws).

¹⁹⁸ *Id.* at B1.

This should be a very profitable operation for the tribe but not necessarily for the state. The Choctaw casino will be able to offer high-stakes bingo, with jackpots of up to \$100,000,¹⁹⁹ which is very popular but is prohibited in other casinos.²⁰⁰ First-year revenues are projected to reach between \$80 and \$100 million.²⁰¹ In addition to gambling profits, the tribe will also collect a five percent sales tax on food and the casino's 100 hotel rooms.²⁰² Another big advantage for the Silver Star is that under the Indian Gaming Regulatory Act the tribe will not have to pay state taxes or comply with state regulations.²⁰³

Prior to the casino, the average Choctaw made about \$3000 per year.²⁰⁴ Many of them have now found better paying work with the casino. Today, about 150 of the casino's 1000 employees are Choctaws,²⁰⁵ although critics have charged Choctaws are getting mainly low-paying jobs and that the casino is harming smaller, Native-American operated businesses like grocery stores and gas stations.²⁰⁶ Opponents also fear the adverse social impact that casino gambling and promotion of alcohol may have on the tribe.²⁰⁷ Still, Native Americans across the

¹⁹⁹ *Id.* Silver Star's bingo hall will seat approximately 800 people. *Id.*

²⁰⁰ Campbell, *supra* note 188, at B1, B4; see also MISS. CODE ANN. § 75-76-5(k) (1991) (excluding bingo from definition of "game" or "gambling game" under Gaming Control Act); MISS. CODE ANN. § 75-76-3(6) (1991) (defining constitutional prohibition on lotteries). Compare *Knight v. State*, 574 So. 2d 662, 669 (Miss. 1990) (holding constitutional provision prohibiting lotteries does not apply to bingo games), with *Secretary v. St. Augustine Church*, 766 S.W.2d 499, 502 (Tenn. 1989) (holding constitutional provision prohibiting lotteries applies to bingo games).

²⁰¹ Campbell, *supra* note 188, at B1.

²⁰² *Id.*

²⁰³ See Barnes, *supra* note 187.

²⁰⁴ Gina Holland, *Choctaws Upset at No Casino Manager Jobs*, COM. APPEAL (Memphis), June 22, 1994, at B8. Some Mississippi Choctaw Indians are complaining to the Justice Department because while many still earn \$3000 annually, some non-Indian management employees earn as much as \$80,000. *Id.*

²⁰⁵ Campbell, *supra* note 188, at B1.

²⁰⁶ Holland, *supra* note 204, at B8.

²⁰⁷ Campbell, *supra* note 188, at B1; see also Holland, *supra* note 204, at B8. Gwen Willis, a Philadelphia woman who opposes the casino, said the Indian values "will deteriorate with what's being brought here." *Id.* Willis went on to say that the casinos promoted everything the reservation had fought, "especially the liquor." *Id.*

nation are hoping that gambling will help pull tribes out of the economic hole in which they have so long been mired.

IX. SATURATION CONCERNS

The Mississippi gambling market may well be reaching the point of saturation,²⁰⁸ and this could have a significant economic impact on the state. As of October, 1994, two casinos had already moved out from Mhoon Landing (in Tunica County), and another that had experienced layoffs was considering relocating to a site closer to Memphis.²⁰⁹ Work on other casino projects in that area was halted shortly after it began.²¹⁰ Some casinos in Biloxi have had to lay off employees.²¹¹ Revenue per gambling position - the casino's daily profit at each gaming table or slot machine - has been steadily declining over the past year.²¹² Nevertheless, across the state, casinos are continuing to be built. As of mid-1994, there were more than fifty applications on file with the Mississippi Gaming Commission for new projects.²¹³ It is quite likely that growth in the gambling industry will soon exceed demand.²¹⁴

When Splash Casino in Tunica was the only legal gambling spot in the area, crowds stood in line for four or five hours and

²⁰⁸ Mike Hughlett, *Ripples On the Coast; A Hugh Falls Over the Boom for Some Casinos as Money Woes Creep In*, TIMES-PICAYUNE (New Orleans), Aug. 5, 1994, at C1. Bondholders for the Biloxi Belle, for example, have seen their value drop to approximately 40 cents on the dollar. *Id.* Some analysts have called it saturation while others call it a maturing market. *Id.* Whatever the nomenclature, there is no doubt that competition has begun to silence the initial explosion on the Coast. *Id.*

²⁰⁹ Tom Charlier, *As Casinos Pull Out, Some Fret Over Landscape Scars*, COM. APPEAL (Memphis), Oct. 2, 1994, at A1. The first riverboat casino in Mississippi, The President, was forced to leave the State after suffering \$2.3 million in losses. *Id.*

²¹⁰ Charlier, *supra* note 209, at A1.

²¹¹ Walters, *supra* note 13, at 11.

²¹² Campbell, *supra* note 1, at A1. When the first casinos opened in Tunica County, revenue per gambling position averaged almost \$600 per day. Lee Ragland, *Gaming Saturation Eats Up Casino Profit Margins*, DAILY MISSISSIPPIAN, Oct. 24, 1994, at 1, 6. By late 1994, it had fallen to \$100. *Id.*

²¹³ Salomon, *supra* note 121, at 10.

²¹⁴ Campbell, *supra* note 1, at A10.

paid ten dollars per person to enter.²¹⁵ Now, with competition from other casinos, admission is free and customers must be lured with special promotions.²¹⁶ A similar situation exists on the Coast, which is already hosting twice the number of casinos experts predicted it could support.²¹⁷ Biloxi Mayor Holloway was recently working on a plan to set up contract limitations for all new city employees so that when things begin to slow down the city will not be burdened with unnecessary staff.²¹⁸

In addition to over-building in Mississippi, state gaming operators are bracing for more competition from neighboring states. Plans are underway for a giant land-based casino and fifteen new riverboat casinos in New Orleans,²¹⁹ and Mobile officials are trying to get gambling legalized in Alabama.²²⁰ Voters in Arkansas had planned to vote in November, 1994, on authorizing casinos in that state. The proposed amendments, however, were struck down by that state's supreme court.²²¹ When neighboring states do open their own gambling establishments, their residents will be far less likely to come to Mississippi to gamble. That, of course, means that there will probably be a reduction in demand, which should only exacerbate the existing saturation problem.²²²

Wall Street also seems to be concerned about saturation in the gaming industry. Listings of gambling stocks jumped in two years from twenty to more than fifty,²²³ but some prices are

²¹⁵ According to at least one report, there was a less obvious business reason for charging an admission fee. Wilkie, *supra* note 107, at 14. Splash may have been aware that adverse publicity would result if Tunica County's welfare recipients began squandering their money there, so Splash may have charged the entrance fee to discourage poor clientele. *Id.*

²¹⁶ Brodie, *supra* note 75, at 38. Splash Casino, the first casino in Tunica, offers a daily lottery for a car to attract business. *Id.*

²¹⁷ Walters, *supra* note 13, at 11.

²¹⁸ *Id.* In April, 1994, the Casino Magic Corporation, which had two casinos on the Coast, laid off 300 employees. *Id.*

²¹⁹ Salomon, *supra* note 121, at 10.

²²⁰ *Weekend Edition*, *supra* note 10.

²²¹ *Ark. Court Strikes Gambling Plan from Ballot*, CLARION-LEDGER (Jackson, Miss.), Oct. 21, 1994, at A7.

²²² *Weekend Edition*, *supra* note 10.

²²³ Brodie, *supra* note 75, at 38.

beginning to tumble.²²⁴ In 1990, only five of Atlantic City's twelve casinos reported a profit.²²⁵ The Mississippi gaming industry may have already reached the point of saturation.²²⁶ I. Nelson Rose, a professor of law at Whittier College School of Law and an analyst of state regulatory gambling systems, said that it was an error for Mississippi to allow the marketplace to decide how many casinos should be built.²²⁷ Most states statutorily limit the number of casino licenses that can be given out.²²⁸ Professor Rose predicts that there will be an inevitable casino bust cycle in Mississippi as the industry over-expands.²²⁹

The decision to let the free market fix the number of casinos in Mississippi seems reasonable on its face. States do not usually limit other industries; competition will do that. However, the profitability of the early casinos will continue to lure more casinos into the state. With the dramatic impact that these casinos have had in given areas, there will be significant displacements as old ones close and new ones open. In addition, due to the regulatory scheme, it may be necessary to ultimately limit the number of casinos in order to maintain proper supervision. If the displacement issue becomes more serious, and especially as the industry begins to face competition from other states, look for pressure on the legislature to statutorily limit the number of casinos in Mississippi, as is done in most other states.²³⁰ There may be valid reasons to establish such a rule,

²²⁴ See *Grand Casino to Buy Back 2 Million Shares*, CLARION-LEDGER (Jackson, Miss.), Oct. 27, 1994, at B8 (noting stock prices dropped almost 50% in one year).

²²⁵ See Kindt, *supra* note 130, at 56 (noting that Atlantic City's casinos now have very low profitability levels).

²²⁶ Randy McClain, *Investors Depositing Trust in Bank Stocks; Rising Interest Rates Haven't Hurt Much*, TIMES-PICAYUNE (New Orleans), June 5, 1994, at F1. Bruce Turner believes that profit margins will drop as too many casinos "slice up the market." *Id.*

²²⁷ Sayre, *supra* note 2, at B5.

²²⁸ Swanson, *supra* note 5. For instance, Illinois allows up to ten licenses, and each license is good for two casino boats. ILL. ANN. STAT. ch. 230 para. 10/7 (Smith-Hurd 1993).

²²⁹ Sayre, *supra* note 2, at B5.

²³⁰ Established casinos may be especially likely to press for such legislation. See Kindt, *supra* note 130, at 84 (discussing gambling interests lobbying for terri-

but economic theory would suggest that consumers - patrons of the casinos - are best served by the wide open competition that now exists in Mississippi. This is an issue which needs to be monitored as the Mississippi gaming industry matures.

X. COMPETITION WITH NEIGHBORING STATES

Related to the issue of saturation is the issue of competition across state boundaries. If neighboring states have gambling, and people cross state boundaries to place their bets, the state without gambling may suffer the adverse consequences that are caused by gambling, without receiving the benefit of increased revenue.²³¹ In fact, when New Hampshire introduced the first modern legal lottery in 1964, officials correctly anticipated that most of the revenue would come from ticket sales to residents of neighboring states.²³² That was clearly a benefit to New Hampshire in that it siphoned money from out-of-state purchasers to support in-state programs.²³³ By the same token, this clearly was a detriment to New Hampshire's neighboring states. In such cases, legalized gambling must be considered as a defensive mechanism. "If gaming only draws from the community, it's worthless."²³⁴

Alabama, Arkansas, Florida, Louisiana, and Tennessee are all feeling pressure from the Mississippi casinos.²³⁵ Local tourism officials have no way of tracking who comes to the

torial limits).

²³¹ See John L. Mikesell & C. Kurt Zorn, *State Lotteries as Fiscal Savior or Fiscal Fraud: A Look at the Evidence*, 46 PUB. ADMIN. REV. 311, 311 (1986) (stating that "[s]ome states implemented lotteries because of revenue they feared lost to their lottery neighbors"). Evidence that this does happen can be found in newspapers that print winning numbers from lotteries in other states.

²³² See Sullivan, *supra* note 44, at 102 (indicating that non-resident revenue was officials' intent).

²³³ DEVELOPMENTS, *supra* note 34, at 700. New Hampshire's profits dropped dramatically when its neighboring states adopted lotteries. *Id.*

²³⁴ Charles Bernsen, *Miss., Tenn. Keep Their Distance From Gambling Addict Problems*, COM. APPEAL (Memphis), Apr. 5, 1994, at A1, A11 (quoting Las Vegas Mayor Jan Jones).

²³⁵ See Lucy Morgan, *Speaker's Help Sought for Casinos*, ST. PETERSBURG TIMES, May 6, 1994, at B4 (discussing Florida's fear of losing tourists).

casinos, but license plates on cars show that they are a regional draw. In the southern part of the state, most cars are from Mississippi, followed by Louisiana and Alabama, with a few from Florida and Texas.²³⁶ In Tunica, most are from Tennessee, Mississippi, and Arkansas. At this point in time, it is reasonable to assume that the casinos are pulling out-of-state money into Mississippi. The tables, however, could turn.

Tennessee has not yet legalized casino gambling, and Louisiana has had problems getting its casinos going.²³⁷ Still, Mississippi gambling operators are concerned. Biloxi officials are worried about New Orleans, just fifty miles to the west, which plans to build the largest casino in the world.²³⁸ In Tunica, the primary concern is that Tennessee will authorize gambling, and Memphis will build its own casinos. These concerns may be especially serious, because New Orleans and Memphis have traditionally been better tourist destinations than Mississippi, and the Mississippi casinos are mobile. "As more states legalize gambling, the lure of Mississippi casinos may disappear. Then there'll be nothing to keep them . . . from drifting away."²³⁹

If neighboring states build casinos, it may still be to Mississippi's economic advantage to keep casinos here, even if the tourists stop coming. That would at least prevent Mississippi dollars from flowing out of state. The problem with this thinking, however, is that a "cycle of escalation and retaliation begins - what you might call legal gambling wars."²⁴⁰ A "parasitic dependence on revenues from residents of other states may be initially attractive, [but] it can only lead to harsh competition between [gambling] states."²⁴¹

²³⁶ Beebe, *supra* note 12, at A1. Gambling experts point out that the regional draw experienced by Mississippi is to be expected in other states that approve gambling in the future. *Id.* Las Vegas and Atlantic City are not good indicators in that they are the only two areas that draw from the entire nation. *Id.*

²³⁷ See Alan Sayre, *Louisiana Gambling Industry Mired in Controversy*, L.A. TIMES, Sept. 29, 1994, at D10 (discussing Louisiana difficulties with gambling related to land-based casino venture).

²³⁸ Walters, *supra* note 13, at 11.

²³⁹ Swick, *supra* note 153, at C7.

²⁴⁰ ROSE, *supra* note 35, at 14.

²⁴¹ King, *supra* note 38, at 752.

Legal gambling begets more of the same in states that fear they will lose money if they do not devise new ways of wagering. Illinois, for example, operates a giant lottery that is believed to siphon much money out of neighboring states. But, fearful that some cash might eventually flow back to Iowa [due to riverboat gambling], Illinois House Democrats have recommended starting roulette, blackjack and dice games on twelve paddleboats cruising six rivers that flow through or past the state.²⁴²

Accordingly, attracting money from out-of-state sources has an attractive ring, but like a pyramid scheme, such a plan will ultimately collapse. Nonetheless, with no better alternatives, legalized gambling continues to be a fairly reasonable short-term economic defense to a neighboring state that permits gambling.²⁴³

XI. IMPACTS OF GAMBLING

Unlike in years past, today's governmental entities do possess alternative ways to raise revenue, painful though they may be. Thus, before deciding to rely on gambling proceeds, policy makers should weigh the effectiveness of gambling as a revenue raising tool against any possible adverse side-effects. This is especially important in light of the universal condemnation that resulted after these comparisons were made in the nineteenth century.²⁴⁴

Most states turned to gambling with the assumption that it would be a significant source of revenue. In Mississippi, despite some regional variances, this has certainly been true. For that reason alone, it is unlikely that the state will turn its back on gambling in the near future. The questions that must be addressed, however, relate to the source of the money generated by legalized gambling and the impact that legalized gam-

²⁴² George J. Church, *You Bet Your Life: Pete Rose and the Great American Obsession*, TIME, July 10, 1989, at 16, 19.

²⁴³ Rychlak, *supra* note 16, at 58-60.

²⁴⁴ *Id.* at 32-38.

bling has on the populace.

Politicians often speak of gambling generating new money for the state. Gambling does not, however, create money out of thin air. It only transfers funds from losing gamblers to casinos, lucky winners, and the state.²⁴⁵ That money comes from losing players, who are often residents of that state.

One question never asked, and therefore never answered, is where this money is coming from. If the New York state lottery sells one billion dollars in tickets a year, and less than half of that amount is returned in the form of prizes, over half a billion dollars has been taken out of the economy. . . . Is it money that would have been spent on movies, or left in banks, or given to charity?²⁴⁶

Certainly some entrepreneurs are finding that casinos have cut into their business.²⁴⁷

There is some question as to whether Mississippians are the true beneficiaries of casino gambling. For one thing, there are no restrictions on foreign investment in Mississippi gaming operations.²⁴⁸ A proposed casino on Biloxi's Back Bay could be the first casino owned and operated by a native Mississippian,²⁴⁹ but as of mid-1994, out-of-state interests were behind all of the casinos. Additionally, according to one report, most of the good, high-paying jobs at the casinos in Tunica went to out-of-state employees.²⁵⁰ Those left to the locals were primarily minimum wage employment.²⁵¹

²⁴⁵ See CLOFFELTER & COOK, *supra* note 71, at 134 ("Some of the lottery's effects are baldly redistributive: many lose so that a few might win.").

²⁴⁶ ROSE, *supra* note 35, at 12; see also ANDREW A. ROONEY, AND MORE BY ANDY ROONEY 141 (1979) ("The man who blows twenty dollars at the [off-track betting] parlor doesn't have it to buy a new pair of sneakers for his son. What good does that do for the legitimate businessman who runs the shoe store or for the man's son?").

²⁴⁷ See *infra* notes 252-61 and accompanying text.

²⁴⁸ *Casino Law*, *supra* note 6, at 72.

²⁴⁹ *Miss. Native Plans to Build Casino*, COM. APPEAL (Memphis), Apr. 7, 1994, at A13.

²⁵⁰ *Id.*

²⁵¹ Dan Martin, *Dockside Gambling; State is Being Urged to Take a Sucker Bet*, DALLAS MORNING NEWS, May 1, 1994, at J5; see also Holland, *supra* note

Businesses that compete with casinos for disposable income can also suffer. The Biloxi Restaurant and Beverage Association lobbied for casino gambling, but the casinos are now using food and beverage as a "loss leader," causing most people to eat and drink at the casinos.²⁵² Local "mom and pop" establishments are suffering.²⁵³ In Biloxi, some local restaurants and tourist businesses have closed because they cannot compete with the casinos.²⁵⁴ The owner of one small business complained that in addition to the loss of customers, he has difficulty competing for workers because the casinos and hotel chains pay comparatively higher wages.²⁵⁵

Fishing was the main industry on the Coast in the pre-gambling days, but it too is now feeling pressure from the casinos.²⁵⁶ A number of shrimpers have already left Biloxi because casinos now occupy the docks and boat slips once used by shrimpers to get fuel and sell their catch.²⁵⁷ Although the casino operators promised to build new slips to replace the old ones, many of these projects remain unfinished.²⁵⁸ Fish processing plants and ice plants have also been forced out.²⁵⁹ The "newest growth industry on the Mississippi coast" is the pawn shop business.²⁶⁰ As one traveler to the Mississippi Coast ob-

204, at B8 (noting that opponents of gambling on Choctaw reservation claim that tribe members have not been offered better jobs).

²⁵² Beebe, *supra* note 12, at A1. Some casinos actually pay senior citizens to eat at their restaurants. See Kevin Gray, *Plentiful Perks Sweeten Pot For Seniors*, CLARION LEDGER (Jackson, Miss.), Oct. 27, 1994, at 7E. (giving senior citizens four dollars in quarters after they finish casino's \$3.75 breakfast).

²⁵³ Beebe, *supra* note 12, at A1. Ironically, the Biloxi Restaurant and Beverage Association lobbied hard for casino gambling. *Id.* However, as Nina Schwartzman, owner of one of Biloxi's better restaurants noted, "that was when gambling consisted of only two boats." *Id.*

²⁵⁴ Walters, *supra* note 13, at 11.

²⁵⁵ *New Port Should be a Blend of Both Old and New*, ST. PETERSBURG TIMES, May 16, 1994, at A9 [hereinafter *New Port*].

²⁵⁶ Walters, *supra* note 13, at 11.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* The once picturesque shrimp boats that remain on the Coast look oddly out of place lined up behind the glittering casinos. *Id.* Many shrimpers have given up on their business and gone to work for the casinos. *Id.*

²⁶⁰ Martin, *supra* note 251, at J5.

served:

This area became depressed when the oil business decreased, but the casinos have not helped the local people very much. The owner of the motel where we stayed said that he could not get anyone to work for him because the casinos and big national hotel chains paid such high wages that older, small motels were being forced out of business. A gas station owner said he has had to make everyone pay for gas ahead of time because people who lost all their money gambling would try to fill up their tanks for free in order to get home. He sells almost no groceries or soft drinks because in the casinos, they are free. He told us that whereas last year the area had one bank robbery, this year there have been seven. The casinos are ruining local businesses and simply swallowing up that entire beautiful coastline. The beach is going to disappear under casinos.²⁶¹

Similar observations have been made about Atlantic City, though the casinos were supposed to revitalize that city.²⁶²

Labor shortages and the high price of materials are slowly pushing up the cost of living space in the state.²⁶³ The real estate market for private homes has not been greatly affected by gambling in Tunica because most of the new people have chosen to rent rather than buy.²⁶⁴ Increased demand for apartments and rental houses, however, has driven rental prices to new heights. In Tunica, for instance, a trailer which once went for \$150 per month now rents for \$500 per month.²⁶⁵ Higher rental prices, of course, are driving some people out of the housing market. In the midst of Biloxi's recent prosperity, the

²⁶¹ *New Port*, *supra* note 255, at A9.

²⁶² Pete Dexter, *Just What Florida Needs - To Be Like New Jersey*, OXFORD TOWN, Oct. 6-12, 1994, at 18. In Atlantic City many promises of civil improvements made by developers were not kept. *Id.*

²⁶³ Shep Montgomery, *State's Biggest Builders Experience Dynamic Year*, MISS. BUS. J., Apr. 18, 1994, at 14. Many builders have decided not to build as many houses as they have in the past so that they can do more casino-related projects. *Id.*

²⁶⁴ Montgomery, *supra* note 263, at 14.

²⁶⁵ Martin, *supra* note 251, at J5.

number of people in homeless shelters has grown, and Biloxi's soup kitchens are turning out more meals than ever before.²⁶⁶

To a certain extent, these negative economic impacts are nothing more than natural market adjustments to the birth of a new and vigorous industry in the state. It is now harder to hire people to build homes in the state, but one can hardly complain about full employment in the construction industry. Similarly, it is hard to feel bad about casinos hiring people at good salaries and thereby driving up the cost of labor for other employers. If rental prices are artificially high in some areas today construction will eventually meet the demand and prices will come back down. If certain industries are now less profitable, that is just a reflection of the market at work. These adjustments are simple economic growing pains, inconvenient and undesirable to those who are directly impacted, but not a valid basis for challenging the gaming industry. Social issues, however, are an altogether different matter.

XII. SOCIAL PROBLEMS ASSOCIATED WITH LEGALIZED GAMBLING

In order to reach well-reasoned decisions concerning modern legalized gambling, the economic benefits derived by a state must be weighed against any adverse social consequences. Unlike the lotteries of the 1800s, today's gambling is fairly well regulated when it comes to assuring the gambler of a fair bet.²⁶⁷ Problems associated with gambling's impact on individuals, however, may be even more serious today than they were in the last century, due to modern marketing techniques.

When states benefit from gambling proceeds they have a vested interest in seeing that gambling operations are successful, and regulators sometimes take the attitude that they have

²⁶⁶ Beebe, *supra* note 12, at A1. Since the introduction of gambling to the Coast, the Salvation Army's caseload has doubled. *Id.*

²⁶⁷ See CLOTFELTER & COOK, *supra* note 71, at 48 (concluding that illegal lotteries have all but disappeared); ROSE, *supra* note 35, at 20 ("There have been less than a half-dozen major scandals involving state lotteries in the last 20 years, fewer than the number of scandals related to the regulation of atomic plants."). But see ALAN J. KARCHER, LOTTERIES 49 (1989) (arguing that not enough money is spent on regulation).

to help the industry. This attitude has changed the nature of gambling, the role of the state, and the relationship between the two. "There was a time when gambling had a taint, in respectable America, anyway. At best, the government tolerated it. Today, the states are the casinos, the house. They don't just tolerate gambling anymore. Now, they downright encourage it."²⁶⁸ As some observers now warn, if Mississippi relies on gambling to generate funds, the State may ultimately pay a price in broken homes, bankrupt businesses, and gambling addicts.²⁶⁹

Gambling interests want, of course, to attract new "customers" and to encourage current players to wager greater amounts (or at least to bet more often).²⁷⁰ This causes them to encourage new segments of society, including youngsters, to gamble and risk addiction to gambling.²⁷¹ Lawmakers have to be aware of this when setting policy for the state. There are at least five important non-economic impacts that the state must carefully consider when setting policy: the impact on people prone to compulsive behavior, the impact on children, the impact on poor people, the impact on crime, and the impact on the environment.²⁷² Failure to pay special attention to these matters may "generate social costs exceeding benefits."²⁷³

²⁶⁸ 48 Hours: Lottery Fever (CBS television broadcast, Apr. 27, 1989) [hereinafter 48 Hours].

²⁶⁹ Wilkie, *supra* note 107, at 14 (quoting Rev. Paul Jones, executive director of the Christian Action Commission, a wing of the Mississippi Baptist Convention).

²⁷⁰ See DEVELOPMENTS, *supra* note 34, at 713 (explaining that advertising agencies "create consumers—gamblers—from persons who otherwise might never bet").

²⁷¹ *Illegal use of Video Gambling Machines: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 98th Cong., 2nd Sess. 38 (1984) [hereinafter *Hearing*] (testimony of Angelo Aponte, Commissioner of Consumer Affairs, New York City).

²⁷² WEINSTEIN & DEITCH, *supra* note 36, at 5.

²⁷³ *Id.*; see also CLOTFELTER & COOK, *supra* note 71, at 217 ("To the extent that the public comes to view the pursuit of a big jackpot as an easy avenue to wealth and substitutes lottery play for education, savings, and entrepreneurial efforts, the economy as a whole may suffer.").

A. Compulsive Gambling²⁷⁴

"The documented history of compulsive gambling is as old as the most ancient civilizations."²⁷⁵ It was recently brought to the nation's attention when baseball great Pete Rose had his falling out with Major League Baseball.²⁷⁶ Compulsive gambling affects an estimated six to ten million people in the United States today,²⁷⁷ and it "almost always involves destructive behavior."²⁷⁸ The World Health Organization has recognized

²⁷⁴ The causes of compulsive gambling are difficult to identify, and problems associated with compulsive gambling are often overlooked because they are not easily specified and are not biological in nature. DOMBRINK & THOMPSON, *supra* note 49, at 12. However, a common dissociative-like state has been found to prevail among compulsive gamblers, alcoholics and compulsive overeaters. Durand F. Jacobs, *A General Theory of Addictions: Rationale for and Evidence Supporting a New Approach for Understanding and Treating Addictive Behaviors*, in COMPULSIVE GAMBLING, *supra* note 16, at 35, 54. Thirty to fifty percent of compulsive gamblers in Gamblers Anonymous report withdrawal symptoms when they stop gambling. See COMPULSIVE GAMBLING, *supra* note 16, at 7 (noting similar behavior patterns among compulsive gamblers and narcotic addicts); see also Henry R. Lesieur, *The Compulsive Gambler's Spiral of Options and Involvement*, 42 PSYCHIATRY 79, 81 (1979) (describing chase philosophy (betting more to make up for losses) as major contingent in becoming compulsive gambler).

²⁷⁵ COMPULSIVE GAMBLING, *supra* note 16, at 9.

²⁷⁶ Church, *supra* note 242, at 19.

²⁷⁷ ROBERT CUSTER & HARRY MILT, WHEN LUCK RUNS OUT: HELP FOR COMPULSIVE GAMBLERS AND THEIR FAMILIES, 22, 35-36, 39-41 (1985); see also COMPULSIVE GAMBLING, *supra* note 16, at 5 (estimating three to twelve million affected by compulsive gambling in United States). But see SKOLNICK, *supra* note 69, at 20.

Gamblers Anonymous puts the number in the United States at 6 million, but the figure is hard to believe: the concept of compulsion as employed by that organization is so broad that it includes a large number of persons with all kinds of troubles. Or perhaps Gamblers Anonymous, like other organizations, seeks to upgrade its importance by exaggerating the problem.

Id. (footnote omitted).

²⁷⁸ Ricardo Chavira, *The Rise of Teenage Gambling*, TIME, Feb. 25, 1991, at 78. Experts agree that casual gambling in which only small amounts of money are wagered is essentially harmless. *Id.* The fear is that the habit may escalate. *Id.* The emotional impact on the compulsive gambler's family is also significant. Valerie C. Lorenz & Duane E. Shuttlesworth, *The Impact of Pathological Gambling on the Spouse of the Gambler*, 11 J. OF COMM. PSYCHOL. 67, 69 (1983). In a survey of 250 members of Gamblers Anonymous, 84% of the children and spouses

compulsive gambling as a disease,²⁷⁹ and the American Psychiatric Association has identified pathological gambling as a mental disorder.²⁸⁰ Several defendants have even asserted compulsive gambling as a type of insanity defense in criminal cases.²⁸¹

If legalized gambling were doing no more than getting the compulsive gambler to bet with the casino instead of a bookie, then there would be no net contribution to the problem of com-

considered themselves emotionally ill as a result of the experience; 78% of the spouses had threatened separation or divorce; 12% had attempted suicide; and 25% of the children had significant behavioral or adjustment problems. *Id.*; see also Joanna Franklin & Donald R. Thomas, *Clinical Observations of Family Members of Compulsive Gamblers*, in *COMPULSIVE GAMBLING*, *supra* note 16, at 135, 140-42 (describing severe emotional problems often associated with children of compulsive gamblers).

²⁷⁹ CUSTER & MILT, *supra* note 277, at 36. But see SKOLNICK, *supra* note 69, at 15.

Unlike drugs, such as alcohol, heroin, tobacco, or cannabis, gambling cannot produce physiological effects in an individual. Even non-marital sex can, however implausibly, be considered damaging to one's health: venereal disease being an obvious case in point. In contrast, gambling does not readily lend itself to analysis as a medical model of pathology. No one could possibly allege that it is linked with a high incidence of cancer, pulmonary disorder, or brain damage. Nor is gambling physiologically addicting. If a player suffers from withdrawal symptoms, these obviously must be entirely psychological. Still, a variety of apparently intelligent commentators persist in discussing gambling in terms of social and personal pathology.

Id.

²⁸⁰ AMERICAN PSYCHIATRIC ASS'N DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 291 (3d ed. 1980). The American Psychiatric Association (APA) defines pathological gambling as "a chronic and progressive failure to resist impulses to gamble and gambling behavior that compromises, disrupts, or damages personal, family or vocational pursuits." *Id.*

²⁸¹ See, e.g., *United States v. Torniero*, 735 F.2d 725, 734-35 (2d Cir. 1984) (rejecting defense in this case, but noting it might be available in other cases), *cert. denied*, 469 U.S. 1110 (1985); *United States v. Lewellyn*, 723 F.2d 615, 619-20 (8th Cir. 1983) (excluding evidence of compulsive gambling in trial for theft); *United States v. Gilliss*, 645 F.2d 1269, 1279 (8th Cir. 1981) (finding no error in failure to subpoena witness who would have testified as to gambling problems); *State v. Lafferty*, 456 A.2d 272, 273 (Conn. 1983) (*per curiam*) (acquitting defendant on grounds of insanity); see also Milton E. Burglass, *Compulsive Gambling: Forensic Update and Commentary*, in *COMPULSIVE GAMBLING*, *supra* note 16, at 205, 209-20 (discussing future of this defense).

pulsive gambling from legalized gambling. That, however, does not seem to be the history. Rather than providing compulsive gamblers with a legal alternative to the already existing forms of gambling, legalized gambling tends to encourage non-gamblers to begin gambling.²⁸² This, of course, creates new potential problem gamblers.²⁸³ Experts suggest that four of every 100 people risk becoming compulsive gamblers,²⁸⁴ and legal gambling leads to an "inevitable increase" in that number.²⁸⁵

²⁸² See Rychlak, *supra* note 16, at 56-58.

²⁸³ According to Gamblers Anonymous, if you answer yes to at least seven of these questions, you are probably a compulsive gambler:

- Do you ever lose time from work due to gambling?
- Has gambling made your home life unhappy?
- Does gambling affect your reputation?
- Do you ever feel remorse after gambling?
- Do you ever gamble to get money with which to pay debts or to solve other financial problems?
- Does gambling cause a decrease in your ambition or efficiency?
- After losing, do you feel you must return as soon as possible and win back your losses?
- After winning, do you have a strong urge to return and win more?
- Do you often gamble until your last dollar is gone?
- Do you ever borrow to finance your gambling?
- Have you ever sold anything to finance your gambling?
- Are you reluctant to use "gambling money" for normal expenditures?
- Does gambling make you careless about the welfare of yourself or your family?
- Do you ever gamble longer than you had planned?
- Do you gamble to escape worry or trouble?
- Have you ever committed or considered committing an illegal act to finance gambling?
- Does gambling cause you to have difficulty sleeping?
- Do arguments, disappointments or frustration create an urge in you to gamble?
- Do you ever have an urge to celebrate good fortune by gambling?
- Have you ever considered killing yourself as a result of your gambling?

Gambling Fever Burns up Bills, Then Lives, and 'It Happens So Fast', COM. AP-PEAL (Memphis), Apr. 4, 1994, at A1 [hereinafter *Gambling Fever*].

²⁸⁴ 48 Hours, *supra* note 268.

²⁸⁵ CUSTER & MILT, *supra* note 277, at 40 (emphasis added); see also ROSE, *supra* note 35, at 11 ("[T]here will definitely be some individuals, hundreds or

A study focusing on the Delaware lottery found that the incidence of pathological gambling increased by ninety-four percent after the daily lottery was introduced.²⁸⁶ Moreover, as legalized gambling has spread to more and more states, the problem has been compounded.

When serious gambling could only be found in Nevada, at the race tracks, or through illegal outlets, a problem gambler could relocate himself or herself away from those places where gambling was present. If, however, we are moving toward a situation in which commercial gambling is present in nearly every community in a wide variety of forms, schizophrenic problem gamblers may end up with having no place to hide.²⁸⁷

Thus, it is not surprising to find evidence of a recent increase in the number of problem gamblers throughout this country,²⁸⁸ and especially in the South. Of course, the South's gambling bonanza is the "almost-exclusive province of Mississippi."²⁸⁹

According to the New Jersey Council on Compulsive Gam-

thousands, who will fall victim to compulsive gambling, loan sharks, prostitution, and theft."); H. Roy Kaplan, *State Lotteries: Should Government Be a Player?*, in COMPULSIVE GAMBLING, *supra* note 16, at 187, 195 ("[T]here is general agreement among clinicians that the increased availability of legalized gambling is contributing to increased abuse.").

²⁸⁶ LEGIS. BUDGET AND FIN. COMM., PA. GEN. ASSEMBLY, REPORT ON A PERFORMANCE AUDIT OF THE PENNSYLVANIA STATE LOTTERY 74 (Sept. 1987) [hereinafter PA. REPORT].

²⁸⁷ William R. Eadington, *Problem Gambling and Public Policy: Alternatives in Dealing with Problem Gamblers and Commercial Gambling*, in COMPULSIVE GAMBLING, *supra* note 16, at 175, 184; see also ROONEY, *supra* note 246, at 141 ("If blackjack was whiskey, I could become an alcoholic. I'm glad no casino is readily available to me because I need to be protected from myself.").

²⁸⁸ See Durand F. Jacobs, *Illegal and Undocumented: A Review of Teenage Gambling and the Plight of Children of Problem Gamblers in America*, in COMPULSIVE GAMBLING, *supra* note 16, at 245, 263 (noting overall increase of 37% in number of problem gamblers between 1975 and 1988); Henry R. Lesieur, *Current Research into Pathological Gambling and Gaps in the Literature*, in COMPULSIVE GAMBLING, *supra* note 16, at 225 (estimating that 80% of American population gambles).

²⁸⁹ Sayre, *supra* note 2, at B5.

bling, the South is the fastest-growing trouble area in the nation.²⁹⁰ Mississippi experts in mental health predict that compulsive gambling will "become a very public problem very soon."²⁹¹ There used to be just a single, sparsely attended meeting of Gamblers Anonymous in Biloxi, but now there are five well-attended sessions each week.²⁹² Calls to Gamblers Anonymous hotlines have significantly increased from this area of the nation.²⁹³ At the publicly funded Gulf Coast Mental Health Center, caseloads are up.²⁹⁴ Gamblers Anonymous in Memphis, the nearest big city to Tunica, reports that ninety percent of its members are casino gamblers, presumably due to the Tunica County casinos.²⁹⁵

The National Council on Problem Gambling and the gambling industry report that problem gamblers make up two to six percent of the gambling population.²⁹⁶ Most of those studies, however, were done when legalized gambling was confined to Nevada and New Jersey.²⁹⁷ "I'd say it's more like fifteen percent of the population that has trouble with gambling," said Jim Jongewaard, director of recovery programs for chemical dependency and compulsive gambling at the Memphis Psychological Center.²⁹⁸ "The proliferation of casinos has created a situation like the introduction of cheap, easy-to-get crack cocaine in the 1980s that touched off a huge wave of drug addiction."²⁹⁹

²⁹⁰ *Gambling Fever*, *supra* note 283, at A1. The number of calls from Mississippi to the New Jersey hotline 1-800-GAMBLER jumped from 1 in January of 1993 to 58 last December. *Id.*

²⁹¹ Bernsen, *supra* note 234, at A11 (quoting Newton Dodson, executive director of the four-county mental health district that includes Tunica).

²⁹² Beebe, *supra* note 12, at A1.

²⁹³ Mary Judice, *Experts: La. Should Have Gambling Hotline*, *TIMES-PICAYUNE* (New Orleans), May 24, 1994, at D1; see *supra* note 290 and *infra* notes 309-11 and accompanying text.

²⁹⁴ Beebe, *supra* note 12, at A1.

²⁹⁵ *Gambling Fever*, *supra* note 283, at A1. Neither Tennessee nor Arkansas at this time has any casinos. *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.* at A4.

²⁹⁹ *Id.* at A1 (citing Jim Jongewaard, director of recovery programs for chemi-

Mississippi does not currently have a plan and has not yet appropriated any money to address the issue of compulsive gambling.³⁰⁰ State Rep. Tyrone Ellis (D-Starkville) sponsored a bill in 1994 that would have assessed an extra tax of 0.1% on gross casino revenues to generate up to \$250,000 for a gamblers' rehabilitation program, but it died in the House Ways and Means Committee.³⁰¹ Thus, as it currently stands, compulsive gamblers who want help must rely primarily on private sources such as hospital addiction programs, private therapists, and groups like Gamblers Anonymous.³⁰²

Health care professionals in this area of the country have not had significant exposure to compulsive gambling, so they do not have much experience in dealing with it.³⁰³ This makes it difficult for therapists to deal with compulsive gamblers, whose problems often are obscured by other addictions or psychologi-

cal dependency and compulsive gambling at the Memphis Psychological Center).

³⁰⁰ See Bernsen, *supra* note 234, at A1 (noting that Tennessee also has no plans or appropriations to address compulsive gambling).

³⁰¹ *Id.* at A11. Rather than an extra tax, House Ways and Means Committee Chairman Charlie Williams (D-Senatobia) favors appropriating money from a general fund to aid problem gamblers. *Id.*

³⁰² Gamblers Anonymous has been described as

a group therapy technique that uses only ex-gamblers as helpers. It involves confession of misdeeds, acknowledgement of guilt and penance, and acceptance of personal responsibility. GA provides the gambler with a sponsor whose main task is to perform an audit of a gambler's finances, take total control of the gambler's income (transferring finances to the spouse or "significant other" of the gambler has been found untenable as this only encourages the gambling to continue), and provide for graduated payments to bookmakers and other creditors.

A STUDY OF PROBLEM AND PATHOLOGICAL GAMBLING AMONG CITIZENS OF INDIANA ASSOCIATED WITH PARTICIPATION IN THE INDIANA STATE LOTTERY, 43-44 (Nov. 1990). For a description of a typical meeting, see Alvin Scodel, *Inspirational Group Therapy: A Study of Gamblers Anonymous*, 18 AM. J. OF PSYCHOTHERAPY 115, 115-17 (1964) (reporting on author's eight month investigation). There are now over 500 Gamblers Anonymous chapters in the United States and Canada. CLOTFELTER & COOK, *supra* note 71, at 124. There are also two related organizations; Gam-Anon for spouses and Gamateen for children of compulsive gamblers. ROSE, *supra* note 35, at 295.

³⁰³ Bernsen, *supra* note 234, at A1 (quoting Jim Jongewaard, director of recovery programs for chemical dependency and compulsive gambling at Memphis Psychology Center).

cal illnesses.³⁰⁴ As such, gamblers are being treated through the drug and alcohol programs, which are not geared to handle gambling problems.³⁰⁵ Moreover, many compulsive gamblers avoid seeking help because such treatment is often excluded from insurance coverage.³⁰⁶

Some states require a certain percentage of gambling proceeds to support programs to help compulsive gamblers. A three percent tax in Iowa generates \$1.2 million a year for the State's gamblers assistance funds.³⁰⁷ New Jersey earmarks the first \$500,000 in fines levied on casinos for the compulsive gambling council.³⁰⁸ The New Jersey Council on Compulsive Gambling operates a toll-free national hotline for problem gamblers: 1-800-GAMBLER.³⁰⁹ Sixteen percent of the calls received at that number are now from Mississippi or Louisiana.³¹⁰ In 1993, Mississippi gamblers made 582 calls to the number; by April of 1994 they had already made 508.³¹¹

The problems associated with compulsive gambling are not limited to the personal downfall of the gambler. "Economic losses from work absenteeism, bad debts, and crime [due to gambling problems] have been estimated at over \$34 billion annually to our society."³¹² According to some reports, every problem gambler negatively impacts between seven and seventeen other people³¹³ and costs society approximately \$52,000

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ IOWA CODE ANN. § 99F.11 (West Supp. 1994).

³⁰⁸ Bernsen, *supra* note 234, at A1.

³⁰⁹ Judice, *supra* note 293, at D1. Louisiana Law requires the 1-800-GAMBLER number to be posted on all decks of the gambling boats, but there is no similar requirement in Mississippi. *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Kaplan, *supra* note 235, at 195 (citing Politzer et al., Report on the Social Cost of Pathological Gambling and the Cost-Benefit Effectiveness of Treatment, FIFTH NATIONAL CONFERENCE ON GAMBLING AND RISK TAKING PROC. (1982)); see also Kindt, *supra* note 130, at 62 (noting problems associated with problem gamblers cancelling their insurance to have more money for gambling).

³¹³ Kindt, *supra* note 130, at 61.

per year.³¹⁴

Until about 1980, the typical member of Gamblers Anonymous was a middle-aged, middle class, white man - usually a businessperson or a professional.³¹⁵ Gambling addicts now include teenagers, retired people, women, and people from all races and income levels.³¹⁶ This spread of gambling problems to new segments of society seems to be linked to the spread of state sponsored gambling. "[O]nce gambling is legalized - once gambling becomes sociologically acceptable - the number of compulsive gamblers increases from .77% to between 1.5% to 5% of the population."³¹⁷

Video gambling, in particular, seems to have attracted new segments of society to compulsive gambling.³¹⁸ According to one player, video poker machines are

mesmerizing. Hypnotic. While you're staring at the screen, you don't think about the dishes in the sink or that your car hasn't had a full tank of gas in years or that your babysitter is having problems or your husband is mad again because you're not there. It's a total escape.³¹⁹

Many of the Mississippi casinos devote about half of their floor space to video slot machines, and they are played primarily by

³¹⁴ Martin, *supra* note 251, at J5.

³¹⁵ Hearing, *supra* note 271, at 97 (prepared statement of Valerie C. Lorenz, Ph.D). This description is generally in accord with the patterns found by the Commission on the Review of the National Policy Toward Gambling; however, the Commission also found that these generalizations change sharply when considering only illegal betting. GAMBLING IN AMERICA, *supra* note 53, at 58; see also Lee Ragland, *Educated More Likely to Gamble*, CLARION-LEDGER (Jackson, Miss.), Oct. 24, 1994, at A1 (noting that in Mississippi, casino patronage tends to increase with education level).

³¹⁶ See Kindt, *supra* note 130, at 66 (discussing preteen gambling addiction and identifying it as "national disgrace" in United Kingdom).

³¹⁷ *Id.* at 64 (footnotes omitted).

³¹⁸ Because such games are attractive to children, some experts are concerned that the video gambling will encourage youngsters to gamble. Hearing, *supra* note 271, at 107-08 (prepared statement of the National Coin Machine Institute); *id.* at 96-97 (prepared statement of Valerie C. Lorenz, Ph.D). Such concerns prompted law makers in at least one state to oppose video lotteries. See, e.g., N.J. Stat. Ann. § 5:9-7.1 (1988) (prohibiting video lottery).

³¹⁹ Gambling Fever, *supra* note 283, at A1.

women.³²⁰ While currently most of the members of Gamblers Anonymous are men, the organization expects to see many more women members in the near future, due primarily to video slot machines.³²¹

In addition to attracting new segments of society to gambling, video gambling devices have accelerated the speed at which gambling becomes a serious problem. Previous studies showed a typical pattern of ten to fifteen years of compulsive gambling before a person "hits bottom."³²² With video slot machine addicts, this period is dramatically reduced to as little as a few months.³²³ As such, the effects of widespread compulsive gambling problems may begin to show up within the state in the very near future, and the state should begin to brace for that eventuality.

B. Children and Gambling

Ten years ago teenage gambling did not appear to be a problem.³²⁴ Today counselors report that seven percent of their caseload involves teenage gamblers.³²⁵ One recent study indicates that teenagers may be three times more likely than adults to become problem gamblers.³²⁶ The Executive Director of the National Council on Problem Gambling explained, "[w]e have always seen compulsive gambling as a problem of older people Now we are finding that adolescent compulsive

³²⁰ Brodie, *supra* note 75, at 38; see also Beebe, *supra* note 12, at A1 (explaining that slots at Mississippi casinos are played mainly by women).

³²¹ *Gambling Fever*, *supra* note 283, at A1.

³²² *Hearing*, *supra* note 271, at 11.

³²³ See *id.*

³²⁴ Chavira, *supra* note 278, at 78. California psychologist Durand Jacobs believes that students are more than twice as likely to become compulsive gamblers than are adults. *Id.* A different survey, performed at St. John's University in New York, found eight times as many problem gamblers among college students as among adults in general. *Id.*

³²⁵ *Id.*; see also Kindt, *supra* note 130, at 65 ("[I]n 1992, the range of adolescents who were already problem or compulsive gamblers was between 4% and 15%.").

³²⁶ Jacobs, *supra* note 288, at 281.

gambling is far more pervasive than we had thought."³²⁷ Because adolescent gambling was not seen as a widespread problem until this past decade, there has not been much research into teenage gambling.³²⁸ Unfortunately, experts fear that current psychological profiles and analytical data may not work with teenage gamblers.³²⁹ This incongruity creates additional problems for young gamblers because treatment centers for youthful gamblers are "virtually nonexistent."³³⁰ As one psychologist has explained, "[P]ublic understanding of gambling is where our understanding of alcoholism was some forty or fifty years ago Unless we wake up soon to gambling's darker side, we're going to have a whole new generation lost to this addiction."³³¹ One reason for the recent surge in teenage gambling may be the active promotion of legal gambling. "[T]here is no question that children are exposed to much celebration of the lottery on television. . . ."³³² Laws have a teaching function, similar to museums, libraries, public television, and education.³³³

If members of the next generation are persuaded that the way to get ahead is through education, hard work, and deferred gratification, then our old age pensions are secure. But if they come to believe that success is a matter of luck, or that there is no point in working hard when an effortless play of the

³²⁷ Chavira, *supra* note 278, at 78 (quoting Jean Falzon).

³²⁸ See Jacobs, *supra* note 288, at 263-64 ("Potentially harmful effects of teenage gambling simply had not been a matter for professional, scientific, governmental, or lay scrutiny, as attested to by the virtually silent literature on this topic before 1980.").

³²⁹ *Id.* at 257.

³³⁰ Chavira, *supra* note 278, at 78 (quoting California psychologist Durand Jacobs).

³³¹ *Id.*

³³² CLOTFELTER & COOK, *supra* note 71, at 133. Former Arizona Governor Bruce Babbitt said that banning sales of lottery tickets to minors was unenforceable. *Id.* at 134. He described the tickets as "part of the culture" at the public school to which he sent his children. *Id.*

³³³ JOSEPH L. SAX, MOUNTAINS WITHOUT HANDRAILS 50-52 (1980); see also Lakshman Guruswamy, *Integrating Thoughtways: Re-Opening of the Environmental Mind?*, 1989 WIS. L. REV. 463, 509 (1989) (stating that "[e]conomic analysis seeks to subvert this teaching function of the law").

lottery can have the same effect, then the whole society suffers.³³⁴

Most parents seem to recognize that casinos are inappropriate places for children. A survey conducted by the Harrison County Tourism Office before the casinos came showed that seventy-seven percent of those polled considered the Gulf Coast a family place.³³⁵ Since the casinos came, the same poll shows only four percent consider it a place for families.³³⁶

Although teenagers are officially barred from casinos,³³⁷ they often manage to get in.³³⁸ Some of the newer Mississippi casinos even have playrooms and video arcades for children.³³⁹ If parents begin bringing their children to the casinos on a regular basis, it can become a family tradition just like going to a baseball game or going on a picnic. If that happens, it will be hard to encourage teenagers to avoid the temptations contained in the casinos when they get older.

Even where children themselves are not gambling, they often suffer when family members gamble. For one thing, children of compulsive gamblers are prone to become problem gamblers.³⁴⁰ Moreover, compulsive gamblers are usually not good parents.

The children of compulsive gamblers are caught in a process that reflects extremes in behavior by their parents. At

³³⁴ CLOTFELTER & COOK, *supra* note 71, at 133; see also *id.* at 244 (suggesting that long term economic interest of state may be damaged by undermining public values); 48 *Hours*, *supra* note 268 (complaining that lottery promotions conflict with basic message of education).

³³⁵ Beebe, *supra* note 12, at A1.

³³⁶ *Id.*

³³⁷ In Mississippi a person must be 21 years of age or older to play or be allowed to play any licensed game or slot machine, or to loiter in any licensed premises. MISS. CODE ANN. § 75-76-155(1)(a) (1991). Despite similar rules in New Jersey, approximately 29,000 underage gamblers are ejected from Atlantic City casinos each month. Chavira, *supra* note 278, at 78; see also Jacobs, *supra* note 288, at 253 (noting that casinos are attractive to high school students).

³³⁸ See Kindt, *supra* note 130, at 75 (noting that 64% of Atlantic City high school students had gambled in a casino and 9% did so weekly).

³³⁹ Swick, *supra* note 153, at C7.

³⁴⁰ Jacobs, *supra* note 288, at 252, 259.

times the gambler dotes on them; at other times he ignores them. . . . The children respond by feeling angry, hurt, lonely, guilty, abandoned, and rejected. They experience troubled teen years and run away from home, use drugs, become depressed, and experience psychosomatic illnesses.³⁴¹

Studies have also found numerous cases of parents who are delinquent with child support payments, but who spend a great deal of money gambling.³⁴² In Mississippi, judges are already reporting an increase in divorces and in fathers' failure to pay child support.³⁴³ In some states, legalized gambling has been linked to an increase in child abuse and domestic violence cases.³⁴⁴ These problems have all been exacerbated, if not caused, by the state's recent shift in gaming laws. If the reason for the legalization of gambling is a simple cost-benefit question, we must recognize the true costs of legalization. When one begins to weigh in these costs, the decision to legalize gambling becomes far less clear.

C. The Impact on Criminal Activity

Since legalized gambling leads to increased illegal gambling,³⁴⁵ crime will inevitably increase when gambling is legalized. If the only crime that increased was illegal gambling, then the result might be negligible. Legalized gambling's impact on criminal behavior is not, however, limited to an in-

³⁴¹ Lesieur, *supra* note 288, at 236; see also Lorenz & Shuttlesworth, *supra* note 278, at 69 (explaining that 84% of children and spouses considered themselves emotionally ill; 12% had attempted suicide; and 25% of children had significant behavioral or adjustment problems); Franklin & Thomas, *supra* note 278, at 140-42 (discussing severe emotional problems associated with some children of compulsive gamblers).

³⁴² Kaplan, *supra* note 285, at 194. Florida's Department of Health and Rehabilitative Services found 47 lottery winners who were derelict in their child support payments. *Id.* The total amount not paid totalled more than \$100,000. *Id.*

³⁴³ Brodie, *supra* note 75, at 38. It has also been estimated that 25% of the patrons at casinos are retirees gambling with pension money. *Id.*

³⁴⁴ See Kindt, *supra* note 130, at 72 (noting 42% to 43% increase in child abuse cases and 80% increase in domestic violence after Deadwood, South Dakota, legalized casinos).

³⁴⁵ See *infra* notes 369-90 and accompanying text.

crease in illegal gambling. Perhaps the most serious concern is that legal gambling creates problem gamblers, and problem gamblers often turn to more serious criminal activity to support their habits.³⁴⁶

"[I]t is a matter of observation over the years that gambling does lead particularly to the crime of petty embezzlement on the part of first offenders."³⁴⁷ Approximately ninety-seven percent of incarcerated pathological gamblers and two-thirds of the unincarcerated pathological gamblers have admitted to engaging in illegal behavior to finance gambling or pay gambling related debts, and an estimated thirty percent of all current prison inmates are problem gamblers.³⁴⁸ The gambler's criminal behavior is driven both by a need to replace lost money,³⁴⁹ and by a fundamental shift in values that often accompanies a compulsive behavior pattern.³⁵⁰ "[C]ompulsive gamblers are engaged in a spiral of options and involvement wherein legal avenues for funding are used until they are closed off."³⁵¹ The end result is criminal activity.

On the Mississippi Coast, preliminary figures indicate that some property crime is down (perhaps because more people are employed and have money) but that violent crime is much higher.³⁵² Although crime is down nationally,³⁵³ crime has

³⁴⁶ See Lesieur, *supra* note 274, at 83 (noting that "borrowing crimes" such as loan fraud, check forgery, and embezzlement typically rise when gambling is legalized); Chavira, *supra* note 278, at 78 (describing problem gamblers who turn to criminal activity); see also 48 Hours, *supra* note 268 (showing problem gamblers who stole money to play lottery).

³⁴⁷ PERKINS, *supra* note 18, at 68; see also Lesieur, *supra* note 288, at 239 ("Ultimately, pathological gambling results in crime."); Shaffer, *supra* note 16, at 7 (noting "the resemblance between the crime patterns of compulsive gamblers and narcotics addicts").

³⁴⁸ Lesieur, *supra* note 274, at 239.

³⁴⁹ See Lorenz & Shuttlesworth, *supra* note 278, at 69 (explaining that 99% of family members of compulsive gamblers report financial problems related to gambling).

³⁵⁰ See Lesieur, *supra* note 274, at 84-86; see also PERKINS, *supra* note 18, at 69 (noting that "gambling depreciates the personal character").

³⁵¹ Lesieur, *supra* note 274, at 240.

³⁵² Beebe, *supra* note 12, at A1. A gaming intelligence officer with the Harrison County Sheriff's Department said that "bank robberies just went through the roof." *Id.* Also, many of the muggings on the Coast took place in casino park-

increased about twenty percent since the casinos came to the Gulf Coast.³⁵⁴ Burglary and larceny are the most often committed crimes.³⁵⁵ In response, Biloxi has bought twelve new police cars and hired more police officers.³⁵⁶ The Mississippi Coast Crime Commission has agreed to work with the University of Southern Mississippi to study why crime is increasing.³⁵⁷

In addition to "street crime," gambling has traditionally been associated with organized crime. Even today, gambling is an important revenue source for organized crime.³⁵⁸ Current estimates of illegal gambling run as high as one billion dollars annually wagered in New York City alone,³⁵⁹ and one hundred billion wagered nationally.³⁶⁰ Much of that is controlled by organized crime. In 1977, the National Institute of Law Enforcement and Criminal Justice estimated that organized crime controlled half of all the illegal gambling in the

ing lots. *Id.*

³⁵³ Carolyn Skorneck, *Overall Crime Rate is Lowest Since '86, FBI Says—Homicides Rise; Memphis is 23rd*, COM. APPEAL (Memphis), Dec. 4, 1994, at A1. In 1994, the overall crime rate was 5,482.9 serious crimes per 100,000 population. *Id.* Violent crime was at 746.1 while property crime was at 4,736.9. *Id.*

³⁵⁴ Beebe, *supra* note 12, at A1 (citing Mississippi Coast Crime Commission).

³⁵⁵ *Coast Crime Shows Jump of 20 Percent*, COM. APPEAL (Memphis), July 11, 1994, at B2.

³⁵⁶ Walters, *supra* note 13, at 11.

³⁵⁷ *Gulf Coast Crime Rate is Tracked*, TIMES-PICAYUNE (New Orleans), July 11, 1994, at B4.

³⁵⁸ It is widely believed (and was depicted in the motion pictures *The Godfather II* and *Bugsy*) that organized crime moved into Nevada when that state opened itself up to legalized gambling. See *Nevada Tax Comm. v. Hicks*, 310 P.2d 852, 854 (Nev. 1957) (expressing concern over possible infiltration of Nevada's legalized gambling by organized crime); see also SKOLNICK, *supra* note 69, at 35-36 ("[I]n the 1950's and 1960's, . . . former bootleggers openly ran [Las Vegas] hotel-casinos."). See generally Jerome H. Skolnick & John Dombrink, *The Limits of Gaming Control*, 12 CONN. L. REV. 762 (1980) (discussing organized crime's role in legalized gambling).

³⁵⁹ DOMBRINK & THOMPSON, *supra* note 49, at 99.

³⁶⁰ ROSE, *supra* note 35, at xiii; see DEVELOPMENTS, *supra* note 34, at 740 ("Estimates of the amount wagered annually through organized illegal operations vary greatly, but virtually all are in the billions of dollars."). Of course, the exact amount of any illegal activity is very difficult to determine. Rychlak, *supra* note 15, at 572.

Northeastern section of the United States.³⁶¹ In some states, it was hoped that legalized gambling would displace illegal gambling, thereby taking away one of organized crime's primary sources of revenue.³⁶² If legalized gambling were able to draw its customers from patrons of the illegal games, the state could raise revenue and fight crime at the same time.

Although politicians deem the lottery a "voluntary tax," they realize that it is a burden that *someone* will have to shoulder. In general, they believe that the burden should fall primarily on organized criminals. Indeed, mobsters are presumably earning billions of dollars each year from illegal gambling. If the public could be wooed from the illegal to the state-run games, lottery profits would come at the expense of organized criminals. By diverting the funds from the syndicates to the states, the lottery would kill two birds with one stone. It would fight crime while it raised money.³⁶³

Accordingly, some states identified the elimination of organized crime's control of illegal gambling as one of the goals of state sanctioned gambling.³⁶⁴ Unfortunately, that has not been the case in most places.

In general, legalized gambling has not been successful in combatting illegal gambling,³⁶⁵ but it is too early to tell what

³⁶¹ DEVELOPMENTS, *supra* note 34, at 123, 741. More recent studies indicate that illegal gambling is not controlled by one huge syndicate, but rather by several smaller organizations. CLOTFELTER & COOK, *supra* note 71, at 131.

³⁶² The term "organized crime" has many meanings. DEVELOPMENTS, *supra* note 34, at 110 n.77. The Commission on the Review of the National Policy Toward Gambling equated it with the Mafia or *La Cosa Nostra*. GAMBLING IN AMERICA, *supra* note 53, at 171. In this paper, "organized crime" refers to large scale operations which use force, bribery, and intimidation to conduct their unlawful activities, regardless of any ethnic, racial, or other distinguishing features.

³⁶³ DEVELOPMENTS, *supra* note 34, at 682 (footnote omitted).

³⁶⁴ See, e.g., PA. STAT. ANN. tit. 72, § 3761-2 (1995) (listing aid to elderly and curbing illegal gambling as lottery's purposes); see also Lester B. Snyder, *Regulation of Legalized Gambling: An Inside View*, 12 CONN. L. REV. 665, 666 (1980) (identifying stopping illegal gambling as secondary purpose of state run lotteries).

³⁶⁵ See DEVELOPMENTS, *supra* note 34, at 707 ("Patrons of illegal games apparently cannot be enticed in great numbers to play the government's game, so the government must create a gambler who will."); see also 48 Hours, *supra* note 268 (suggesting that lottery may have damaged illegal games, but they are "still func-

the impact of Mississippi's casinos will be. One serious concern is that legal gambling may attract underworld figures into the state, perhaps leading to more illegal gambling. There is evidence that organized crime figures have moved into casinos in other states.³⁶⁶ Organized crime figures have been seen on the Mississippi Coast since the casinos arrived.³⁶⁷ According to federal affidavits filed with the United States District Court in Minneapolis, one company that sought to purchase Splash Casino in Tunica and build other casinos elsewhere had links to the New York Genovese crime family.³⁶⁸

Legalized gambling may also have the unintended effect of encouraging more illegal gambling. First of all, state sanction of legal gambling tends to remove any taint from the illegal games.³⁶⁹ As such, people who would not have gambled illegally might be encouraged to do so.³⁷⁰ Legal gambling can also make it easier for illegal gambling operators to run their operations.³⁷¹ In addition, the incredible amount of money involved in the gaming industry can lead to police corruption.³⁷²

tioning and functioning well").

³⁶⁶ See Michael Goldsmith, *The Supreme Court and Title III: Rewriting the Law of Electronic Surveillance*, 74 J. CRIM. L. & CRIMINOLOGY 1, 140-41 (1983) (referring to intercepted conversations which concern hidden and unlawful financial interests in various Las Vegas casinos).

³⁶⁷ Beebe, *supra* note 12, at A1.

³⁶⁸ *Mafia Probe Targets Gambling Firm that Pursued Miss. Casinos*, COM. APPEAL (Memphis), July 30, 1994, at A1, A12. In May of 1994, several alleged members of the Genovese crime family were indicted for allegedly skimming from video gambling businesses in Louisiana. *Id.*

³⁶⁹ ROSE, *supra* note 35, at 10; see also Judith H. Hybels, *The Impact of Legalization on Illegal Gambling Participation*, 35 J. SOC. ISSUES 27, 35 (1979) (concluding that legal and illegal gambling are complementary and that gamblers do not substitute one for other).

³⁷⁰ Hybels, *supra* note 369, at 32. It has been noted that states with a lottery have more illegal gambling problems with residents playing the numbers. *Id.* This may be because the two types of gambling are so similar in form. *Id.*

³⁷¹ DEVELOPMENTS, *supra* note 34, at 732, 776. For instance, if sports betting is legalized, a bookie can "lay-off" bets on a given game, assuring his profitability. Rychlak, *supra* note 16, at 58. Similarly, a lottery can make it easier to run an illegal numbers game. *Id.* (explaining that illegal games use same numbers as state games).

³⁷² During his confirmation proceedings, Justice Souter was asked if he had ever been a crusader for a cause. Earle Eldridge, *Sen. Reid Wants Souter to Ad-*

Thus far, problems such as cheating, skimming, and organized crime infiltration are not evident in Mississippi, perhaps because much of the gaming investment comes from large public companies which recognize that bending the rules could jeopardize their profits. However, the industry history shows that tight regulation is usually needed. According to the head of the FBI's organized crime section, "States with strong regulations and enforcement are not experiencing an influx of organized crime. However, we expect that states with poor regulations and controls may do so."³⁷³ Questions have been raised about Mississippi's regulatory scheme.

Mississippi has assigned license and regulation authority to the Mississippi Gaming Commission.³⁷⁴ The Commission consists of three members, each serving a four year term.³⁷⁵ Mississippi regulators investigate all gaming operators before issuing a permit.³⁷⁶ The investigation focuses on the character of the operator,³⁷⁷ sources of financing,³⁷⁸ and business

dress Casino Issue, GANNETT NEWS SERVICE, Sept. 28, 1990, available in LEXIS, News Library, GNS file. He had opposed efforts to bring casino gambling to New Hampshire in 1977 while he was attorney general for the state. *Id.* "I guess my greatest crusade was the cause against bringing casino gambling into the state of New Hampshire," he stated. *Id.* "I did not believe that we had a very good chance of maintaining the integrity of the law enforcement structure of the state when the economy would have been totally overbalanced by the amount of money that would have come in for that purpose." *Id.*; see also SKOLNICK, *supra* note 69, at 260 ("The problem of bribery is particularly acute in the gaming industry.").

³⁷³ Brodie, *supra* note 75, at 38 (quoting Jim Moody, head of the FBI's organized crime section).

³⁷⁴ MISS. CODE ANN. § 75-76-7 (1991). The Commission must meet at least once per month. MISS. CODE ANN. § 75-76-13(2) (1991). The Commission is responsible for licensing. MISS. CODE ANN. § 75-76-61 (1991). The Commission is also responsible for administering discipline to licensees. MISS. CODE ANN. § 75-76-103 (1991). The members also adopt appropriate regulations. MISS. CODE ANN. § 75-76-53(1)(a) (1991). The "Executive Director" directs and supervises all administrative and technical activities of the Commission. MISS. CODE ANN. § 75-76-23 (1991). The director is also in charge of directing various investigations. MISS. CODE ANN. § 75-76-103 (1991). The Attorney General advises the Commission, and represents it in lawsuits. MISS. CODE ANN. § 75-76-25 (1991).

³⁷⁵ MISS. CODE ANN. § 75-76-9 (1991). The boards or commissions of most states consist of five to seven members. Swanson, *supra* note 5.

³⁷⁶ See MISS. CODE ANN. §§ 75-76-61 to -101 (1991) (setting out standards and procedures to obtain gaming license).

³⁷⁷ *Id.* § 75-76-67(2)(a). The applicant must be "[a] person of good character,

competency.³⁷⁹ No regulation addresses advertising and public relations activities.³⁸⁰ Licensees set their own limits on wagers and payouts for all games.³⁸¹ The Commission has the authority to revoke, suspend, limit, or condition any gaming license, and to fine any gaming licensee for any reasonable cause, including any violation of any provision of the Gaming Control Act or the Regulations of the Commission.³⁸²

There are, however, questions about the ability of the state to enforce its regulations. For example, New Jersey has 140 gaming agents patrolling twelve casinos, but as of July, 1994, Mississippi had only nine investigators covering 21 casinos.³⁸³ Still, Mississippi regulators have been averaging four patron arrests and one or two casino employee arrests for cheating each week.³⁸⁴

honesty, and integrity." *Id.*

³⁷⁸ *Id.* § 75-76-67(4)(a). The applicant must show both that the proposed financing is sufficient and "[f]rom a suitable source." *Id.* § 75-76-67(4)(b)(i),(ii).

³⁷⁹ *Id.* § 75-76-67(4)(b). The Commission is prohibited from granting a gaming license unless the applicant demonstrates that he has sufficient business experience generally or in the gaming industry. *Id.* § 75-76-67(4)(a).

³⁸⁰ CASINO LAW, *supra* note 6, at 80; see also Rychlak, *supra* note 16, at 60-63 (arguing that advertising has had negative effect in many states).

³⁸¹ CASINO LAW, *supra* note 6, at 68; see also Rychlak, *supra* note 16, at 56-57 (noting various payout rates that for some games, like lotteries, are set by state).

³⁸² MISS. CODE ANN. § 75-76-103 to -127 (1993). The Gaming Commission recently established a 24-hour phone line [1-800-504-PLAY] to hear complaints about casinos. Lee Ragland, *Ante Up: With 800 Number, Board Hears Gripes Round-the-Clock*, CLARION LEDGER (Jackson, Miss.), Oct. 27, 1994, at E7. J. Ledbetter, head of the Commission's enforcement division, said that they receive approximately three calls per day, usually asking minor questions such as the basic rules of a game. *Id.*

³⁸³ *The Gamble*, *supra* note 11. Gaming consultant Ray Koon said that "[w]ithout adequate enforcement in regulatory functions, the industry becomes much like a ship without a captain." *Id.* Mississippi seems to be improving in this area. See *Mississippi Gaming Commission Opens Enforcement Office*, DAILY MISSISSIPPIAN, Nov. 30, 1994, at 6 (discussing new Gaming Commission office in Vicksburg); see also Sarah C. Campbell & Bartholomew Sullivan, *Miss. Gets Tougher on Cheaters at Casinos*, COM. APPEAL (Memphis), Dec. 4, 1994, at A1 (describing various ways in which cheaters operate).

³⁸⁴ Gina Holland, *Palace Casino Manager Charged With Rigging Blackjack*, DAILY MISSISSIPPIAN, Dec. 1, 1994, at 7. Although cheating is not unusual, it is most often committed by low level employees and patrons. *Id.* The Palace Casino manager was the highest ranking official arrested in Mississippi thus far. *Id.*

There are also some questions about the ethical restrictions governing the regulators. The first two directors of the state's regulatory board quit and immediately went to work for the industry that they had been hired to regulate.³⁸⁵ It is not surprising that lawyers who have worked for enforcement agencies are in demand in the gaming industry. For one thing, such lawyers can bring a sense of integrity to an industry often associated with organized crime.³⁸⁶ More troublesome, however, is the rationale set forth by the President of the International Association of Gaming Attorneys. "We're not interested in becoming a power bloc, but we want to keep up with the latest developments and *improve relations between the casino operators and the regulators.*"³⁸⁷ Close relations, of course, can lead to at least the appearance of impropriety. Other states have restrictions on the ability of regulators going to work for the industry. New Jersey regulators are not allowed to work for New Jersey casinos for two years, and Nevada has a one-year waiting period.³⁸⁸

Mississippi has tried to tighten its ethics law, but the Director of the Mississippi Gaming Board has quoted the Board's attorneys saying that "probably, if challenged, our ethics law would not be enforceable."³⁸⁹ While the evidence is inconclusive, if Mississippi follows the national trend, legalized gambling will probably not displace illegal gambling, and crime will likely increase due to the casinos.³⁹⁰ Hopefully regulations

³⁸⁵ *The Gamble*, *supra* note 11. Regulatory problems that Mississippi must confront include "too few gaming agents, conflicts of interest, and a weak ethics law." *Id.* An attorney for the Mississippi Gaming Board has noted that although the ethics law has been strengthened it would likely not hold up if challenged. *Id.* Many states require that commission members post a bond of between \$10,000 and \$25,000. See Swanson, *supra* note 5 (naming Illinois, Indiana, Iowa, and Texas as states requiring bond).

³⁸⁶ Sullivan, *supra* note 73, at A29.

³⁸⁷ *Id.* (quoting David M. Satz, Jr., former United States Attorney for New Jersey, who was recently sworn in as President of International Association of Gaming Attorneys) (emphasis added).

³⁸⁸ *Id.*

³⁸⁹ *The Gamble*, *supra* note 11 (quoting Paul Harvey, Director of Mississippi Gaming Board).

³⁹⁰ See WEINSTEIN & DEITCH, *supra* note 36, at 139 ("The daily lottery proba-

can be used to minimize the risk of infiltration by organized crime, but it will be necessary to look at the number of enforcement agents and the ethical guidelines that are applied to the regulators.³⁹¹

D. Problems of Poverty

Because gambling holds out the promise of quick riches, it is particularly appealing to those in dire economic straits. As such, it is not surprising to find that poor people tend to spend a disproportionate amount of their income on legalized gambling.³⁹² A state that is truly interested in breaking the cycle of poverty would normally be expected to promote the traditional virtues of education, hard work, thrift, and savings. State sanctioning of gambling, however, sends the opposite message. The promise of great riches may provide a fantasy for those who can afford it, but gambling is a poor choice for those who do not have disposable income.

Although casinos have helped the employment situation in many areas of the State, at least some impoverished Mississippians have seen their situation worsen. The Salvation Army's caseload in Biloxi has doubled since casinos moved into the area.³⁹³ In the midst of Biloxi's recent prosperity, the number of persons frequenting shelters for the homeless has grown, and its soup kitchens are turning out more meals than ever before.³⁹⁴ This problem is exacerbated because casinos have been reluctant to donate to charities like the Salvation Army, perhaps because that might be seen as an admission that they

bly does not substitute closely enough for the illegal numbers game to attract a significant percentage of illegal bettors.").

³⁹¹ As this article went to print, new gaming regulations were taking effect. See *New Regulations for Gaming Establishments to Take Effect*, State Watch Digest, Mar. 24, 1995, at 1.

³⁹² See PA. REPORT, *supra* note 286, at 74 ("[T]he Lottery may . . . have a negative impact on some individuals who may invest a greater portion of their incomes than they can reasonably afford with unrealized expectation of quick wealth."); Rychlak, *supra* note 16, at 51 (discussing regressivity).

³⁹³ Beebe, *supra* note 12, at A1.

³⁹⁴ *Id.*

are contributing to the problems.³⁹⁵

For those who have not found employment in the casinos or elsewhere, rising prices driven by the increased demand for goods and services only worsens their plight.³⁹⁶ This can be an especially cruel trap for senior citizens on a fixed income. At least a quarter of casino patrons are estimated to be retired people.³⁹⁷ If they gamble away their income, they are left with no option but to sell their possessions to buy life's necessities. Pawn shops have already been labeled "the newest growth industry on the Mississippi coast."³⁹⁸ In addition, auctions are regularly held to dispose of the automobiles that must be sold to pay gambling debts.³⁹⁹

It may be that increased tax revenues will help the State provide services to those who gamble away their life savings. This could help mitigate the problems caused by casino gambling, but it is an unsatisfactory long-term answer. The personal downfall of otherwise successful people who fall prey to the temptation of excess gambling is a serious concern that must be weighed in the equation when policy makers consider the impact of legalized gaming.

E. Environmental Concerns

Environmental experts say that an average casino has about the same environmental impact as a small town.⁴⁰⁰ For example, according to an Army Corps of Engineers public notice, the Sheraton Tunica Casino would destroy 2.5 acres of wetlands with its project. In addition to the 91,900 square-foot casino on barges, the "onshore" part of the complex will have a forty-five-acre parking lot for 4000 vehicles, a four lane divided

³⁹⁵ *Id.*

³⁹⁶ Snyder, *supra* note 137, at A8.

³⁹⁷ Brodie, *supra* note 75, at 38; see also Gray, *supra* note 252, at E7 (describing casinos that seek to attract senior citizens with food promotions).

³⁹⁸ Martin, *supra* note 251, at J5; see also *The Gamble*, *supra* note 11 (noting that pawn shops are opening in great numbers).

³⁹⁹ Swick, *supra* note 153, at C7.

⁴⁰⁰ Shep Montgomery, *Federal Regulators Consider Casino's Impact on Coast*, MISS. BUS. J., May 9, 1994, at 1.

highway, a ten-acre lake, and other facilities. Future plans call for a 300-room hotel, country and western dance hall, restaurant, retail space and administrative offices.⁴⁰¹ There are also parking lots, roads, channels, sewer systems, electrical systems, garbage dumps and more.⁴⁰² All of this puts a strain on the surrounding environment.

Ironically, by requiring that all casinos be placed on navigable water, the state created a much more serious environmental problem than if the casinos were located in developed areas. Originally, all of the casinos on the Coast were located on shoreline areas that were classified as commercial or industrial.⁴⁰³ While there were concerns about surrounding wetlands, these areas were not that environmentally sensitive, because they had been subject to development for many years. However, as more casinos moved in, and commercial locations became scarce, applicants sought to introduce casinos into the bays and adjunct waterways that were classified for residential and recreational uses.⁴⁰⁴ These new locations are far more environmentally sensitive than the earlier sites.⁴⁰⁵ The Environmental Protection Agency, the National Marine Fisheries Service, and the Fish and Wildlife Service have now all called for a moratorium on the issuance of further permits until an Environmental Impact Statement is done on the cumulative impact of dockside gambling on the Coast.⁴⁰⁶

In addition to problems that are created when casinos are

⁴⁰¹ Williamson, *supra* note 14, at 46. The Sheraton Corporation, according to company figures, will also spend more than \$200 million building the casino vessels. *Id.* The finished project will employ 2000 people with an annual payroll of about \$46 million and is expected to generate an additional 1000 indirect jobs with a yearly payroll of \$15 million. *Id.* It will also contribute about \$23 million annually into state and county tax coffers. *Id.*

⁴⁰² *Id.* The parking lot alone will accommodate 4000 vehicles covering 45 acres. *Id.*

⁴⁰³ Ellen Peel, *Mississippi "Gamble" Could Cost Fish, Wetlands*, MARINE CONSERVATION NEWS, Summer 1994, at 5.

⁴⁰⁴ Peel, *supra* note 403, at 5.

⁴⁰⁵ *Id.* The Gulf of Mexico is second only to Alaska in fish productivity, and 98% of the commercial fish caught in the Gulf depend on these coastal estuaries at some point in their life cycle. *Id.*

⁴⁰⁶ *Id.*

built, the State is beginning to experience environmental problems associated with their departure.⁴⁰⁷ Thus far there has not yet been any major permanent damage to the environment.⁴⁰⁸ However, by mid-1994 two casinos had pulled out of Tunica County, a third had shut down and announced plans to leave, and other projects had been left unfinished, all of which lead to erosion gullies, abandoned barges, and a paved and dramatically altered floodplain.⁴⁰⁹ The large, empty parking lots may represent the primary environmental concern.⁴¹⁰ If casino sites are eventually abandoned and ghost towns are left in their wake, who will care for the land, and what will happen to it?

One of the particular environmental concerns with casinos relates to how the permitting process has been handled. Under the Clean Water Act, developers must apply for permits to discharge any dredged or fill material into navigable water.⁴¹¹ Since Mississippi casinos must be on water (the term "navigable" has lost most of its meaning),⁴¹² permits are needed for each casino project.⁴¹³ The United States Army Corps of Engineers proposed a plan to allow casino projects to leap-frog over governmental regulation procedures designed to protect the environment, and acquire in as few as five days permits that normally take up to six months to obtain.⁴¹⁴ The Corps is

⁴⁰⁷ Charlier, *supra* note 209, at B1.

⁴⁰⁸ *Id.* Mississippi environmentalist groups have been critical of the gaming development. *Id.* Peter Schutt, founder of the Mississippi River Coalition, said that "[w]hether you call it destruction or not, it's obviously not good for the flood plain." *Id.*

⁴⁰⁹ *Id.* At present, Mississippi lawmakers are considering legislation requiring performance bonds for future gaming developments. *Id.* This money could be used to clean up sites that are abandoned or left unfinished. *Id.*

⁴¹⁰ *Id.* Rain falling on the pavement cannot be absorbed, so it runs off the lot in fast moving streams, cutting the earth and eroding the soil. *Id.*

⁴¹¹ 33 U.S.C. § 1344 (1988).

⁴¹² See *Cinque Bambini v. State*, 491 So. 2d 508, 516 (Miss. 1986) (defining navigable as if one could "hoist a sail upon a toothpick"), *aff'd sub. nom.*, *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988).

⁴¹³ Choctaw casinos, of course, do not have to be on navigable water. See *supra* notes 184-89 and accompanying text.

⁴¹⁴ *Why are Casinos Special?*, COM. APPEAL (Memphis), May 6, 1994, at A16.

issuing the permits for wetland destruction under the assumption that the casinos are "water dependent" under the Clean Water Act.⁴¹⁵ This permits greater use of water and destruction of wetlands than would otherwise be possible.⁴¹⁶ State law, of course, requires that they be placed on water, but they are not water dependent in the traditional sense.⁴¹⁷

Another issue tied to the permitting process and abandonment of casino sites involves mitigation. When casino developers get Clean Water Act permits, they are usually required to mitigate the damage by restoring or developing wetlands elsewhere.⁴¹⁸ According to Corps reports issued in 1994, twenty-three active and proposed casino sites in Tunica and Coahoma counties involve the filling of 128.13 acres of wetlands.⁴¹⁹ To mitigate that damage, developers agreed to develop 165.5 acres of mitigation wetlands.⁴²⁰ Of course, if developers abandon a site, they might not carry through with the long-term efforts required to fulfill mitigation obligations.⁴²¹

In order to prevent this from being a problem in the future, legislation requiring performance bonds which would cover cleanup costs at sites that are abandoned has been discussed during recent hearings in Jackson.⁴²² In the absence of a bond

⁴¹⁵ Williamson, *supra* note 14, at 46.

⁴¹⁶ See *Friends of the Earth v. Hintz*, 800 F.2d 822, 831-32 (9th Cir. 1986) (discussing concept of water dependency). As this article went to print, the Mississippi River Coalition, an environmental group, filed suit against the Corps of Engineers claiming that the Corps had allowed casino developers in North Mississippi to damage an important wetland area. See Tom Charlier, *Lawsuit hits corps' casino permits*, COM. APPEAL (Memphis), April 1, 1995, at B1.

⁴¹⁷ *Friends of the Earth*, 800 F.2d at 831-32. A water-dependent activity is one requiring "access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose." *Id.* at 831 (quoting 40 C.F.R. § 230.10(a)(3) (1986)).

⁴¹⁸ This is in keeping with former President Bush's pledge of "no net loss" of wetlands. See Ronald J. Rychlak & Ellen M. Peel, *Swimming Past the Hook: Navigating Legal Obstacles in the Aquaculture Industry*, 23 ENVTL LAW 837, 849 (1993) (discussing various state approaches to wetland conservation).

⁴¹⁹ Charlier, *supra* note 209, at A1.

⁴²⁰ *Id.*

⁴²¹ *Id.* Abandoned sites have not posed a problem yet because they are all on sites covered by permits for group developments. *Id.*

⁴²² *Id.* State Sen. Mike Gunn (R-Jackson), chairman of the Senate Environment

requirement, the Corps of Engineers, as a condition of issuing permits, has recently started requiring developers to make upfront pledges to clean up any site they abandon.⁴²³ Casino officials, of course, resent these additional impositions. They point to the lack of problems so far and the fact that other businesses are not subjected to similar requirements.⁴²⁴ Nevertheless, if abandonment causes problems, and the casinos are truly at fault, responsible state officials must make provisions for ultimate clean-up of abandoned sites.

A different type of environmental concern relates to the safety of those who must travel to, from, or near the casinos, especially those in northern Mississippi. The primary route between Memphis and Tunica is U.S. 61, a two-lane highway described (before the casinos) in John Grisham's book, *The Chamber*.⁴²⁵ Since the casinos came, traffic has tripled and it has been called "an auto-body shopman's greatest dream,"⁴²⁶ "the state's worst gamble,"⁴²⁷ and a "death trap."⁴²⁸ In January, 1994, four casino employees were killed driving on that highway.⁴²⁹ Plans are underway to improve and make it safer, and casino developers are even looking at the possibility of building a private access road to provide a shortcut from Memphis,⁴³⁰ but with gamblers returning home after having been

Committee, said the bond is especially important because the State's gaming law restricts casinos to sites on water, which "by definition are environmentally sensitive areas." *Id.* The outcome is not, however, clear. "At this point, with all the difficulties in the industry, I don't see the Legislature coming out with anything that's going to be a hardship for the industry." *Id.* (quoting Barbara Shattles, director of corporate marketing for Treasure Bay Corporation, which has casinos in Biloxi and Tunica County).

⁴²³ *Id.* The new policy, however, does not affect developments previously permitted. *Id.*

⁴²⁴ Charlier, *supra* note 209, at A1. The casino owners are of the opinion that they have adhered to the strict environmental requirements. *Id.*

⁴²⁵ GRISHAM, *supra* note 139, at 63.

⁴²⁶ Smith, *supra* note 109, at 1.

⁴²⁷ *Id.*

⁴²⁸ Snyder, *supra* note 137, at A1.

⁴²⁹ *Id.* In 1989 there were only two fatalities recorded on Tunica roads the entire year. *Id.*

⁴³⁰ Wilkie, *supra* note 107, at 14.

served free drinks most of the night, U.S. 61 continues to be a very risky road.

In Biloxi, environmental concerns relate primarily to the strains that the casinos have put on public services. With 2000 new hotel rooms being built along Biloxi's casino row, local water and sewer systems are being overtaxed, and the city has had to pour money into infrastructure improvements.⁴³¹ The state itself will sell \$325 million in construction bonds to widen highways in areas of the Gulf Coast casinos.⁴³² All of this development, of course, comes at a cost. As one state traveler put it:

And I kept insisting how much better it all looked before the gambling gods ruled Mississippi.

The casinos have cast their long neon shadow over much of the beach between New Orleans and Biloxi. One of them hosts a nightly laser show so spectacular that it confuses the pilots at Keesler Air Force Base.⁴³³

As historian Gordon Cotton said, "My starlit skies have been infringed upon."⁴³⁴

The National Trust for Historic Preservation, a Washington-based preservation watchdog group chartered by Congress, named Natchez one of its "eleven most endangered historic places" in June, 1994, citing the threat of casino development on the bluff.⁴³⁵ Even though the casinos do not yet dominate the skyline the way they do on the Coast, the fear is that casinos will lead to development and the historic character of Natchez will be lost. Some already feel that Natchez has changed "from something authentic to something plastic."⁴³⁶

⁴³¹ Walters, *supra* note 13, at 11.

⁴³² *Safe Bet*, *supra* note 126.

⁴³³ Rheta G. Johnson, *On the Road With a Good Neighbor*, ATLANTA J. & CONST., May 29, 1994, at C1.

⁴³⁴ Swick, *supra* note 153, at C7 (complaining about nightly searchlights at Ameristar Casino in Vicksburg).

⁴³⁵ Sullivan, *supra* note 11, at A1.

⁴³⁶ *Id.* (quoting History Professor Ronald L. Davis of California State University at Northridge, regular visitor to Natchez for past 20 years).

It's like Brigadoon, the magical town that came to life once every 100 years in the musical by Lerner and Loewe. You don't know if it's real, but you know that it was once real. The tawdriness and crassness of this gambling activity threatens the magic of all that.⁴³⁷

Critics say that "a gracious, slow-paced way of life is disappearing in a city that, away from the touristy beach, still has white-columned mansions and canopies of live oaks and hanging Spanish moss along many of its streets."⁴³⁸ Not everyone agrees. According to Natchez Mayor Larry W. "Butch" Brown, Natchez now has some of the toughest historic preservation guidelines in the country. He agrees that Natchez is endangered, "but I don't think it's endangered by gaming."⁴³⁹

All of this development comes at a cost that some other states have found too high. In a 1977 article, then New Hampshire Attorney General David Souter argued that gambling would attract tourists to that state (which already had a lottery) for the thrill of gambling instead of the beauty of the state's mountain scenery.⁴⁴⁰ He said gambling "would change the character of the part of the world closest to us."⁴⁴¹ The New Hampshire gambling proposal, which was endorsed by then Governor Meldrin Thomson, Jr. ultimately failed.⁴⁴² Mississippians may be more willing to accept changes in our geography and the character of our communities, but we must recognize the consequences of our actions when we invite casinos into the neighborhood. It is another cost that must be considered.

⁴³⁷ *Id.* (quoting Professor Davis).

⁴³⁸ Beebe, *supra* note 12, at A1. One resident, whose yard now floods each time it rains said, "It's done; it happened; there's no use squawking about it." *Id.*

⁴³⁹ Sullivan, *supra* note 11, at A1. The Giles Cutoff north of town, created in the 1930s by the Corps of Engineers, changed the angle at which the river passes Natchez. *Id.* Over the past 60 years, approximately eight square blocks have been washed away. *Id.* At present, there is a \$70 million bluff stabilization plan being considered by Congress. *Id.*

⁴⁴⁰ Eldridge, *supra* note 372.

⁴⁴¹ *Id.*

⁴⁴² *Id.*

XIII. CONCLUSION

A couple of years ago, before Mississippi and other states had turned to casino gambling, the most interesting feature of modern state-sanctioned gambling was that it went "from universal prohibition and condemnation of all forms of gambling to state sponsorship of lotteries, [and] completely bypassed the logical step of legalized (but unsponsored) gambling."⁴⁴³ Mississippi has taken that "logical step," and while there are serious social consequences, the economic results have thus far been about as positive as any gambling proponent could have hoped for. Gambling has not only added a tremendous amount of money to state coffers in the past two years, it has pulled some communities out of dire economic situations. Significantly, it has done this without the state becoming directly involved in the operation of a gambling enterprise (such as a lottery).

For the time being, Mississippi is benefiting from an influx of money from neighboring states, but that is likely to slow down or stop when they, too, move toward legalized gambling. Moreover, Mississippi has not yet begun to see the full effects of legalized gambling on individuals. Crime, bankruptcy, homelessness, domestic problems and membership in Gamblers Anonymous have all grown markedly since the introduction of gambling in the state. These trends are almost certain to continue.

Mississippi must prepare to deal with the negative impact that casino gambling will have in the near future. It is time to act on these issues. Public education campaigns, treatment centers, and additional help for social services are all likely to be required in the near future. The State will also have to face the likelihood of more teenagers with gambling problems and continued increases in the level of criminal activity. Special consideration for the environment may also be necessary.

As all of these issues evolve over the next few years, it will be important to remember the observed correlation between these problems and legalized casino gambling. History suggests

⁴⁴³ Rychlak, *supra* note 16, at 47-48.

that this wave of legalized gambling in America will not last forever. Hopefully, Mississippi will be able to capitalize on its early entry into the gambling arena to pull itself out of its historical poverty. When gambling starts to become a drain on the state, as history indicates it inevitably will, let us hope that Mississippians are among the first to recognize that trend as well.