

RIVERBOATS: FLOATING OUR WAY TO A BRIGHTER FISCAL FUTURE?

*Kristen M. Campion**

I. Introduction

New Jersey has allowed casino gambling¹ within its borders since its citizens first voted to permit it in 1976.² For a long time, New Jersey and Nevada had a virtual monopoly on this form of entertainment.³ Recent changes in the gaming industry, however, have forced Atlantic City, and New Jersey itself, to reexamine its position on gambling and its priorities relating thereto.⁴ The

* B.A., Political Science, Providence College, 1992; J.D., Seton Hall University School of Law, anticipated June 1995.

¹ H. CARL MCCALL, *GAMBLING: TO STAKE SOMETHING OF VALUE UPON AN UNCERTAIN EVENT 1* (State of New York Comptroller Staff Report 1994). "Gambling" or "gaming" is defined as staking something of value upon an uncertain event. *Id.*

² N.J. CONST. art. IV, § 7, ¶ 2 (1990), amended Nov. 2, 1976, provides:

It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith

Id.

³ I. NELSON ROSE, *GAMBLING & THE LAW* 25 (1st ed. 1986). Nevada voters officially embraced gambling in 1931, and New Jersey adopted the practice in 1976. *Id.* at 4, 25; see generally CARL ZIETZ, *CROSSROADS: CASINO REGULATION IN NEW JERSEY: THE CASE FOR REFORM* (1994). In this piece prepared by Policy Management and Communications for the Casino Association of New Jersey, Zietz details the early history of gambling. *Id.* at 8-12. It should be noted that the Commonwealth of Puerto Rico also permitted gambling with a full range of gambling games. ROSE, *supra*, at 4.

⁴ A. Con. Res. 85, 206th N.J. Leg., 2d Sess. (1994) (introduced by Assemblymen Gerald Zecker (R-Passaic) and Joseph Doria (D-Hudson) proposing an amendment to N.J. Const. Art. IV, § 7, ¶ 2 for allowing casino gambling on boats or other structures at the Meadowlands in Bergen County, and Garden State Race Track in Camden County, if a state bordering New Jersey authorizes any form of casino gambling); Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) (Act provides that Native Americans may conduct gambling activities on their sovereign lands "as a means of promoting tribal economic development, self sufficiency, and strong tribal governments"). An example of this form of gambling is Foxwoods Casino in Ledyard, Connecticut. Peter Passell, *The False Promise of Development*, N.Y. TIMES, June 12, 1994, at § 3-5. Likewise, many states are currently considering proposals, including Pennsylvania (see Daniel Heneghan, *It's Philly's Deal*, PRESS OF ATLANTIC CITY, June 12, 1994, at A1); Detroit, Michigan (see *As Vote Nears, Detroit Edges Closer to Gambling*, N.Y. TIMES, July 24, 1994, at 28) [hereinafter *As Vote Nears*]; and New York (see *Transcript of In the*

proliferation of gambling on Indian reservations, proposals to allow casinos in numerous states, and the advent of riverboat gambling, together with the threatened expansion of such a practice, loom large in the minds of every Atlantic City casino operator.⁵

This note addresses the proposal to bring riverboat gambling into New Jersey. Specifically, it traces the history of gambling within the United States and New Jersey and illustrates the new forms of competition faced by this industry. Next, this note paints a portrait of riverboat projects in other states and outlines the benefits of riverboat gaming. It further considers the potential damage that could descend on Atlantic City if the proposed constitutional amendment is enacted. The note then examines the economic statistics traditionally associated with Atlantic City, as well as riverboats' economic effect in other states and the expected effect that this industry would have on New Jersey's economy and its citizens. Ultimately, this note will answer the question, "Is riverboat gambling the answer for New Jersey?"

II. *Historical Background—Gambling in America*

Gambling is by no means a new form of entertainment.⁶ It has existed in the United States since the days of the colonists and, in

Matter of a Public Hearing to Consider: Should Casino Gambling Be Legalized in New York State Before the New York State Senate Standing Comm. on Finance, Subcomm. on Racing, Gaming and Wagering, (May 1994) (on file with the *Seton Hall Legislative Journal*) [hereinafter *Public Hearing to Consider*].

⁵ Debra Dowling & Patrick Jenkins, *Benefits from Gaming Seen as Wide Ranging*, STAR-LEDGER (Newark), Oct. 4, 1994, at 1, 15. "Atlantic City is going to be faced with a tremendous amount of pressure over the coming years, with [gaming coming to] Philadelphia, New York and other locations and with all the Indian tribes that are installing it as we speak." (Statement by Donald Trump, owner of three Atlantic City casinos). *Id.* at 15.

⁶ ALICE FLEMING, *SOMETHING FOR NOTHING: A HISTORY OF GAMBLING* 1-11 (1978). Gambling has manifested itself in the Babylonian, Etruscan, Ancient Chinese, Egyptian, Roman, English, and American cultures. Cubical dice, six-sided cubes similar to today's dice, have been discovered in Egyptian tombs, *circa* 2000 B.C. *Id.* at 5. The New Testament mentions that the Roman soldiers guarding Jesus Christ's cross threw dice for his clothes. The Roman emperor Nero bet heavily on a single toss of dice. *Id.* at 6.

Additionally, English King Henry VIII lost the largest church bells in England, which hung in St. Paul's cathedral, in a game of dice. *Id.* at 7.

Finally, in a 1944 bequest to Northwestern University, Chicago businessman Louis M. Cohn left the University \$35,000 and stated in an accompanying document that the great Chicago fire of 1871 had been started, not because Mrs. O'Leary's cow kicked over a lantern, which was the original explanation, but rather because he got

fact, even before the first European settlers arrived in America.⁷ Early Americans pursued gambling in the traditional form of card games,⁸ and in the now familiar persona of lotteries.⁹ High stakes games continued during the Civil War, as soldiers kept busy between battles by betting on whatever they could find.¹⁰ As the frontier pushed westward in the 1800s, illegal gaming halls sprung up amongst the wagon wheels and new frontier cities.¹¹

very enthusiastic while playing craps with his friends. *Id.* at 11. He simply explained, "I was winning." *Id.*

Cards were also a popular source of gambling. FLEMING, *supra* at 12-23. The 15th century French became the leading manufacturer of cards, although Venice and Spain have been credited with their initial development. *Id.* at 12-14. The French used the four classes of French society for their design; hearts represented the church, spears or spades symbolized the army, diamonds recognized the merchants, and clubs were attributed to the peasants and farmers. *Id.* at 14. In America, cards were welcomed in Virginia, Florida, and New Amsterdam, but the New England Pilgrims fined any adults caught playing cards. *Id.* at 18-19. At Harvard College, a student could be penalized for fighting, swearing, and getting drunk, but was fined most severely when discovered playing cards. *Id.* at 19. See also DANIEL J. BOORSTIN, *WE AMERICANS* 114 (1980). Boorstin states:

On the fall of a die, on sports events, the weather, politics—colonists at home or tavern called out a bet and looked for odds. In the "seductive arena of city dissipation," cards and billiards most often parted a man from his money. Women also wagered on card games and, in Virginia at least, even children gambled.

Id.

⁷ BOORSTIN, *supra* note 6, at 114. Early American settlers in the colonies discovered the Iroquois Indians playing hubbub, a game involving dice made of peach stones. FLEMING, *supra* note 6, at 7.

⁸ FLEMING, *supra* note 6, at 19-20. Playing cards, which entered the colonies from England by the thousands, were on the list of things taxed by the Stamp Act of 1765. *Id.* at 19. Three of the best known early Americans, George Washington, Thomas Jefferson, and Benjamin Franklin, all enjoyed a good game of cards. *Id.* at 20.

⁹ See ROSE, *supra* note 3, at 1; ZIETZ, *supra* note 3, at 5; FLEMING, *supra* note 6, at 59-63. Virginia ran lotteries to finance the development of roads, bridges, churches, schools, and hospitals. *Id.* at 60. Numerous early institutions of higher learning, Harvard, Yale, Dartmouth, Williams, and Brown, were partly paid for by lotteries. A 1762 lottery raised money to add a steeple atop Providence, Rhode Island's St. John's Episcopal Church. *Id.* Incidentally, the first lottery is thought to have occurred in 1466 when Madame Jan van Eyck, widow of the famous Flemish painter, used it as a means to raise money to aid the poor of Bruges. *Id.* at 57.

¹⁰ BOORSTIN, *supra* note 6, at 209. For example:

Magazines and dime novels bought from sutlers, and meatier books from home, helped pass the tedium of camp. So did gambling. "Nine out of ten play cards for money," a soldier wrote—though before a battle Bibles often displaced decks. Favored games ran to poker and dice, but men even bet on races and fights staged with lice.

Id.

¹¹ RICHARD LEHNE, *CASINO POLICY* 16 (1986). See also FLEMING, *supra* note 6, at 97-

Gambling seemed to find a home in the state of Nevada.¹² Citizens of Nevada began gambling in the nineteenth century, and continued to do so into the early twentieth century.¹³ In 1913, this practice was interrupted when the state banned gambling, but the voters reinstated it as a legal activity in 1931 and it has remained a major tourist attraction ever since.¹⁴

Nevada's position as the sole gambling state, however, was challenged in the mid 1900s.¹⁵ New Jersey first attempted to legalize casino gambling in the early 1970s.¹⁶ Its first two efforts to do

102. In the mid 1800s, Michael McDonald was Chicago's most famed gambling operator who ran several halls that catered to the town's millionaires and politicians. *Id.* at 97, 99. The groups of people rushing to California in the 1849 gold rush, motivated by rumors and hopes, had San Francisco gambling houses in which to spend their "fortunes." *Id.* at 99. The first of these casinos, the Eldorado, was a canvas tent with a sawdust-covered floor. *Id.* Women, although rarely present on the frontier, also played a role in the Western gambling movement. *Id.* at 101-102. The most notable was Eleanor Dumont, who opened a house that boasted free champagne and blackjack. *Id.* at 102.

¹² FLEMING, *supra* note 6, at 106-108. In 1931, the year in which Nevada legalized gambling, Hoover Dam was being constructed 30 miles south of Las Vegas. *Id.* at 106-107. The government forbid gambling and liquor stores in the area, so the workers building the Dam would travel to Las Vegas on weekends. *Id.* at 107. They helped to turn the town into a place filled with activity and excitement. *Id.*

¹³ I. Nelson Rose, *Gambling and the Law—1993 Update*, 15 HASTINGS COMM. & ENT. L.J. 93, 96-97 (1993); ZIETZ, *supra* note 3, at 5.

¹⁴ ZIETZ, *supra* note 3, at 5. The Nevada Constitution did not prohibit gambling, so the Legislature merely had to pass a simple majority vote to allow it. Rose, *supra* note 3, at 25. However, it is interesting to note that the Nevada Constitution specifically disallows the state Legislature from legalizing any lottery within that state. *Id.* at 24; see NEV. CONST. art. IV, § 24. After Nevada's 1931 legalization, converted storefronts were reincarnated as small casinos until William Harrah opened one of the first large gaming clubs in Reno in 1937 (presumably a precursor to today's Harrah's Casinos). LEHNE, *supra* note 11, at 16-17. A few years later, Benjamin "Bugsy" Siegel, an associate of crime figure Meyer Lansky, erected the Flamingo Casino in Las Vegas, thereby housing gambling, recreation, and entertainment under one roof. *Id.* Although the Flamingo's initial profits were small, prosperity soon came to Las Vegas, attracting more crime families to invest in the former Nevada desert. *Id.* In 1978, Alice Fleming noted that the Las Vegas casinos remained open 7 days a week, 24 hours a day, stopping only a 1/2 minute each year, when the clock strikes midnight on New Year's Eve. FLEMING, *supra* note 6, at 108.

¹⁵ FLEMING, *supra* note 6, at 108. New Jersey legalized gambling in 1976. *Id.* It should be noted that while Nevada was the only state where gambling could be done legally, Hot Springs, Arkansas was one of the early 1900s most famous gambling towns, and Palm Beach, Florida was a close second. *Id.* at 103.

¹⁶ LEHNE, *supra* note 11, at 28-31. Atlantic City was originally intended to be a recreation getaway for workers from Philadelphia. *Id.* at 26-27. Its first builders were an entrepreneurial group who planned to construct a railroad from Philadelphia to Atlantic City. The railroad made Atlantic City, otherwise one shore town of many,

so were defeated; the first due to a lack of legislative support, and the second by voters at the polls.¹⁷ On the third try, in 1976, gambling proponents succeeded when the New Jersey populace passed a referendum that amended the state constitution and enabled casino gambling to take place in the state.¹⁸ The new amendment restricted the area in which gambling could occur to Atlantic City, and included provisions that gave a percentage of the revenue earned from the casinos to the state's senior citizens and disabled persons.¹⁹ By 1976, New Jersey citizens and tourists worldwide were able to throw the dice, play the cards, and spin the roulette wheel to their hearts' content.²⁰

A. *New Jersey Legalization—The Early 1970s*

Arguably, New Jersey failed in its first attempts at legalizing gambling because, unlike Nevada, the Garden State's Constitution originally prohibited gambling.²¹ While the state had closed an eye to illegal local gaming in the past,²² by the 1970s the once-dominant local political machinery was replaced by a powerful governor and a central bureaucracy.²³ Possibly, these entities recognized

into a lively spot on the Jersey coastline. Creative commercial ventures always typified Atlantic City. *Id.* at 27. Even the streets, familiar to almost everyone from the board game Monopoly, were named after oceans and states in an attempt to boost real estate sales, and the Miss America Pageant was a ploy to expand Atlantic City's summer season past Labor Day. *Id.* at 27. Illegal gambling had flourished in the beachfront community in the early twentieth century. New Jersey politics, at that time, honored the home rule tradition, allowing localities to raise revenue as they wished; this policy at times meant closing an eye to illegal gaming activities. *Id.* at 27.

¹⁷ LEHNE, *supra* note 11, at 32-33. Attempts to put a referendum to allow casino gambling on the ballot in New Jersey were defeated in 1972. The second attempt at legalization failed in 1974. Groups opposing the 1974 referendum included the state Catholic Conference and Jewish and Protestant groups. Dick Stanley & Jim Landers, *Casino Act Aims Pitch at Atlantic City*, TRENTON TIMES, Oct. 3, 1976, at A1.

¹⁸ LEHNE, *supra* note 11, at 35. The casino question won by a 300,000 vote margin. Jim Landers, *Casinos Win; Atlantic City Rejoices*, TRENTON TIMES, Nov. 3, 1976, at A1.

¹⁹ See ROSE, *supra* note 3, at 248. At the time the amendment passed in November, 1976, ten sites had already been chosen for casinos. Landers, *supra* note 18, at A1.

²⁰ *Id.*

²¹ N.J. CONST. art. IV, § 7, ¶ 2 (1844); ZIETZ, *supra* note 3, at 8. In 1938, the Constitution was amended to allow pari-mutuel wagering on horse races. *Id.* at 8-9. New Jersey's current Constitution, adopted in 1947, prohibits gambling except in specified instances, and has been amended six times since its inception. *Id.* at 9.

²² LEHNE, *supra* note 11, at 27. In the early decades of the 20th century, localities were traditionally allowed to raise revenue and provide services as they believed fit for their circumstances—some chose to do so through illegal gambling. *Id.*

²³ *Id.* at 28.

that they were, ultimately, executors of the State's constitution and were accountable as such.²⁴

Beginning in 1969, New Jersey politicians and citizens engaged in their first debate concerning the possibility of permitting casino gambling within the state.²⁵ Issues discussed included ownership and operation of casinos,²⁶ the locale in which to place these gaming halls,²⁷ and whether legalizing an illicit activity was prudent.²⁸ The debate continued into the early 1970s.²⁹

When the debate first began, Governor William T. Cahill was

²⁴ *Id.* Specifically, in 1974, gambling advocate Brendan Byrne became Governor. *Id.* at 33. Byrne argued that casino gambling could help urban renewal. Jim Landers & Dick Stanley, *Casino Vote Also Verdict at Humbled Atlantic City*, TRENTON TIMES, Oct. 31, 1976, at A1.

²⁵ LEHNE, *supra* note 11, at 28-29. Originally, legalizing gambling was proposed by a state legislator from Sussex County. *Id.* at 28. His district was anticipating the opening of a Playboy resort which would promote gambling as one of its attractions. *Id.*

²⁶ *Id.* at 190. Ownership options included public and private proprietors. *Id.* The chief argument behind the public ownership advocates was that the casinos could more easily be kept free of criminal behavior, revenues would be greater, and the public would be confident that the operations maintained their integrity. On the other hand, private ownership proponents noted that the privatization option had already proven to be successful in other areas of the world, and private ownership would not place the government in the uncomfortable position of extending credit to gamblers, collecting debts from casino debtors, and having to borrow from the treasury if the operation needed additional financing. Moreover, the integrity of the operations could be adequately insured by state regulatory measures. *Id.*

²⁷ LEHNE, *supra* note 11, at 30. In light of the economic boon assumed to accompany casino activity, many legislators lobbied to get casinos into their districts. However, Atlantic City had always been mentioned as an obvious locale in connection with the fight for legalization. Several factors accompanied this reasoning: (1) Illicit gambling had existed in Atlantic City for years; (2) the City's convention business needed economic stimulation to be rescued; and (3) new money from the casino business would boost Atlantic City's deadened economy and reverse the decay which presently pervaded the city. *Id.*

²⁸ LEHNE, *supra* note 11, at 30. Pro-legalizers recognized that illicit gambling did exist, and contended that by making the practice legal, the revenues which (under the system as it existed) flowed to organized crime would be slowed and corruption would decrease. Conversely, anti-legalization groups, most notably, law enforcement officials, argued that illegal gambling would increase with legalization. They believed that a market that had removed the moral sanctions against gambling would leave people to reach new lows in their search for an enlarged market. Finally, the social argument was addressed. *Id.* at 31. People debated whether legalizing the activity would destroy family life and encourage crime from desperate gamblers needing money to pay off gambling debts. *Id.*

²⁹ *Id.* at 32-35.

in office. Governor Cahill strongly opposed casino gambling.³⁰ Reports indicating that casinos could help the New Jersey economy, however, kept the concept alive, even in the face of Governor Cahill's forceful adversity to the idea.³¹ In the gubernatorial election of 1973, Brendan Byrne, a casino gambling advocate, was elected and the wheels of change, already in motion, began to turn even faster.³² In 1974, the Legislature introduced a constitutional amendment that would allow casino gambling in New Jersey.³³ The Assembly and the Senate approved the proposal and placed it on the ballot as a referendum in the 1974 general election. An unconvinced public, however, rejected the amendment by a sound margin.³⁴

Two years later, in 1976, a new amendment was introduced.³⁵ It called for the development of casinos as a method for redeveloping a blighted Atlantic City.³⁶ The referendum was passed by a ma-

³⁰ *Id.* at 32. Cahill was a former prosecutor and Republican Congressman who believed that gambling simply helped organized crime. *Id.*

³¹ LEHNE, *supra* note 11, at 32-33. The first study, commissioned by the New Jersey Hotel/Motel Association and authored by the Dean of Rutgers, concluded that the legalization of gambling would help the Atlantic City economy. *Id.* at 32. The second was a legislative study done at the request of a Sussex County senator. *Id.* at 32-33.

³² *Id.* at 33. In March of 1970, Governor Byrne had been the sole state official to appear before a legislative committee endorsing casino gambling. His election campaign was notably supportive of gambling as well. Finally, as governor-elect, he pledged to put forth a constitutional amendment calling for casino gambling. *Id.*

³³ A. Con. Res. 128, 196th N.J. Leg., 1st Sess. (1974). At the time, horse breeders associations, along with race track operators, traveled to Trenton to voice their objection to legalized gambling. LEHNE, *supra* note 11, at 34. These same individuals are now the proponents for bringing riverboat gambling to New Jersey. Robert Brennan is the owner of Due Process Stables in Colts Neck, New Jersey and is a self-described "horseman." *Matter of a Public Hearing to Consider*, *supra* note 4, at 64, 74.

³⁴ LEHNE, *supra* note 11, at 34. Only Atlantic and Hudson counties favored permitting gambling in 1974. *Id.*

³⁵ *Id.* at 34-35. Actually, two versions of constitutional resolutions were introduced in January, 1976 by Atlantic City legislators, one by Senator Joseph McCann and the other by Assemblyman Steven Perskie. *Id.* at 34. The first called for private ownership for the Atlantic City casinos, and pledged to reduce local property from revenues gained from these initiatives. *Id.* The other suggested state-owned casinos, with taxation revenue collected from them used to provide assistance to senior citizens and the handicapped. *Id.* The final amendment was actually a compromise of the two proposals. LEHNE, *supra* note 11, at 35.

³⁶ *Id.* The Committee to Rebuild Atlantic City spent over \$1 million on the campaign. Landers & Stanley, *supra* note 24, at A1. Atlantic City, a "sick resort," needed the casinos so it would be more than a place to visit only ten weeks a year. *Id.* at A14. In the early 1970s, Atlantic City business persons had "42 vacuous weeks a year to wonder how the tourist season will turn out." *Id.* This theory serves as an impetus

jority of the state's voters in November of 1976.³⁷ Thereafter, New Jersey joined Nevada as a casino state.³⁸ These two states remained the only two competitors in the lucrative casino industry from 1976 until 1988.³⁹

B. *Atlantic City Progress—1976 to the Late 1980s*

The legalization of gambling was originally envisioned as a tool of urban redevelopment for Atlantic City.⁴⁰ The decaying sea-

behind the present call for riverboat gambling in other cities as well. See Robert Zausner, *Odds Favor Riverboat Gambling*, PHILAD. INQUIRER, Apr. 10, 1994, at B1; Hal Dardick, *Aurora Churches Hope to Sink Gambling*, CHI. TRIB., Nov. 30, 1990, at D5.

³⁷ See LEHNE, *supra* note 11, at 35. The morning after the referendum passed, a newspaper headline read "It's Party Time in 'Vegas of the East.'" Dick Stanley, *It's Party Time in 'Vegas of the East'*, TRENTON TIMES, Nov. 3, 1976, at A2. Why, two years after the referendum had failed, did it pass? Its later success is attributed to increased lobbying efforts; more success at fund raising by pro-casino supporters; more Atlantic City businesses contributed financial support to the 1976 attempt (along with some important outside supporters, such as Resorts International); the fact that the 1974 proposal would have allowed gambling anywhere in New Jersey, but the 1976 proposal limited it to Atlantic City; and that the public trend was a lower concern about crime and corruption than in 1974. LEHNE, *supra* note 11, at 35-42. The higher percentage of voter turnout may also be attributed to the fact that 1976 was a Presidential election year. *Id.* at 42. Moreover, this final factor was perhaps due, in part, to the fact that memories of Watergate were fading. *Id.*

³⁸ See generally LEHNE, *supra* note 11 and accompanying text.

³⁹ See *infra* notes 112-130 discussing the Indian Gaming Regulatory Act and riverboat gambling in other states.

⁴⁰ The Casino Control Act, N.J. STAT. ANN. § 5:12-1 (West 1994). Specifically, § 5:12-1(b)(4) states:

(4) Legalized casino gaming has been approved by the citizens of New Jersey as a unique tool of urban redevelopment for Atlantic City. . . . [This]. . . will facilitate the redevelopment of existing blighted areas and the refurbishing and expansion of existing hotel, convention, tourist, and entertainment facilities; encourage the redevelopment of lost hospitality-oriented facilities; provide for judicious use of open space for leisure time and recreational activities; and attract new investment capital to New Jersey in general and to Atlantic City in particular.

Id. The morning after the election, Assemblyman Steven Perskie (D-Atlantic City) (who would years later become a member of the Casino Control Commission) said, "We asked the people of New Jersey for the chance to rebuild Atlantic City. Now we've got to go ahead and do that." Landers, *supra*, note 18, at A1. See also LEHNE, *supra* note 11, at 199. As one reporter noted:

By 1975 Atlantic City, the favorite middle-class seaside resort in the East, home of saltwater taffy, Miss America, Monopoly and the Boardwalk, had fallen on hard times. The death of trains and the birth of easy long-range auto and air travel had drawn vacationers to Florida and the Caribbean. The once-grand hotels were half empty, the amusement piers sleazy and decaying, and the Boardwalk was falling apart. As the tourist trade on

side summerplace had long been in desperate need of help, and there were indicators that many New Jersey voters believed in the dream of its revitalization.⁴¹ Presumably, people imagined that accompanying the casinos on their march into Atlantic City would be the construction of beautiful hotels, the creation of jobs for everyone, an abundance of money, and glitz, glitter, and glamour.⁴²

Did the economic revitalization and expected renaissance of Atlantic City occur?⁴³ Many jurisdictions now ask themselves the same question when considering whether to legalize gaming.⁴⁴ Before answering this query, it is important to note that Atlantic City had many problems prior to, and in, 1976 when gambling first became legal.⁴⁵ The city was economically depressed and in need

which the city depended declined, businesses failed and unemployment soared.

David Mehegan, *Atlantic City: "It's Nice as Long as You Stay Inside"*, BOSTON GLOBE (Magazine), July 19, 1981, at 36.

⁴¹ LEHNE, *supra* note 11, at 35. The Casino Campaign Committee's slogan reflected this goal: "Help Yourself. Help Atlantic City. Help New Jersey." *Id.* at 39. The morning after the election, people were speaking of "a turn-around in Atlantic City." Landers, *supra*, note 18, at A1. Even now, when addressing questions about riverboat gambling, a common response is, "I feel that riverboat gambling would be a real boon to this area. [T]he tax dollars that it would bring in would be a real healthy promotion for us and I think it would really help with creating more jobs, which are desperately needed in this area. . . ." *You Tell Us: Should the State Legislature Approve "Riverboat Gambling" on the Delaware River?*, PHILAD. INQUIRER, Jan. 16, 1994, at MD3 [hereinafter *You Tell Us*].

⁴² Mehegan, *supra* note 40, at 36. "The visitor expects to see ruffled pink shirts, pinkie rings, gold cigarette lighters, and silk dresses in the casino." *Id.* Although this article was written in 1981 when Hull, Massachusetts was considering legalized gambling, this impression seems to be a common characterization of the casino-goer.

⁴³ LEHNE, *supra* note 11, at 199. The city with which the developers had to work needed major reconstructive surgery, not a mere face lift. Atlantic City was a dejected municipality. *Id.*

⁴⁴ See Mehegan, *The Hull Casino Gamble*, BOSTON GLOBE (Magazine), July 19, 1981, at 35; Chris Reidy, *Gambling Has Become the Nice Vice*, BOSTON GLOBE, Jan. 17, 1993, at 71; *Casinos Will Break Promises*, DETROIT FREE PRESS, Aug. 20, 1994, at 8A; Jacqueline L. Urgo, *Atlantic City Winning its Gamble on Revitalizing*, PHILAD. INQUIRER, July 27, 1994, at S3; Mary Sit, *Connecticut Considers a Gamble to Gain Jobs*, BOSTON GLOBE, Oct. 18, 1992, at 88. All of these articles describe the plan of revitalization for Atlantic City and measure this with the true reality. Most, unfortunately, conclude that Atlantic City was helped minimally, if at all, by the casinos.

⁴⁵ Debra Dowling, *Fickle Fortunes*, STAR-LEDGER (Newark), Oct. 2, 1994, at 1, 8. "You can't compare a 100 year-old East Coast city [Atlantic City] with a western city, most of it built up in the last 20 years." (Statement of Paul E. Rubeli, Chairman, President, and Chief Executive Officer of Aztar Corp., owner of TropWorld Hotel Casino in Atlantic City and Tropicana in Las Vegas). *Id.* at 8.

of structural maintenance.⁴⁶ Since 1976, however, Atlantic City has indeed changed. Twelve casinos now make their homes within the city's boundaries.⁴⁷ In 1993, these twelve businesses had gross revenues of \$3.7 billion.⁴⁸ A significant percentage of their funds go to New Jersey social programs, most notably the Casino Revenue Fund (hereinafter "CRF") which contributes to programs for senior citizens and the disabled.⁴⁹ The industry also pays money into the Casino Reinvestment Development Authority (hereinafter "CRDA").⁵⁰ Finally, Atlantic City has developed jobs for New Jersey, both directly and in ancillary positions.⁵¹

In 1986, ten years after casino gambling was first legalized in New Jersey, many still believed that Atlantic City was a ruined city.⁵² Even as recently as August of 1994, people described Atlantic City

⁴⁶ Landers & Stanley, *supra* note 24, at A1. Then Atlantic City Assemblyman Perkie noted that the city had swallowed its pride and needed a financial boost. Governor Brendan Byrne called it a "social wasteland." *Id.*

⁴⁷ Dowling, *supra* note 45, at 8 (compared with the 264 casinos in Las Vegas).

⁴⁸ *Id.* For 1993, the casinos showed a combined operating profit of \$54.7 million. *Id.*

⁴⁹ N.J. STAT. ANN. § 5:12-145 (West 1976). This section describes the CRF and notes:

(c) Moneys in the [CRF] shall be appropriated exclusively for reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of eligible senior citizens and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents, as shall be provided by law. . . .

Id.; "Atlantic City's 12 gaming halls paid another \$294.6 million to the [CRF] in fiscal 1993." Dowling & Jenkins, *supra* note 5, at 15.

⁵⁰ See N.J. STAT. ANN. § 5:12-153-209 (West 1976) (specifically, § 5:12-160 describing the CRDA's purpose). The CRDA's main objective is urban redevelopment of Atlantic City and elsewhere, accomplished by collecting approximately 1.25% of revenue with \$41 million paid into the fund last year. Dowling, *supra* note 5, at 15.

⁵¹ Dowling & Jenkins, *supra* note 5, at 1, 15. According to the Casino Association of New Jersey (hereinafter "CANJ") and the State Casino Control Commission, over 48,000 people are employed in the New Jersey gambling industry, 85% in full-time positions. *Id.* at 1. Moreover, many more have jobs in ancillary businesses of Atlantic City, such as those providing supplies and services to the casinos. *Id.* at 15.

⁵² ROSE, *supra* note 3, at 188. The author further observed that:

Atlantic City was, and is, a bombed out ruins. Magnificent hotel/casino complexes of steel and glass rise like mirages out of a wasteland of empty lots, boarded up hovels and burned out shells. . . . Poor planning has allowed the hotel/casinos to develop into isolated islands; no one who goes to gamble sees any reason for leaving the hotel, except, perhaps, to go to another casino.

Id.

as two places: one, a city of glitz and glimmer, and the other a deteriorated city with cracked and potholed streets.⁵³ Many people think that the urban revitalization imagined in 1976 never materialized.⁵⁴

Yet, there are signs that Atlantic City is still trying to achieve the goal set for it when gambling was legalized; namely, to change its depressed image back to its former resort-by-the-sea impression.⁵⁵ Atlantic City has created an Atlantic City Special Improvement District (hereinafter "SID") which has, to some extent, undertaken the task of cleaning up the city.⁵⁶ The members of SID patrol the encompassing area, answer visitors' questions, and direct them to restaurants and hotels.⁵⁷ SID employees are also in charge of the city's 400 newly-placed trash cans and 325 recycling containers.⁵⁸ Finally, SID members plant trees and maintain recently-installed park benches.⁵⁹ Evidently, according to visitor reaction, the project is working.⁶⁰

⁵³ *Casinos Will Break Promises*, *supra* note 44, at 8A. Rev. John K. Sefcik states, "I recently returned to Atlantic City, where I pastored a church from 1952 to 1955. I discovered two cities. One was newly refurbished with casinos, a glitzy island in the midst of a city deteriorating into rubble. . . . Atlantic City had lost many of its solid businesses. . . . The city's police, social services and welfare budgets had greatly increased to deal with new demands." *Id.* Poor neighborhoods stand in tragic contrast to the next-door glitter of gaming halls. *Editorial, Bill Moyers' Atlantic City*, PHILAD. INQUIRER, Aug. 15, 1986, at A14.

⁵⁴ Mehegan, *supra* note 40, at 36. Though Atlantic City has some well-kept businesses and residential streets, the general business revitalization that many people hoped for never materialized.

Steve Wynn, owner of the former Golden Nugget Casino in Atlantic City and head of three successful casinos in Las Vegas . . . made headlines years ago when he called Atlantic City a 'slum by the sea' . . . The contrasts in Atlantic City are stark. A block or two from most of the glamorous Boardwalk casinos, deteriorating buildings and housing projects abound.

Dowling, *supra* note 45, at 8.

⁵⁵ Dowling, *supra* note 45, at 8. Perhaps this is, in part, due to necessity. The urban blight that stands out in Atlantic City is, according to experts, an unnatural condition in a city promoting itself as a tourist center. *Id.*

⁵⁶ Urgo, *supra* note 44, at S3. The bulk of this project comes from the casinos, while businesses each pay about \$28 a year. *Id.*

⁵⁷ *Id.* The so-called "courtesy patrol" consists of 15 uniformed winter members and 15 uniformed summer members. *Id.*

⁵⁸ *Id.* Over 450 gallons of trash are removed on a daily basis by SID employees. *Id.*

⁵⁹ Urgo, *supra* note 44, at S3. Such beautification projects include installing 350 ornamental cast iron park benches, planting flowers and trees in what used to be vacant lots to create "pocket parks," and construction of a garden plaza. *Id.*

⁶⁰ *Id.* Atlantic City visitor Louisa Schmidt explained, "I'm beginning to feel about the Atlantic City Boardwalk the way I did when I first came here in the 1930s. . . . It

Perhaps anticipating more visitors, Atlantic City is opening a new convention center and is enlarging its airport.⁶¹ The convention center is set to open in 1996, and the airport is receiving a \$211.4 million facelift.⁶² New casino projects are also underway.⁶³ Officials are hoping that these improvements will make Atlantic City a tourist destination.⁶⁴

Moreover, casino officials assert that their industry has tremendously benefitted Atlantic City, as well as New Jersey as a whole.⁶⁵ They cite the funding provided to the CRF, the numerous jobs created both in Atlantic City and in peripheral industries, and the casinos' contribution to the economic prosperity and progress of New Jersey.⁶⁶ The officials claim that if New Jerseyans have not seen Atlantic City make a dramatic turnaround, the citizens should blame the politicians, not the casinos, because the casinos have met all their legal and regulatory obligations.⁶⁷ Casino executives also have long been critics of the New Jersey regulatory system, claiming that it is too oppressive for the Atlantic City gaming halls.⁶⁸ These officials continuously lobby for less regulation and more praise for their contributions to New Jersey.⁶⁹

used to be so nice. Then it got trashy. Now it's getting nice again. It's a place I can bring my grandchildren to. Five years ago, I wouldn't have bothered." *Id.*

⁶¹ Leo H. Carney, *In Atlantic City, Airport's Growing*, N.Y. TIMES, Mar. 5, 1995, at § 13-1.

⁶² *Id.* at § 13-8. The convention center is a \$254 million project. *Id.*

⁶³ *Id.* Reports indicate that the amount of hotel rooms in Atlantic City will increase from 9,200 to 14,300 by 1996. This 1994 report by Lehman Brothers is optimistic about Atlantic City's future chance at becoming a "thriving resort destination." *Id.*

⁶⁴ *Id.* They want Atlantic City to become more than a day tripper's place to gamble. Carney, *supra* note 61, at § 13-8.

⁶⁵ See generally ZIETZ, *supra* note 3.

⁶⁶ Dowling, *supra* note 5, at 1, 15; ZIETZ, *supra* note 3, at 40.

⁶⁷ Dowling, *supra* note 5, at 15. A frequent industry complaint is that casinos have met their obligations to the state, but that the state was tardy or ineffective in distributing the collected funds. Henry Gluck, Chairman and Chief Executive Officer of the Los Angeles based Caesars World, which owns casinos in both Atlantic City and Nevada, noted that "[w]hen voters did not see direct results but instead saw continued urban decay in Atlantic City, they blamed the casinos, not the politicians. . . ." *Id.* (paraphrasing Gluck's position).

⁶⁸ Debra Dowling, *Casino Control*, STAR-LEDGER (Newark), Oct. 3, 1994, at 1. "To say Atlantic City's regulation is stifling would be an understatement. . . . When you have that big of a burden, it kind of percolates down to everything that you do." *Id.* (Statement by Hector Mon, General Manager and Executive Vice President of Harrah's Casino Hotel in Atlantic City and a veteran Nevada gaming executive.) *Id.*

⁶⁹ *Id.*; ZIETZ, *supra* note 3, at 21-36. New Jersey's regulatory system, the New Jersey Casino Control Commission, see N.J. STAT. ANN. § 5:12-50, is the object of much criti-

C. Existing Gambling Law in New Jersey

After the New Jersey Constitution was amended in 1976, it permitted the following: charitable, educational, religious or fraternal organizations, volunteer fire squads, and first aid or rescue squads to conduct certain gambling activities, as well as a state lottery system. The amendment also provided for casino gambling in Atlantic City.⁷⁰ As Justice Bodine recognized in the 1933 case of

cism from industry officials. ZIETZ, *supra* note 3, at 2-4, 21-36. This Commission, responsible for the regulatory oversight of 12 casinos, spends more than Nevada's regulatory system, which is responsible for more than 200 casinos. *Id.* at ii, 28.

⁷⁰ N.J. CONST. art. IV, §7, ¶2 states as follows:

2. Gambling

No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State of New Jersey voting at a general election, except that, without any such submission or authorization;

A. It shall be lawful for bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire companies and first-aid or rescue squads to conduct, under such restrictions and control as shall from time to time be prescribed by the Legislature by law, games of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes. . . ;

B. It shall be lawful for the Legislature to authorize, by law, bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, senior citizen associations or clubs, volunteer fire companies and first-aid or rescue squads to conduct games of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes. . . ;

C. It shall be lawful for the Legislature to authorize the conduct of State lotteries. . . ; and

D. It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith. Any law authorizing the establishment and operation of such gambling establishments shall provide for the State revenues derived therefrom to be applied solely for the purpose of providing funding for reductions in property taxes, rental, telephone, gas, electric, and municipal utilities charges of, eligible senior citizens and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents, in accordance with such formulae as the Legislature shall by law provide.

N.J. CONST. art. IV, § 7, ¶ 2 (1990).

Dombrowski v. State,⁷¹ however, human ingenuity will continue to search for new ways to gamble.⁷² Thus, numerous cases have arisen in New Jersey's history attempting to expand the right to gamble.

Cases pertaining to gambling in New Jersey arose prior to its 1976 legalization. For example, in *Martell v. Lane*,⁷³ a plaintiff was arrested for violating a local anti-gaming statute.⁷⁴ The plaintiff had installed a game entitled "Stop and Go" in one of the Point Pleasant Beach boardwalk buildings that he owned.⁷⁵ When played in compliance with certain procedures, the game had previously been adjudged to be within legal limits.⁷⁶ As the plaintiff was operating it here, however, it was a game based on chance, not on skill, and therefore was held violative of the statute.⁷⁷ The *Martell* court upheld the plaintiff's conviction, noting that the action at issue involved wagering, a conduct prohibited by statute.⁷⁸ The court cited with approval a 1915 English case, *Peers v. Caldwell*,⁷⁹ which held that an action similar to that involved in *Martell* was wagering.⁸⁰

⁷¹ 168 A. 722 (N.J. 1933).

⁷² *Id.* at 723. "Obviously, gambling may be carried on in as many different ways as human ingenuity can devise." *Id.*

⁷³ 123 A.2d 541 (N.J. 1956).

⁷⁴ *Id.* The statute alleged to have been violated was N.J. STAT. ANN. § 2A:112-1 (West 1988) (repealed September, 1979) (denominating certain games played for money to be a misdemeanor). *Martell*, 123 A.2d at 545.

⁷⁵ *Martell*, 123 A.2d at 542.

⁷⁶ *Id.* In *Harris v. Hock*, Super. Ct., N.J., Chancery Div. (Feb. 6, 1953), an unreported case cited in *Martell*, the game of "Stop and Go" was determined to be based on skill rather than pure chance, and therefore did not violate the statute. *Id.* at 542-46. In other words, if a game involved some degree of skill, it was not overly risky and thus was not gambling.

⁷⁷ *Id.* at 544-45. The *Martell* court further stated that:

"Stop and Go" is described by the State as a "game at which persons, by staking money, seek to win packages of cigarettes, the number of which depend on certain results of the outcome of a particular game." The participating players place a ten-cent piece on the counter at the space having the chosen number. The object is to control the mechanism by means of the "stop" button, to the end that at the close of the game a bulb will be lit in a space containing the selected number.

Id. at 543-44. As described in the case, the game sounds like today's roulette.

⁷⁸ *Martell*, 123 A.2d at 545-46. The *Martell* court noted that "[t]o gamble" is "[t]o stake money or other thing of value upon an uncertain event; to hazard; wager. . . ." *Id.* at 545 (citations omitted).

⁷⁹ 85 L.J. K.B. N. S. 754 (K.B. 1915) (cited in *Martell*, 123 A.2d at 545).

⁸⁰ *Martell*, 123 A.2d at 545. The court summarized the situation as follows:

The fact that there is a possibility of exhibiting some degree of skill does

In 1968, the Appellate Division decided *Jersey Downs, Inc. v. Div. of New Jersey Racing Comm'n, et al.*⁸¹ The plaintiff in that case had applied for a permit to conduct a harness race meeting in the Township of North Bergen, and had been denied this access.⁸² The defendant, Racing Commission, denied the application because of a racing law section that stated that the same public question shall not be presented to the voters of a county more often than once in five years.⁸³ A referendum concerning a permit for a harness race meeting had been on the ballot the previous year in the same county but had been defeated by the general electorate.⁸⁴ Based on the noted statute, the court upheld the denial of the appellant's permit, commenting that issues concerning legalized gambling had been carefully scrutinized in New Jersey.⁸⁵

Public scrutiny of gambling advocates remained strong in the years before 1976. A case entitled *Matter of the Presentment of the Essex County Grand Jury*⁸⁶ involved a grand jury that made a present-

not . . . alter the liability of the appellants; it is easy to understand that a game may be one of skill whilst the player only thinks of it as a matter of chance; . . . the boys were not exercising skill; they were regarding only the sweets . . . ; the boys were not paying their halfpennies for the privilege of competing at a game of skill, but were simply gambling on the chance of getting twopenny-worth of sweets.

Id. (citations omitted).

⁸¹ 246 A.2d 146 (N.J. Super. Ct. App. Div. 1968) (denying applicant's application to allow horse racing in a municipality because the previous year the same referendum had been defeated; statute existed which required a five-year wait between placing the same public questions on the ballot).

⁸² *Id.* at 147. The racing law section upon which the denial relied stated that "the same public question [whether race meetings shall be permitted in a county] shall not be submitted to the legal voters of the same county oftener than once in five years." *Id.*

⁸³ *Id.* (citing N.J. STAT. ANN. § 5:5-39.1 (West 1988)).

⁸⁴ *Id.*

⁸⁵ *Id.* at 149-50. The court held that when the voters had defeated the horse racing referendum in the previous year, practically they had precluded the county from instituting a harness race meeting for the next five years. *Id.* at 149. In so doing it noted, "The business of racing and the legalized gambling attendant thereupon are strongly affected by a public interest, and close legislative regulatory supervision is highly appropriate." *Id.* at 149-50. (citing *State v. Garden State Racing Association*, 136 N.J.L. 173, 175 (E. & A. 1947)).

⁸⁶ 264 A.2d 253 (N.J. Super. Ct. App. Div. 1970) (a mayor was publicly criticized for minimizing violations of gambling statutes). At the time this case was being heard by the Appellate Division, a proposal to change the Constitution to permit gambling in Atlantic City was before the legislature. *Id.* at 255.

ment⁸⁷ criticizing the Mayor of Newark for publicly minimizing illegal gambling.⁸⁸ The court rejected the Mayor's attempt to eradicate references to himself from the grand jury's presentment.⁸⁹ In the court's opinion, violation of the gambling laws was a serious matter, and the Mayor's apparent trivialization of such conduct was a proper target for public censure.⁹⁰

In *Young v. Byrne*,⁹¹ Judge Gruccio of the Superior Court was asked to decide the constitutionality of a 1976 proposal⁹² to amend the Constitution so as to permit gambling in Atlantic City exclusively.⁹³ The issue at hand was whether the 1976 proposal could be submitted to the voters so soon after an amendment to allow casino gambling had failed in the 1974 general election.⁹⁴ The court held that the proposed amendment could be submitted to the voters in the 1976 general election because it was not the same, or

⁸⁷ *Id.* at 254-55. The 1947 State Constitution Article 1 ¶ 8 expressly allows the "presentment or indictment of a grand jury." *Id.* A "presentment" is a formal accusation initiated by the grand jury itself, basically suggesting that an indictment should be brought against the person who is the subject of the presentment. BLACK'S LAW DICTIONARY 821 (6th ed. 1991). Finally, the court in *Matter of a Presentment* noted that a presentment may call to the public's attention a matter which the grand jury believes ought to be remedied. *Matter of a Presentment*, 264 A.2d at 255.

⁸⁸ *Matter of Presentment*, 264 A.2d at 255. Around the time the case was being decided, there was widespread gambling in Newark. A special anti-gambling squad had been set up by the police department and effectively stopped the illegal activity for about six weeks. However, the mayor acquiesced to the unexplained disbanding of the squad. *Id.* Apparently, the mayor impliedly suggested that gambling was not a grave evil. *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 255. The public's censure of persons who tacitly approved illicit gambling is also demonstrated in *State of New Jersey v. Hozer*, 116 A.2d 193 (N.J. 1955) (affirming a detective's conviction for not fully investigating a bookmaking operation).

⁹¹ 364 A.2d 47 (N.J. Super. Ct. 1976).

⁹² *Id.* at 50. The proposal was A. Con. R. 126, 197th N.J. Leg., 1st Sess. (1976). *Id.*

⁹³ *Id.* at 50-51. The case was actually a consolidation of two actions, *Young v. Byrne*, and *Lazarow v. Kramer*, 364 A.2d 47 (N.J. Super. Ct. Law Div. 1976). *Id.* at 50. Young was an Atlantic City businessman who supported casino gambling. *Id.* Lazarow was a chief member of the Committee to Rebuild Atlantic City. *Id.*

⁹⁴ *Young*, 364 A.2d at 51. The problem with submitting the 1976 amendment arose from Art. 9, ¶ 7 of the New Jersey Constitution (1947), which stated:

7. Resubmission of rejected amendments. If at the election a proposed amendment shall not be approved, Neither (sic) such proposed amendment nor one to effect the same or substantially the same change in the Constitution shall be submitted to the people before the Third (sic) general election.

Id. A similar problem had arisen in *Jersey Downs, Inc. v. Div. of N.J. Racing Comm'n*, 246 A.2d 52 (N.J. Super. Ct. App. Div. 1968).

substantially the same, as the 1974 proposal.⁹⁵ Unlike the 1974 proposed revision to the Constitution, the 1976 proposal called for private ownership of casinos with a state regulatory oversight duty. The proposal also limited the locale of casinos to Atlantic City.⁹⁶ Additionally, it specifically determined that state revenues gained from gambling would be put toward a fund established to aid New Jersey senior citizens and disabled residents.⁹⁷ Thus, the 1976 amendment was permitted to be placed on the ballot in the 1976 election.⁹⁸

As previously noted, the 1976 amendment passed, thereby permitting casino gambling in New Jersey.⁹⁹ Although this revision to the Constitution was approved, it was not a signal that New Jersey authorities were willing to ease the process used to accomplish a broadening of gambling. In *Atlantic City Racing Ass'n v. Attorney Gen. of the State of New Jersey*,¹⁰⁰ the plaintiff sought a judgment affirming the constitutionality of an anticipated business venture it was considering.¹⁰¹ The Racing Association wanted assurance that the business would not be in violation of the New Jersey Constitution of 1947; specifically, Article 4, section 7, paragraph 2.¹⁰² The New Jersey Supreme Court observed that legalized gambling had been slow to arrive in New Jersey, and had been recognized only after approval was sought and granted by a majority of the voting electorate.¹⁰³ Noting that the 1939 amendment to the Constitu-

⁹⁵ *Young*, 364 A.2d at 52.

⁹⁶ *Id.*

⁹⁷ *Id.* See *supra* note 49 discussing Casino Revenue Fund. The court also determined that specifically designating these funds for certain purposes would not violate the equal protection clause. *Young*, 364 A.2d at 53.

⁹⁸ *Id.* at 47.

⁹⁹ See *supra* note 49 and accompanying text.

¹⁰⁰ 489 A.2d 165 (N.J. Super. Ct. 1985) (disallowing change in gambling practice without first receiving approval from general electorate by way of referendum).

¹⁰¹ *Id.* at 165.

¹⁰² *Id.* at 166. The plaintiff's arrangement proposed that races being run at the Meadowlands be simulcasted live to plaintiff's track, Atlantic City Race Course, and that plaintiff's patrons be permitted to bet exactly as did Meadowlands' race-goers. Plaintiff anticipated enacting this procedure in accordance with the Intertrack Wagering Act, N.J. STAT. ANN. §§ 5:5-100-109 (West 1988) (repealed August, 1985) (authorizing intertrack pari-mutuel wagering on horse racing simulcasts). *Id.* Alternatively, plaintiff suggested that the 1939 amendment to the Constitution permitting pari-mutuel wagering on horse races covered the type of gaming presently being considered. *Id.*

¹⁰³ *Atlantic City Racing Ass'n*, 489 A.2d at 167. "The evolution of legalized gambling in New Jersey has been grudging. Because of widespread abuses in various gambling

tion permitted pari-mutuel wagering on horses, the court was faced with the decision of whether the activity in question fell within the boundaries of this amendment.¹⁰⁴ After examining the context of the amendment, including the discussions surrounding the proposal to allow pari-mutuel betting on horses,¹⁰⁵ the court decided that the legislature had not intended the amendment to apply to situations such as the one at hand.¹⁰⁶ Furthermore, the court found that the plaintiff's proposed arrangement was invalid until specifically approved by a majority of New Jersey voters through means of a public referendum.¹⁰⁷

Recently, in December, 1993, in *Matter of the Petition of Casino Licensees for Approval of a New Game, Rulemaking, and Authorization of a Test*,¹⁰⁸ the New Jersey Appellate Division held that sports betting was not a "gambling game," as that term is used in the section addressing gambling in the New Jersey Constitution.¹⁰⁹ The court noted that the legalization of gambling in New Jersey had been

activities and the attendant social and economic ills engendered thereby, gambling has historically been viewed as an undesirable activity." *Id.*

¹⁰⁴ *Id.* at 168-69. Responding to the financial disasters of the Depression, in a 1939 special election, New Jersey citizens modified the broad anti-gambling policy. Hoping to create a source of revenue, they voted to allow pari-mutuel wagering on horse races. The court described pari-mutuel wagering as:

[T]he system under which "odds" are posted at the track from time to time until the race is begun, determined by the quantum of the bets placed on the several entries, those whose wagers were placed on the winning horse share the total stake, less a fixed percentage to the track management, in proportion to their respective contributions or wagers.

Id. at 168.

¹⁰⁵ *Id.* at 169-70. During the Constitutional Convention of 1947, the issue of gambling generated more contention on the floor of the Convention than did any other constitutional provision. *Id.* at 169.

¹⁰⁶ *Atlantic City Racing Ass'n*, 489 A.2d at 172-73. "[T]he draftsmen made clear the narrow extent to which the activity would be tolerated—at race meetings, in duly legalized tracks, between the hours of sunrise and sunset, on weekdays only." *Id.* at 172.

¹⁰⁷ *Id.* at 174. The court noted that since an expansion of gambling could bring with it potential evils and regulation problems, only the voters could decide whether gambling could become a legal practice in New Jersey. *Id.* A "public referendum" is "the process of referring to the electorate for approval of a proposed new state constitution or amendment. . . ." BLACK'S LAW DICTIONARY 886 (6th ed. 1991).

¹⁰⁸ 633 A.2d 1050 (N.J. Super. Ct. App. Div. 1993), *cert. granted*, 636 A.2d 526 (1993).

¹⁰⁹ *Id.* at 1051, 1054. Judge Arnold M. Stein of the Appellate Division chronicled gambling's history from 1844 to 1992. He noted that with each amendment, only a little had changed. *Id.* at 1052-53. N.J. CONST. art. IV, § 7, ¶ 2(D) (1990).

accomplished cautiously and slowly.¹¹⁰ Because of this cautious tradition, the Court held that it must reject the request to bring sports betting to New Jersey in the absence of a voter referendum and constitutional amendment.¹¹¹

New challenges now face the casino industry requiring New Jersey officials to reexamine Atlantic City's advantages and disadvantages. In particular, they must determine whether to join the call for change and further expand gambling in New Jersey, or fight this current movement and keep gambling as it now exists. These new challenges and the legal responses thereto are discussed in the following sections.

D. *New Challenges Facing the Casino Industry*

1. Native American Gaming

Until 1988, New Jersey and Nevada were the "only game in town" for gambling.¹¹² In 1988, however, the enactment of the Indian Gaming Regulatory Act (hereinafter "IGRA") forever changed the Las Vegas-Atlantic City stronghold on the industry.¹¹³ This Act enabled Native American tribes to conduct casino gambling on their reservations according to prescribed terms and conditions.¹¹⁴ Its stated purposes were to stimulate the economies of the various tribes, to encourage tribal self-sufficiency, and to promote strong government within the tribes.¹¹⁵ The casinos developed as part of

¹¹⁰ *Matter of a Petition*, 633 A.2d at 1052. "[G]ambling has been legalized in New Jersey very cautiously, one step at a time." *Id.* The court also noted that many New Jersey legislators stated at the time that the 1976 Amendment passed that sports betting was not within the purview of the Legislature in connection with this section. *Id.* at 1053.

¹¹¹ *Id.* at 1054.

¹¹² See generally ZIETZ, *supra* note 3. New Jersey and Nevada were the only states allowing gambling; the Commonwealth of Puerto Rico also permitted it. *Id.* at 4, 6.

¹¹³ ZIETZ, *supra* note 3, at 7. The Act is codified at 25 U.S.C. §§ 2701-21 (1988). See Linda King Kading, *State Authority to Regulate Gaming Within Indian Lands: The Effect of the Indian Gaming Regulatory Act*, 41 DRAKE L. REV. 317 (1992). Kading notes that IGRA was done to balance Indian autonomy and economic self-sufficiency with states' contentions that they could use their police power to oversee tribal gaming operations. *Id.* at 327. She notes that IGRA is too new to yet determine how the interaction between the tribes and the states will play out. *Id.* at 338.

¹¹⁴ ZIETZ, *supra* note 3, at 7. Indian tribes' casinos are authorized to use any game that state charities are able to use. SENATOR FRANK PADAVAN, TRANSCRIPT OF ROLLING THE DICE: WHY CASINO GAMBLING IS A BAD BET FOR NEW YORK STATE 3 (Legislative Report Apr. 21, 1994) [hereinafter TRANSCRIPT OF ROLLING THE DICE].

¹¹⁵ 25 U.S.C. § 2701 (1988); Kading, *supra* note 113, at 328.

IGRA have added a new, uncertain element to the casino gambling equation.¹¹⁶

The impact of Native American-run casinos has been tremendous. At the Foxwoods Resort Casino in Ledyard, Connecticut,¹¹⁷ estimates indicate that almost two million dollars per day exits gamblers' pockets.¹¹⁸ As of June, 1994, seventy Indian tribes managed casinos in seventeen states, a number expected to continue growing dramatically.¹¹⁹ In an attempt to counteract this new class of gambling, and prompted by a desire to share in the revenues generated by casinos, many states have legalized or have considered legalizing gambling,¹²⁰ and numerous existing New Jersey and Nevada corporations have entered into contracts to manage Native American gaming operations.¹²¹

¹¹⁶ McCALL, *supra* note 1, at 5. These casinos do not pay property taxes, licensing fees, or automatic income tax. Thus, they have an advantage over "regular" casinos and are deserving of consideration as such. *Id.* Some claim that they also have an unfair advantage over other casino operators because they are insulated from state regulation. Linda Kanamine, *Reservation Casinos: The Latest Gold Rush*, U.S.A. TODAY, Apr. 28, 1994, at 6A.

¹¹⁷ Passell, *supra* note 4, at § 3-5. Run by the Mashantucket Pequot Indians, Foxwoods is now the most profitable casino in the United States. *Id.* In fiscal year 1993, Indian gaming ventures produced \$4 billion in profits. Robert Cohen, *Indian Casinos: Jersey Regulator Urges Federal Standards*, STAR-LEDGER (Newark), Apr. 21, 1994, at 15.

¹¹⁸ George Judson, *Not the Last of this Tribe*, N.Y. TIMES, Mar. 19, 1994, at B1, B4.

¹¹⁹ Passell, *supra* note 4, at § 3-5. As of late April, 1994, the ten most profitable Native American gaming operations were surmised to be: Foxwoods—Ledyard, Connecticut; Mystic Lake—Prior Lake, Minnesota; Grand Casino Mille Lacs—Onamia, Minnesota; Grand Casino Hinckley—Hinckley, Minnesota; Turning Stone Casino—Verona, New York; Sycuan Gaming Centre—El Cajon, California; Potowatomi Bingo & Northern Lights Casino—Wabeno, Wisconsin; Indio Bingo Palace & Casino—Indio, California; Oneida Bingo & Casino—Oneida, Wisconsin; Casino Morongo—Cabazon, California. Kanamine, *supra* note 116, at 6A.

¹²⁰ Passell, *supra* note 4, at § 3-5; Heneghan, *supra* note 4, at 1; Michael Brown, *Mississippi Casinos in a Tougher Game Than Thought*, STAR-LEDGER (Newark), June 16, 1994, at 52; Peter Applebome, *Legal Gaming Bedevils Louisiana*, N.Y. TIMES, June 12, 1994, at 20; P.L. Wyckoff, *Game Wardens: Spread of Legalized Gambling Brings Call for National Regulation to Bar Criminals*, STAR-LEDGER (Newark), Mar. 21, 1994, at 1, 10; Bernard Murphy, Vice President-Bally's Entertainment Corp., Speech to New Jersey Pennsylvania Press Association - Valley Forge, PA., Oct. 14, 1994, at 1; Sit, *supra* note 44, at 81; Reidy, *supra* note 44, at 69; Janan Hanna, *Hyatt Sweetens its Elgin Riverboat Plan*, CHI. TRIB., July 14, 1993, at § 2-1; Edward Walsh, *In Iowa, Pressure Grows to Expand Gambling Business Interests*, WASH. POST, Jan. 30, 1994, at A8; Jeff Leeds, *Stepping Up to the Table*, L.A. TIMES, Oct. 2, 1994, at B5.

¹²¹ Rose, *supra* note 13, at 103.

2. Riverboat Gambling

Other states have chosen a new type of gambling: riverboat gambling.¹²² Iowa led the riverboat craze, approving gambling on riverboats in 1989 and opening its first floating casinos on April 1, 1991.¹²³ Illinois soon joined in the quest for revenue and riverboats.¹²⁴ A Joliet, Illinois, riverboat operation began sailing along the Des Plaines River on May 4, 1993.¹²⁵ Riverboat operations have also been legalized in Mississippi, Louisiana, Missouri, and Indiana.¹²⁶ The boats evoke memories of a by-gone age: picturesque, romantic boats resembling wedding cakes.¹²⁷ Some boats travel up and down a waterway, while others simply remain idle, floating but not actually cruising.¹²⁸ Yet, whether these sea-

¹²² Wyckoff, *supra* note 120, at 1. As of March, 1994, Missouri and Indiana's riverboat operations were expected to begin by late 1994. Mississippi offered gambling on riverboats (as well as on Indian reservations), and Louisiana was expected to start up riverboat operations by late 1994 as well. Louisiana did, in fact, begin its operations, and apparently is experiencing some ethical problems surrounding the approval of state licenses for riverboat casinos. See Applebome, *supra* note 120, at 20. In June, 1994, it was predicted that Philadelphia, Pennsylvania was seriously considering riverboat gambling, especially once anti-gambling Governor Robert Casey left office in January of 1995. Heneghan, *supra* note 4, at A6. Finally, New York State has proposed legislation to bring riverboats to the Empire State. A. Con. Res. 12256, 217th N.Y. Leg., 1st Sess. (July 2, 1994) (this passed in July); A. Con. Res. 9331, 217th N.Y. Leg., 1st Sess. (1994) (Jacob E. Gunther—sponsor); S. Con. Res. 6529, 217th N.Y. Leg., 1st Sess. (Jan. 24, 1994) (Nicholas A. Spano—sponsor). *New York State Assembly Memorandum in Support of Legislation*, 1994 (noting that this is "[a]n Act to permit the establishment of casino gambling in the Catskill region of New York State, casino gambling on vessels navigating the state waters and waterways, and certain gambling at horse racing tracks and simulcast theaters" (emphasis added)). *Id.*

¹²³ ROSE, *supra* note 13, at 99; IOWA CODE ANN. § 99 F.1-F.18 (West 1994).

¹²⁴ Hanna, *supra* note 120, at § 2-1, § 2-6. The Illinois Gaming Act of 1990 was intended to promote economic development and tourism in the state. *Id.* at § 2-1. It is interesting to note that while Iowa places a five dollar limit on all gambles, Illinois has unlimited stakes on its riverboats. ROSE, *supra* note 13, at 101.

¹²⁵ John Gorman, *Riverboat Casino Towns Fear Chicago Competition*, CHI. TRIB., May 26, 1993, at 23.

¹²⁶ Wyckoff, *supra* note 120, at 1. TRANSCRIPT OF ROLLING THE DICE, *supra* note 114, at 2.

¹²⁷ V. Dion Haynes, *Despite Poor Economy, Elgin Expected to Reject Casino Plan*, CHI. TRIB., Dec. 25, 1990, at 20. In actuality, however, a Louisiana statute defines a riverboat as simply a U.S. Coast Guard certified vessel for carrying passengers, of a minimum length of one hundred fifty feet, driven by a paddle wheel, and replicating a Louisiana passenger steamboat similar to those operated in the nineteenth century. LA. REV. STAT. ANN. §§ 4:504 (23)(a)-(e) (West Supp. 1993).

¹²⁸ ROSE, *supra* note 13, at 101. The Mississippi Attorney General ruled in 1991 that the boats on which casinos are located are not required to actually leave the dock, but rather can be attached to a permanently-moored barge. *Id.*

worthy gambling halls are really mobile or not, they usually have a common purpose—to raise revenue in depressed areas.¹²⁹

Yet, using casinos as a tool for economic redevelopment can be a tricky situation.¹³⁰ A well-respected gambling lawyer, who has written extensively on the topic of gambling, has been quoted as saying that gambling has never been a solution for social problems.¹³¹ While gambling may initially be a boon to the surrounding area, when market saturation occurs profits are no longer outrageously high.¹³² Moreover, the gambling explosion is problematic in another way. Many of these new casinos are attracting local customers, as compared to the tourist-oriented gambling locales of Atlantic City and Las Vegas.¹³³ Local money, therefore, is being spent in the casinos, rather than money being brought into the state from other states. This forces officials to consider whether the casino is helping or is, in fact, hurting the local economy.¹³⁴

¹²⁹ *You Tell Us*, *supra* note 41, at MD3. "I am in favor of riverboat gambling because in the near future it looks like [we are] going to lose the Navy Yard and there is a great potential for jobs in gambling." *Id.* Michael A. Lev, *A City's Dream: Elgin Envisions a Downtown That's Vibrant Again*, CHI. TRIB., Oct. 20, 1992, at 1, 9 (describing how a city in economic difficulty, Elgin, Illinois, hopes to follow in the footsteps of Joliet, Illinois with a riverboat contract to revitalize its downtown). *Sit*, *supra* note 44, at 81.

¹³⁰ Passell, *supra* note 4, at § 3-5. Atlantic City is often cited, whether fairly or not, as a failed experiment at economic betterment. *Sit*, *supra* note 44, at 81, 88. (discussing whether gambling would be a panacea for a troubled economy, such as the Foxwoods Casino in Connecticut, or would merely be a bombastic, loud failure).

¹³¹ Reidy, *supra* note 44, at 71. I. Nelson Rose, a Whittier College professor of law, made that statement, noting that in 1992 state lotteries collected \$23 billion, but after all expenses were paid the remainder was only \$7 billion, a small amount for the entire United States. *Id.* Rose also pointed to the fact that California lottery profits go towards the state education program. In 1992, however, the total amount paid by the lottery profits to the \$43 billion education budget was only \$700 million. *Id.*

¹³² *Id.* Reidy notes in his article that while Atlantic City's first casinos prospered, the ones that came later have not seen such high profits. In Mississippi, where the market, rather than government regulators, was permitted to choose how many gaming facilities would be allowed to conduct business, the first signs of bankruptcy have appeared in some operations. Murphy, *supra* note 120, at 4.

¹³³ ROSE, *supra* note 13, at 104. While Las Vegas seems to have been somewhat successful at getting long term visitors, many people who visit Atlantic City stay only a few hours. Dowling, *supra* note 45, at 8.

¹³⁴ ROSE, *supra* note 13, at 104. It should be noted here that many gambling officials still maintain that their industry increases the overall state tax base and provides numerous low-skilled jobs for the community where the casino is located. *See* Dowling & Jenkins, *supra* note 5, at 1, 15. (noting that New Jersey casinos employ more than 48,000 thousand people, as well as pay an annual amount of (approximately) \$41

Despite the somewhat questionable use of casinos as an implement to stimulate the economy, visions of riverboats continue to sail across the minds of many state officials.¹³⁵ New Jersey is among the states where riverboat gambling is currently under consideration.¹³⁶

III. Legislative History

A. *The History of the Proposal to Add Riverboat Gambling to New Jersey*

The words "riverboat gambling" first surfaced in New Jersey in late March of 1994, when financier Robert Brennan responded to New Jersey Governor Christine Todd Whitman's signal that she wanted to privatize the Meadowlands Sports Complex, located in Rutherford, New Jersey.¹³⁷ Mr. Brennan offered to buy the Meadowlands, as well as Monmouth Park Racetrack,¹³⁸ for one billion dollars.¹³⁹ An integral part of the proposal, however, hinged on the condition that New Jersey voters approve a referendum to legalize additional gambling in New Jersey.¹⁴⁰ Specifically, Brennan's proposal would moor riverboats at various ports on a constructed lake or river at the two sites.¹⁴¹

million dollars to the CRDA, for urban revitalization, and \$294 million to the CRF, for senior citizen and disabled resident benefits).

¹³⁵ See *supra* notes 112-27 for a description of the proliferation of gambling in recent years.

¹³⁶ Stephen G. Hirsch, *Riverboat Gaming Gets Even Odds*, BERGEN RECORD, Nov. 7, 1994, at A1, A4. A. Con. Res. 85, 206th N.J. Leg., 1st Sess. (June 29, 1994) (a proposal by Assemblymen Zecker and Doria calling for an amendment to N.J. Const. Art. IV, § 7, ¶ 2). This bill followed A. Con. Res. 71, 206th N.J. Leg., 1st Sess. (Apr. 25, 1994) (sponsored by Assemblyman Wayne D. Bryant (D-Camden) and also proposing an amendment to the N.J. Const. Art. IV, § 7, ¶ 2). The Senate bill addressing the same issue does not yet have a sponsor.

¹³⁷ Charles Jacobs, *Gambling Boats: A Proposal that is Clinging to Life*, N.Y. TIMES, May 8, 1994, at 1. The Meadowlands Sports Complex houses Giants Stadium, home of the New Jersey-New York football Giants, Brendan Byrne Arena, home of the New Jersey Devils hockey team, and the Meadowlands Race Track.

¹³⁸ Monmouth Park Race Track is located in Monmouth County, New Jersey.

¹³⁹ Jacobs, *supra* note 137, at 1.

¹⁴⁰ Guy Sterling, *Brennan Bids for Sportsplex, Seeks Riverboat Gambling*, STAR-LEDGER (Newark), Mar. 23, 1994, at 1, 14. The New Jersey Constitution requires that the voters approve additional gambling by means of a referendum before it is allowed. N.J. CONST. art. IV, § 7, ¶ 2 (1990). It should again be noted that New Jersey's current Constitution permits casino gambling only in Atlantic City or in connection with a civic or like organization. *Id.*

¹⁴¹ Sterling, *supra* note 140, at 1, 14.

The immediate reaction from the casino operators and legislators, who represented areas in and around Atlantic City, was strong opposition to Mr. Brennan's floating casino plan.¹⁴² These naysayers claimed that the plan would hurt Atlantic City and the persons connected with it, including the thousands of employees who work at the casinos and the senior citizens and disabled persons who benefit from the casinos through the CRF.¹⁴³ At least one legislator, however, was willing to admit that the plan could be viable.¹⁴⁴ Deputy Minority Leader of the Assembly Bryant stated on March 24, 1994 that he was willing to introduce a bill that would call for the expansion of legalized gambling.¹⁴⁵

Assemblyman Bryant's bill¹⁴⁶ was introduced on April 25, 1994. The bill proposed amending the New Jersey Constitution to expand legalized gambling onto boats.¹⁴⁷ The bill was delineated

¹⁴² Ron Marsico, *Bid for Boat Gambling Apparently Flounders*, STAR-LEDGER (Newark), June 15, 1994, at 19 (noting that the Casino Association is adamantly opposing the proposal, alleging that it would cripple Atlantic City); Ron Marsico, *Casino Group Protests Riverboat Games Push*, STAR-LEDGER (Newark), June 4, 1994, at 3 (Thomas Ballezzi, Executive Director of the Casino Association of New Jersey, accusing Robert Brennan of attempting to undermine public and private investment in Atlantic City).

¹⁴³ Joe Donohue, *Riverboat Gambling Proponent Releases Report Backing Floating Casinos*, STAR-LEDGER (Newark), December 20, 1994, at 30. See *supra* notes 49-51 discussing the employees and CRF.

¹⁴⁴ Dan Weissman, *Amendment Readied to Extend Casino Gambling Beyond Atlantic City*, STAR-LEDGER (Newark), Mar. 25, 1994, at 71 (describing Assemblyman Bryant's plan to introduce legislation to amend the Constitution to expand gambling in New Jersey; Bryant's stated purpose was to defend against other states' proposed expansion of gambling).

¹⁴⁵ *Id.*

¹⁴⁶ A. Con. Res. 71, 206th N.J. Leg., 1st Sess. (Apr. 25, 1994).

¹⁴⁷ Weissman, *supra* note 144, at 71. The proposed amendment to Art. IV, § 7, ¶ 2 would be as follows:

It shall also be lawful for the legislature to authorize by law, and to tax, the conduct of casino gambling on boats which are permanently docked at, or are principally docked at and operate from, sites on the shores or banks of bodies of water located in, or constituting a boundary of, this State if a state bordering this State authorizes the conduct of any form of casino gambling. Any law authorizing such casino gambling shall provide that: (1) only holders of licenses which are operating casinos in Atlantic City shall be licensed to conduct the casino gambling on such boats; (2) no license holder in Atlantic City shall be licensed to conduct such gambling on more than three boats; and (3) the tax on such casino gambling shall be at the same rate set by law for the operation of gambling establishments in Atlantic City and the State revenues derived from such casino gambling shall be applied for the same purposes as hereinabove are specified for the State revenues derived from the operation of gambling establishments

as a purely defensive measure, designed to become effective only if Pennsylvania, New York, or any other bordering state voted to allow casino gambling.¹⁴⁸ Bryant's main concern was with the stability of programs funded by casino revenues, not with the expansion of gambling in New Jersey.¹⁴⁹

Numerous other legislators also spoke out in favor of the riverboat proposal or, at least, suggested that it should be examined and discussed.¹⁵⁰ While these legislators were agreeable to verbally offering their cautious support, none were actually ready to sponsor Brennan's proposal.¹⁵¹ Furthermore, Governor Christine Whitman was not advocating the extension of gambling

in Atlantic City, except that 25% of the State revenues derived from casino gambling on each boat shall be transmitted to the municipality in which that boat is permanently or principally docked. . . .

Id.

¹⁴⁸ Weissman, *supra* note 144, at 71. The likelihood that this will occur will be discussed *infra* notes 203-216.

¹⁴⁹ *Id.* at 71. Bryant pointed to the casino revenues as helping such programs as the "pharmaceutical assistance program for the aged and disabled, senior citizen transportation and home health care." *Id.* It should be noted that it does not appear that Bryant was working in conjunction with Mr. Brennan on this issue. However, it is probably accurate to say that Mr. Brennan's proposal put the issue on the table or, at least, made it a more prominent issue for discussion. *Id.*

¹⁵⁰ *Id.* at 71. New Jersey Senate Appropriations Committee Chairman Robert Littell (R-Sussex) noted the possibility that riverboats could come to Pennsylvania, acknowledged the existence of gambling on Connecticut Indian reservations, and hypothesized that gambling could arrive in New York State. In the face of such tough competition, and to protect the \$250 million that, each year, goes to the State from the casino taxes, Sen. Littell advocated examining the proposal to extend legalized gambling. Senate President Donald T. DiFrancesco (R-Union) offered his cautious support for the proposal. Thomas J. Fitzgerald, *Casinos Working to Sink Riverboat Gambling*, BERGEN RECORD, June 15, 1994, at A3. Assistant Minority Leader Richard J. Codey (D-Essex) put forth for consideration that a comprehensive study of gambling in New Jersey should be done, observing that Brennan's project should not be dismissed without at least a cursory review. Patrick Jenkins, *Senator Proposes Gaming for Camden, Newark*, STAR-LEDGER (Newark), May 15, 1994, at 26. He quoted statistics showing that 42% of Atlantic City's business is drawn from the Philadelphia-Camden area, a number which could be in danger if Pennsylvania passed riverboat gambling legislation. *Id.*

¹⁵¹ Marsico, *supra* note 142, at 3. Senate President DiFrancesco stated that he would not be a sponsor, as did Senate Minority Leader John Lynch (D-Middlesex). Senate Majority Leader John O. Bennett (R-Monmouth) had considered sponsorship, but ultimately decided against it. *Id.* See Ron Marsico, *Proponents of Riverboat Gambling Seeking Sponsors for Legislation*, STAR-LEDGER (Newark), June 7, 1994, at 26. Senator Richard J. Codey, was quoted by the Star Ledger as saying, "There's been more romancing on this bill than in a singles' bar in Hoboken on a Friday night." *Id.*

outside of Atlantic City.¹⁵² Time was ticking away for the proponents of the proposal.¹⁵³ In the meantime, Mr. Brennan continued to lobby for the acceptance of his project.¹⁵⁴ Finally, in late June of 1994, Assemblyman Gerald Zecker¹⁵⁵ agreed to endorse the bill, together with a co-sponsor, Assembly Minority Leader Joseph Doria.¹⁵⁶ Their bill, like that introduced earlier by Assemblyman Bryant, called for the legalization of gambling on boats at the Meadowlands and the Garden State Race Track if a state that borders New Jersey mandated any type of casino gambling.¹⁵⁷

B. *The Proponents of Riverboat Gambling*

The main spokesperson for the riverboat gambling project is Mr. Robert Brennan.¹⁵⁸ The impetus behind Mr. Brennan's plan was to stimulate the racing, casino gambling, and horse racing in-

¹⁵² Marsico, *supra* note 151, at 26.

¹⁵³ Marsico, *supra* note 142, at 19. In order to get the referendum on the November 1994 ballot, legislation would need to be passed by a three-fifths majority by early August of 1994. *Id.* Alternatively, supporters of the bill would need a simple majority of both houses in late 1994 and in 1995, or could obtain a three-fifths majority in both houses in the 1995 term, to place the issue on the ballot in November of 1995. *Id.*

¹⁵⁴ *Brennan Keeps Pushing*, HOME NEWS, June 9, 1994, at 2. Charles Stile, *Financier Raises Gambling Ante*, N.Y. TIMES, June 13, 1994, at A1, A7 (establishing that Brennan and lobbyist Roger Bodman had been persistently working to find a sponsor for the bill; also noting that Brennan testified at a New York State Subcommittee on Gaming to describe and attempt to convince officials that the expansion of gambling was a good thing). See *Matter of a Public Hearing to Consider*, *supra* note 4, at 63-96. (statement of Robert Brennan).

¹⁵⁵ R-Passaic

¹⁵⁶ Marsico, *GOP Lawmaker to Sponsor Riverboat Gambling*, STAR-LEDGER (Newark), June 30, 1994, at 26. Comments concerning the search for a sponsor included, "They went from A to Z to find a sponsor and they got Z." *Id.* (statement by Alan Marcus, a lobbyist for the Casino Association of New Jersey); and answering the question of how many legislators were asked to sponsor the legislation, "I lost count." *Id.* (a wry comment by Roger Bodman, a lobbyist for Robert Brennan's proposal).

¹⁵⁷ A. Con. Res. 85, 206th N.J. Leg., 1st Sess. (June 29, 1994) (by Assemblymen Zecker and Doria).

¹⁵⁸ Sterling, *supra* note 140, at 1, 14. Robert Brennan is a fifty-year-old resident of Brielle, New Jersey. *Id.* at 1. His company, International Thoroughbred Breeders, Inc. (hereinafter "ITB") actually made the offers to purchase the Meadowlands and Monmouth Park Race tracks. *Id.* Brennan began his firm, First Jersey Securities, in November, 1974. John T. Ward, *Highflyer*, ASBURY PARK PRESS, Sept. 12, 1994, at A1. The immensely successful firm was one of the forces that enabled Brennan to donate millions of dollars to numerous entities, including St. Benedict's Preparatory School in Newark, N.J.; Seton Hall University in West Orange, N.J.; the Brennan Pavilion at the Jersey Medical Center in Neptune, N.J.; and to begin the Dehere Foundation in 1993, an organization which has, among other things, installed a clock in Times

dustries.¹⁵⁹ Brennan believes that these three enterprises would be severely crippled if New York or Pennsylvania legalized any form of casino gambling.¹⁶⁰ Additionally, Brennan estimates that the state would lose billions of dollars in annual revenues derived from gaming, from the racetracks in New Jersey, and from ancillary business, as well as from tax revenues and jobs.¹⁶¹

Brennan's comments concerning the bill suggest that saving the horse racing industry is his primary objective.¹⁶² Mr. Brennan speaks of horseracing with great love and affection.¹⁶³ Nevertheless, he acknowledges that, today, people want the fast-paced excitement¹⁶⁴ offered by casinos.¹⁶⁵ Brennan wants to put the two together—gambling and horseracing—so as to attract a larger number of people to the sport of racing.¹⁶⁶

In pursuit of this goal, Mr. Brennan urges the horseracing industry to embrace casino gambling and utilize it to draw more fans to the track.¹⁶⁷ Notably, Brennan mentions drawing in younger patrons, typically those who attend casinos, to inject a youthful ingredient into horseracing.¹⁶⁸ He envisions accomplishing this by

Square in New York City which keeps count of the estimated number of gun-related fatalities occurring in the United States each year. *Id.* at C6.

¹⁵⁹ Sterling, *supra* note 140, at 14.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Matter of a Public Hearing*, *supra* note 4, at 64-70. Brennan comments that gaming and racing—the first a brash, exciting sport, and the latter a tired, old pastime—needing new energy and should be unified so as to attract more people to racing; that is, by first bringing them to the racetracks to gamble. *Id.* “[W]e in the gambling industry have to wake up and take our heads out of the sand, we in this racing business. And believe me, that’s where I’m coming from. I’m coming from looking for ways to protect racing, a sport and an industry that I love.” ROUNDTABLE DISCUSSION: THE IMPACT OF CASINO GAMBLING ON THE RACING INDUSTRY AT THE NATIONAL MUSEUM OF RACING AND HALL OF FAME 22 (May 18, 1994) (statement by Robert Brennan) [hereinafter ROUNDTABLE DISCUSSION]. Brennan owns former Triple Crown hopeful “Dehere.” Ward, *supra* note 158, at C1, C7.

¹⁶³ *Matter of a Public Hearing*, *supra* note 4, at 68-70.

¹⁶⁴ ROUNDTABLE DISCUSSION, *supra* note 162, at 22. Seventy percent of Americans believe that a casino is a fun way to spend an evening. *Id.* (statement of Robert Brennan).

¹⁶⁵ *Id.* at 21.

¹⁶⁶ *Id.* at 23, 69.

¹⁶⁷ ROUNDTABLE DISCUSSION, *supra* note 162, at 26. Brennan also notes that as gambling becomes more prevalent in the United States, specifically stating that casinos are present in almost half of the states and being considered in others, the racing industry must address this issue, not simply hope that it will go away. *Id.* at 34-38.

¹⁶⁸ See *Matter of a Public Hearing*, *supra* note 4, at 76, stating that

bringing people to racetracks with the promise of riverboat gambling and simultaneously exposing them to the beauty, charm, and romance of horseracing, thereby teaching them to first appreciate and then return to racing.¹⁶⁹

Brennan appears to believe that this is a necessary partnership, rather than one of convenience.¹⁷⁰ At the racetrack he owns, Garden State Park,¹⁷¹ there is an average daily attendance of four thousand persons.¹⁷² Brennan's New Jersey plan, combining riverboats and racetracks, projects that fifty thousand visitors per day would enter Garden State's gates.¹⁷³ Brennan believes that racing's future can be secured only by attracting more people, using gaming as the bait.¹⁷⁴

Mr. Brennan's plan is supported by good business judgment.¹⁷⁵ It seems natural to expect that a waning industry would receive a boost if combined with a widely popular pastime. Typically, however, a call for gambling is initiated because a state, or an

[r]acing, when you examine the industry over the last fifteen or twenty years, has gradually become old. The people who are racing fans and participate in racing are of an average age which is substantially in excess of those that will visit casinos, and, as the old population, quite frankly, is dying out, there's not enough new blood to replace that in the interests [sic] because the casino industry has brought on new excitement and an environment that's—that [sic] requires a quicker interest, quicker gratification, and it has been a successful competitor.

Id. (Statement of Robert Brennan).

¹⁶⁹ *Id.* at 77-78.

¹⁷⁰ *Id.* at 77.

¹⁷¹ Sterling, *supra* note 140, at 1. The Cherry Hill, New Jersey company known as ITB, of which Brennan is chairman, owns and operates this Camden county based racetrack.

¹⁷² *Matter of a Public Hearing*, *supra* note 4, at 77. Brennan contends that approximately the same number of patrons attend New York's Aqueduct Race Track in the wintertime. *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 80. Responding to a question of whether lowering taxes on racing would be an answer to improve racing's prospects, Brennan stated:

[T]he answer has to be a far more comprehensive solution to attract patrons. Really, we have to find ways to more than just stop the hemorrhaging or stop the out go. We have to find more ways of bringing more people into this to revitalize the industry, and that's not going to happen just by reducing the tax load. It's going to take some more proactive steps.

Id. at 80-81.

¹⁷⁵ See *supra* note 172-73 and accompanying text (i.e., that Garden State Park's attendance would dramatically increase if Brennan's proposal were accepted).

area of a state, wants to stimulate its economy.¹⁷⁶ New Jersey appears to be looking to riverboat gambling to serve two other goals: to protect Atlantic City's interests and the revenues derived from casinos,¹⁷⁷ and to reinforce the racing industry.¹⁷⁸ The opposite viewpoint to that of Mr. Brennan is discussed in the following paragraphs.

C. *The Opponents of Riverboat Gambling*

The casino industry was quick to oppose Mr. Brennan's proposal.¹⁷⁹ Their immediate reaction was to dismiss the idea, believing that it completely lacked credibility.¹⁸⁰ When the industry began to realize that the proposal was seriously being considered,¹⁸¹ however, it organized an effort to vehemently fight it.¹⁸² Representatives of the casino industry traveled to Trenton¹⁸³ to crusade against Brennan's proposal.¹⁸⁴ They alleged that expanding gambling would send a message to Wall Street and other investors that

¹⁷⁶ See *supra* note 27 and accompanying text (describing how legislators lobbied to get casinos in their districts when New Jersey first considered gambling in the early 1970s, because of the economic benefits thought to be associated with gambling); see also *supra* note 36 and accompanying text (stating that gambling was legalized in New Jersey as a unique tool of redevelopment for Atlantic City); and *supra* note 124 and accompanying text (explaining how an Illinois town hoped a riverboat gambling contract would invigorate its economy). See also *supra* note 41 and accompanying text (noting that an individual believed that gambling in Pennsylvania would help the economy).

¹⁷⁷ See *supra* notes 48-51 and accompanying text.

¹⁷⁸ See *supra* note 162 and accompanying text.

¹⁷⁹ *Supra* note 142 and accompanying text.

¹⁸⁰ Bernie Weisenfeld, *ITB Floats Gaming for Meadowlands, Garden State Park*, COURIER-POST, Mar. 23, 1994, at 1A, 5A. "When the legislature last year wouldn't even place the [Atlantic City] sports betting issue on the ballot, to me that makes the [ITB] proposal DOA [dead on arrival]." (Statement by Marvin Roffman, Roffman-Miller investment firm in Philadelphia.) *Id.*

¹⁸¹ See *supra* notes 144-45 and accompanying text.

¹⁸² Marsico, *supra* note 156, at 26. Alan Marcus, a lobbyist for the Casino Association of New Jersey, argued that expanding gambling outside of Atlantic City would hurt casinos because they will have become too widespread. He also charged that the Brennan project is merely "a bailout for Bob Brennan's failing racing interests." *Id.* Finally, he noted that there was not solid support for this legislation. *Id.* Murphy, *supra* note 120, at 5. "We believe there is more to gaming than building a boat and filling it with slot machines and that experience and operating margins are as important to the future of gaming in a new jurisdiction as any other single factor." *Id.*

¹⁸³ Thomas J. Fitzgerald, *Casinos Working to Sink Riverboat Gambling*, BERGEN RECORD, June 15, 1994, at A-3. They had traveled to Trenton the previous year to advocate the passage of a proposal to put sports betting on the ballot. *Id.*

¹⁸⁴ *Id.*

Atlantic City was no longer a place in which to invest with confidence.¹⁸⁵ The Casinos Organization also asserted that Atlantic City would not be able to expand and enhance existing gaming and hotel facilities because of the diminished funds with which they had to work.¹⁸⁶ Finally, they contended that the decrease in revenue would be a tragic loss for the people who depended on this funding.¹⁸⁷

Despite these arguments, the casino enterprises did not maintain a united front against riverboat gambling.¹⁸⁸ An industry investment analyst stated that some casino operators might have changed their attitude regarding riverboats,¹⁸⁹ realizing that there was a strong likelihood that the proliferation of gambling would, in one way or another, reach New Jersey.¹⁹⁰ Some operators began to purchase options on land on the Delaware River along the Philadelphia waterfront.¹⁹¹

Thus, the Casino Association of New Jersey's position was to fight the proposal with action and vigor, yet be ready in case riverboats began floating along the Delaware River, or anywhere else in New Jersey.¹⁹² The casino industry's main objectives were still to encourage New Jersey officials to strengthen Atlantic City, to amend the current regulatory system so as to allow them more flexibility in building up Atlantic City's infrastructure, and to choose a multi-billion dollar investment, rather than the thinly-financed,

¹⁸⁵ *Id.* Investors have bought more than five billion dollars worth of stocks and bonds to improve Atlantic City, assuming that it would maintain a stronghold on gambling in New Jersey. *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See *supra* note 143 and accompanying text. Their contention centered around the premise that people employed in Atlantic City and peripheral industries, along with those funded by the CRF, would be financially injured. Jacobs, *supra* note 137, at 13.

¹⁸⁸ Jacobs, *supra* note 137, at 1.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* "Some of (the casino operators) feel that . . . since sooner or later gambling is going to come to the area . . . riverboats in the Meadowlands could probably be an enormously profitable venture." *Id.*

¹⁹¹ Jacobs, *supra* note 137, at 13. In an answer to Mr. Brennan's accusation that Donald Trump and Arthur Goldberg, Chairman and Chief Executive Officer of the Bally Manufacturing Company, were "duplicitous" because they were fighting his proposal yet purchasing land along the Delaware River, Mr. Trump responded, "If Pennsylvania does approve gambling we will probably go into that market. There's nothing duplicitous about that. We go where the markets are." *Id.*

¹⁹² Murphy, *supra* note 120, at 7 (noting that, if necessary, the casino industry will probably enter the riverboat game).

transient riverboats.¹⁹³

There was another group opposing the plan as well. That group believed that expanding gambling is a morally dangerous road to travel.¹⁹⁴ This argument is backed by a long tradition,¹⁹⁵ but no longer seems to be considered the big hurdle that proponents of gambling must clear in order to achieve their goal.¹⁹⁶ Af-

¹⁹³ ZIETZ, *supra* note 3, at 38. A bill, S-1553/A-6, 206th N.J. Leg., 2d Sess. (1994), proposed deregulating the casino industry in hopes that such action will enable Atlantic City to better compete amidst the proliferation of gambling. Joe Donohue, *Legislation Expected to Repeal Three Casino Ownership Limit for Atlantic City*, STAR-LEDGER (Newark), Nov. 3, 1994, at 21. The bill passed in early 1995. John Froomjian, *Casino Regulations Eased*, ASBURY PK. PRESS, Jan. 26, 1995, at A1, A4. It decreases the number of casino employees who must register with the Casino Control Commission, enables operators to get casino licenses for four years, and allows casinos to extend credit to customers more easily. *Id.* at A4.

¹⁹⁴ Andrea Orlando, *The Wagers of Sin Snare Young People*, STAR-LEDGER (Newark), Dec. 4, 1994, at 6-1. The Council on Compulsive Gambling of New Jersey quoted statistics that 90% of teenagers admitted in a survey that they gambled last year. *Id.* Ed Looney, interim director of the Council, said, "We live in one of the gamblingest states of the union. And both our moral protectors—namely the government and our religion—are into gambling." *Id.*

Also, although written in opposition to New York State gambling, a letter included in a legislative report regards enlarging gambling as a dangerous vice. TRANSCRIPT OF ROLLING THE DICE, *supra* note 114, at iv. This letter was written by an anonymous New York City Councilman, who told how his father had a gambling problem. *Id.* He wrote of the disturbance this problem had on his childhood, of how his family had to move to stay ahead of the bookies, and of the way he was robbed of an education because his college money went to make bets instead. He urged the New York Legislature to reject the proposal.

Finally, addressing the likelihood of riverboats arriving in Aurora, Illinois, but again equally relevant to the New Jersey moral argument, church leaders opposed the proposal because they feared that casino-style gambling would weaken the moral fiber of community residents and be followed by an increase in crime rates. Dardick, *supra* note 36, at D5.

¹⁹⁵ ROSE, *supra* note 13, at 94-95. Two hundred years ago, gambling was, according to popular thought, a sin. *Id.* at 94. Polite society mentioned gambling only to condemn it. In the 19th century, it was upgraded to merely a vice, and the gambler was, instead of thought of as going straight to Hell, pitied as being a weak individual. *Id.* at 94-95.

¹⁹⁶ Reidy, *supra* note 44, at 69, 71 (tracing the evolution of gambling as the "nice vice"). As recently as 35 years ago, gambling was still considered to be the root of much evil. *Id.* Today, churches and the government are into the gambling business, however, especially jackpots. Thus, it has lost much of its stigma. *Id.* See also Murphy, *supra* note 120, at 2.

[G]aming has transformed over the years from a backroom vice to a tentacle of organized crime to just another form of entertainment . . . Today it is no longer gambling, it's gaming and the show girls have been replaced in large part by lions, tigers and magic shows, and the scams and skims have given way to ten K's and Q's. Bette Midler said it best—she

ter all, the perception of riverboat gambling is void of the huge casino hotels of Atlantic City and Las Vegas, and their accompanying parking and crime problems.¹⁹⁷ Compared to that, riverboat gambling sounds almost innocuous.¹⁹⁸

One other opposing argument to riverboats should be noted. Although Atlantic City was initially constructed as a resort tourist attraction where people would spend a few days,¹⁹⁹ the explosion of casino gambling leaves the ability to get to a casino within the reach of almost everyone, and it can be done in a day trip.²⁰⁰ This means that it is more likely that money will be extracted from the local population, thereby having an uncertain economic benefit for the municipality, as well as the state, where the casino is located.²⁰¹

Thus, the sides in the riverboat issue have been chosen, and the arguments organized. The next logical question to be addressed is: how likely is it that a neighboring state will also legalize gambling?²⁰² This issue is discussed below.

D. *Will Gambling Soon Arrive in New York and Pennsylvania?*

As previously noted,²⁰³ New York State has bills²⁰⁴ that support the legalization of gambling in that state. Moreover, New York State officials have taken steps in that direction: they have held at

recently appeared at the MGM in Las Vegas and she told her audience that in the fifteen years since she last appeared at Las Vegas, they had both gained a lot of respectability. She noted that theme parks and children's attractions were the order of the day and said that "[i]t has gotten so the hookers have to dress up like Barney to get any attention."

Id. at 2-3 (Statement of Bernard Murphy).

¹⁹⁷ Thomas Hine, *If Philadelphia Wants Gambling, It Should Go for Best Hand*, PHILAD. INQUIRER, Apr. 24, 1994, at E1 (commenting that riverboats sound wholesome).

¹⁹⁸ *Id.*

¹⁹⁹ ROSE, *supra* note 13, at 104. Whether this was actually an accomplished goal, however, is questionable. Dowling, *supra* note 45, at 8.

²⁰⁰ ROSE, *supra* note 13, at 104.

²⁰¹ *Id.* This scenario juxtaposes having tourists as customers, where it does, in fact, help the economy, if many tourists bet away all of their money. The name for this phenomenon is "gambler's ruin." *Id.*

²⁰² A. Con. Res. 71, 206th N.J. Leg., 1st Sess. (1994) and A. Con. Res. 85, 206th N.J. Leg., 1st Sess. (1994). These existing bills mandate bordering states to permit gambling before gambling can be expanded in New Jersey.

²⁰³ Judson, *supra* note 118, at B1, B4.

²⁰⁴ A. Con. Res. 12256, 217th N.Y. Leg., 1st Sess. (1994) (enacted); A. Con. Res. 9331 (1994), 217th N.Y. Leg., 1st Sess., and S. Con. Res. 6529, 217th N.Y. Leg., 1st Sess. (1994).

least one public hearing on the issue;²⁰⁵ the State Comptroller has written a staff report addressing that issue;²⁰⁶ and a legislator has drawn up an extensive critique on why gambling is not a useful legislative goal for New York.²⁰⁷ New York State, therefore, seems to be extremely wary of the idea of casino gambling. While its officials are certainly aware of the proliferation of gambling around them,²⁰⁸ they do not appear to be in a rush to legalize gambling in that state.²⁰⁹

Pennsylvania, however, tells a different story. The press is widely predicting that the "Keystone State" will legalize casino gambling, possibly in 1995.²¹⁰ Casino developers are purchasing land along Philadelphia's waterfront where, predictably, riverboat casinos would be docked.²¹¹ Finally, Pennsylvania Governor Robert Casey, a man firmly opposed to gambling,²¹² is leaving office in January of 1995 and his new successor, Tom Ridge, is not opposed to the idea.²¹³

While there is some opposition to riverboat ventures,²¹⁴ there

²⁰⁵ See generally *Matter of a Public Hearing*, *supra* note 4.

²⁰⁶ McCALL, *supra* note 1, at 2 (concluding that gambling is an ill-placed panacea for the financial worries of New York State, because claims of economic revitalization are not particularly credible).

²⁰⁷ See generally TRANSCRIPT OF ROLLING THE DICE, *supra* note 114. Sen. Padavan believes that gambling is a misplaced economic tool, and posits that crime and social decay accompany gambling. *Id.* at 17-28.

²⁰⁸ McCALL, *supra* note 1, at 4. He states that gambling will impact New York State regardless of whether the state chooses to legalize it. An Indian tribe has recently signed a contract with New York State authorizing the tribe to operate New York's second Native American casino, and industry leaders predict that 35 states will have gambling by the year 2001 (this number is excluding Native American casinos). *Id.*

²⁰⁹ *Atlantic City Basks in Competitive Reprieve*, N.Y. TIMES, Feb. 5, 1995, at A21. Newly-elected New York Governor George Pataki has stated that he would consider a referendum allowing casino gambling in New York, but has also said that the vote might not be until 1997. *Id.*

²¹⁰ ZIETZ, *supra* note 3, at 16; Zausner, *supra* note 36, at B1. "Legislative observers believe it is only a matter of when." *Id.*

²¹¹ Hine, *supra* note 197, at E1.

²¹² Heneghan, *supra* note 4, at A1. U.S. News and World Report suggested that Casey had decided to challenge President Bill Clinton for the 1996 Democratic nomination. *Washington Whispers*, U.S. NEWS & WORLD REP., Feb. 20, 1995, at 23.

²¹³ Heneghan, *supra* note 4, at A6. While originally it was thought that new Pennsylvania Governor Ridge would move a gambling legalization measure through the legislature quickly, he has now said that he would use a statewide referendum for the gambling issue, which is a much slower process. *Atlantic City Basks in Competitive Reprieve*, *supra* note 209, at A21.

²¹⁴ Hine, *supra* note 197, at E1. The waterfront is supposed to be a place where

appears to be equal support for the fiscal benefits of riverboat gambling.²¹⁵ Only time will tell, of course, but there is an indication that New Jersey could soon be facing gambling competition on one of its borders.²¹⁶

E. *The New Jersey Public's Reaction to Riverboats*

As recently as November, 1994, the public was reportedly equally divided as to the merits of allowing riverboat gambling.²¹⁷ Some residents seem ambiguous about the idea.²¹⁸ Apparently, for most people this was not an idea that sparked either tremendous support or rejection.²¹⁹

It is interesting to note that Assemblyman Zecker, the prime sponsor of the bill, also does not have strong convictions about legalizing riverboat gambling.²²⁰ He continues to stress that his bill is a defensive measure and one that, should it be rejected on referendum, he would not be extremely unhappy about losing.²²¹

IV. *The Final Analysis*

Thus, we return to the question, "Is riverboat gambling the answer for New Jersey?" Quite simply, it is not the answer that New

people can escape the claustrophobic quality of the city, and it should not be completely covered by floating vessels filled with blackjack and bingo. *Id.* "I think casinos do a terrible thing to the local economy, for example, money that would ordinarily go for a pair of shoes might go to the gaming tables." *You Tell Us, supra* note 41, at MD3.

²¹⁵ *You Tell Us, supra* note 41, at MD3.

²¹⁶ ZIETZ, *supra* note 3, at 16.

²¹⁷ Hirsch, *supra* note 136, at A1, A4. In this Bergen Record poll, in answer to the question, "Would you support or oppose legislation to allow riverboat gambling in the Meadowlands," 49% of New Jersey residents opposed the issue, with 47% noting their support. *Id.* at A1. In another poll commissioned by the Casino Association of New Jersey, the results indicated that New Jersey residents are generally against the expansion of gambling, although only 53% were opposed to the idea in New Jersey and only 48% disliked the prospect of riverboats in New York or Pennsylvania. Joe Donohue, *Casino Group Poll Finds Jerseyans Against Expansion of Gambling*, STAR-LEDGER (Newark), Nov. 28, 1994, at 15.

²¹⁸ Donohue, *supra* note 217, at 15.

²¹⁹ *Id.* "I'm kind of in between. I can see positives and negatives to it. The positive is income to the government, but look at Atlantic City—the negative is the crime." (Statement by a twenty-five-year-old pharmacist). "I'm not a lover of gambling myself, but if it's going to help the state, then I'd be for it." (Statement by a Hasbrouck Heights businessman). Hirsch, *supra* note 136, at A4.

²²⁰ Hirsch, *supra* note 136, at A4.

²²¹ *Id.* "I wouldn't be unhappy if this bill was never implemented. If we have a referendum and the people say no, fine. Next issue." *Id.*

Jersey needs. Gambling has been legalized very cautiously in New Jersey, and for good reason.²²² There are a number of problems that can accompany it which could adversely affect the lives of the adults and children of our state.²²³ Thus, an expansion of gambling, and the reasons for doing so, should be examined closely and critically.

Gambling is an economic good, in part, because people from outside of New Jersey come to Atlantic City to gamble. If gambling were expanded, a larger number of New Jersey's citizens could more easily gamble. Our residents' money would be spent on riverboat gambling, perhaps more so than that of tourists. Moreover, Atlantic City might suffer if a competitive gambling operation were located in the same state. Its clients would be able to go to casinos that are closer to them. Although some may not miss Atlantic City's gambling should its popularity decline, persons who receive funding from the CRF and the CRDA *would* miss that money.²²⁴

Somehow, it is accurate to say that, given the chance, Atlantic City could become New Jersey's premier city. It is located on the ocean, a feature that is always a tourist attraction, and has already-existing entertainment. If New Jersey could reconstruct Atlantic City, it could develop into a prime tourist destination. Such a place could certainly be competition for Pennsylvania or New York gambling operations. It appears more sensible to invest in an already, at least moderately, successful enterprise before loading funding onto a boat of uncertainty.

While riverboats sound like an attractive idea, they are not necessary in New Jersey, a state which has a long history of running gaming operations in Atlantic City. The answer for New Jersey, then, is to let the riverboats float on by.

²²² See *supra* note 110 and accompanying text.

²²³ See *supra* note 194 and accompanying text.

²²⁴ See *supra* notes 49-50 and accompanying text.