

ANCHORAGE: GAMING CAPITAL OF THE PACIFIC RIM

This Note examines the current state of legalized gambling in Alaska and inquires as to the optimal breadth of legalized gambling for the state to pursue. The Note surveys the various forms of gambling currently present in the United States, including Internet gambling, and explores how legalization of the respective forms may impact Alaska. The Note's final evaluations are critical of most forms of gambling, including those forms currently legal in Alaska and those otherwise widely accepted by American states, but the Note also suggests that the development of destination gaming resorts, if strategically located and targeted to a receptive tourist consumer market, may serve as a considerable source of revenue and jobs for the people of Alaska.

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I. INTRODUCTION

Legalized gambling¹ is an established aspect of Alaska culture. Whether you find yourself in an Anchorage mall, driving the

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streets of Soldotna, or spending any time within any sizable Alaska town, you are bound to encounter come-ons for an opportunity to achieve riches through the simple skill of selecting the winning pull-tab.² Despite the ubiquitous presence of legalized gambling in Alaska (in the form of pull-tabs and charity bingo), the severe restrictions on the scope of legalized gambling are such that one could plausibly ask: does Alaska *really* permit *gambling*? After all, there are no casinos, no state lottery, and none of the typical forms of gambling attractive to the typical American gambler. Why is this?³ Is the current scope of legalized gambling in Alaska at the

1. The terms “gambling” and “gaming” are, for practical purposes, synonymous. “Gaming” is a euphemism for gambling, developed by Las Vegas casino marketers in the late 1970’s and early 1980’s to counter potential stigma attached to the term “gambling” and to promote Las Vegas as a family vacation destination, in response to the competitive threat posed by the recently opened (1978) casinos in Atlantic City, New Jersey. To allay possible reader confusion, I will consistently use the term “gambling,” except when strategic purposes otherwise dictate. See generally BARNEY VINSON, LAS VEGAS BEHIND THE TABLES! 17, 215-17 (1988); PETE EARLEY, SUPER CASINO: INSIDE THE “NEW” LAS VEGAS *passim* (2000) (providing an up-to-date perspective on the gambling industry in Las Vegas).

2. Pull-tabs, although not necessarily unique to Alaska, are nonetheless not a particularly common form of gambling. For those readers outside of Alaska perhaps unfamiliar with pull-tabs, they are best described as “instant lottery” tickets. Pull-tab games are much more limited in scale than the conventional instant lottery games found in places such as California. Prizes are never very large (seldom more than \$500), and pull-tab games, unlike their lottery brethren, are not state-wide affairs. Rather, each “game” and all tickets comprising that particular “game” are held at the same pull-tab parlor (usually in a fishbowl). Anyone willing to buy *all* of the pull-tab tickets for a game at a particular parlor will thus also buy all of the *winning* tickets for that game. While not a recommended strategy for the profit-minded, the parlor proprietor may extend a heartfelt measure of gratitude for the investment effort.

3. One may argue that the people had spoken. Alaskans voted on a ballot measure on August 28, 1990, that would have granted municipalities the option to introduce a wide assortment of gambling forms, including casino games, slot machines, and pari-mutuel events (horse and dog racing). The initiative lost by a margin of nearly 2:1, but that was ten years ago. The national perception of gambling has changed in the interim, and Alaska is now more sensitive to the need to branch out beyond its economic dependence upon the oil industry. Although the initiative was attacked in 1990 by Tony Knowles (then former Anchorage mayor running for governor) and would likely face similar opposition by Gov. Tony Knowles today in 2000, voter awareness of gambling and the impact of gambling has become much more sophisticated (as the ubiquitous presence of pull-tab parlors may or may not make manifest) and campaigns for a similar measure today would likely receive stronger financial backing than ten years ago (the initiative attracted only limited, albeit vocal, campaigning in 1990). It may be about time

optimum for political, economic, and social purposes in this particular state? Should Alaska consider an expansion in the legalization of gambling? What are the risks and benefits attendant in doing so?

The extent of legalized gambling in America is determined on a state-by-state basis, and in the current climate, the voters of the fifty states are consistent and supportive in their acceptance of legalized gambling. As of today, gambling is legal in forty-eight states (the holdouts being Utah and Hawai'i),⁴ and thirty-seven states (along with the District of Columbia) feature state-sponsored lotteries.⁵ Alaska's closest neighboring states—Washington, Oregon, California, and Idaho—all permit legalized gambling on Native American tribal lands.⁶ Canada also allows gambling essentially Canada-wide (gambling is federally regulated in Canada⁷), and this comes into play particularly in the nearby Western Canadian provinces of British Columbia and Alberta.⁸

Alaska, in contrast to the majority of states, does not run a state lottery.⁹ Alaska does not currently allow gambling on Native lands. Instead, the currently available forms of gambling in Alaska include the aforementioned pull-tabs and charity bingo, which provide about \$260 million in annual gross revenue, but little in the way of new jobs.¹⁰ However, these forms of gambling bring with them the negative social consequences of gambling.¹¹ There was a

for another vote. *See generally* Richard Mauer, *Voters Snub Casino Plan, Rail Measure*, ANCHORAGE DAILY NEWS, Aug. 29, 1990, at B1.

4. *See* NATIONAL GAMBLING IMPACT STUDY COMMISSION, NATIONAL GAMBLING IMPACT STUDY FINAL REPORT 1-1 n.2 (1999) [hereinafter NGISC FINAL REPORT].

5. *See* Charles T. Clotfelter et al., *State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission 1* (Apr. 23, 1999), available at <<http://www.ngisc.gov>>.

6. *See* Gary C. Anders, *Indian Gaming: Financial and Regulatory Issues*, in GAMBLING: SOCIOECONOMIC IMPACTS AND PUBLIC POLICY, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 98, 100 (Mar. 1998) [hereinafter GAMBLING].

7. *See* Colin S. Campbell & Garry J. Smith, *Canadian Gambling: Trends and Public Policy Issues*, in GAMBLING, *supra* note 6, at 22-23.

8. *See id.* at 29.

9. *See* David Whitney, *Gambling Report Due; Loescher Sees Upside*, ANCHORAGE DAILY NEWS, June 17, 1999, at B1.

10. *See* Jon Little, *Homer Couple Accused in Pull-Tab Thefts*, ANCHORAGE DAILY NEWS, Apr. 11, 1998, at D1.

11. *See, e.g.*, Mary Pemberton, *Ex-Official on Slope Accused of Profiting from Charity Scam*, ANCHORAGE DAILY NEWS, May 25, 2000, at A1; *Last Chance Pull-Tab Business Has Run Out of Chances, State Says*, ANCHORAGE DAILY NEWS, Sept. 11, 2000, at B1.

recent push to determine whether to allow convenience gambling (e.g., video poker terminals) in Alaska establishments,¹² but beyond that, curiously little has been done recently to address the issue of legalized gambling in Alaska and to consider to what degree the state of Alaska should attempt to capture the benefits of legalized gambling, as well as to examine what costs legalized gambling (even at the current levels) brings upon Alaskans.

This Note will examine the various types of gambling present in the United States, and how the propagation of these forms of gambling in Alaska may impact the state. The Note will also discuss the highly topical issue of Native gaming, and how the expansion of gambling on Native lands in the contiguous United States may or may not present some opportunities and precedents for Alaska to follow. The Note will conclude by opposing most forms of legalized gambling (including the varieties currently allowed and recently considered in Alaska), criticizing these forms as bringing the costs of gambling to Alaskans without bringing much in the way of benefits. This will be contrasted with perhaps counter-intuitive insights regarding Anchorage, and how Anchorage may prove a near-optimal choice as a locale for destination gaming resorts.

II. NATIONAL GAMBLING IMPACT STUDY

In 1996, Congress approved the National Gambling Impact Study Act, which created the impetus for the nine-person National Gambling Impact Study Commission (“NGISC”) to assess the current state of gambling in America and to present suggestions for determining the course of legal gambling in the near future.¹³ The Committee, selected by President Clinton, featured Robert Loescher, director of Sealaska Corporation, thereby managing to include one representative of Alaska as well as one (but only one)

12. See H.B. 182, 21st Leg., 1st Sess. (Alaska 2000) (not passed out of committee, Mar. 6, 2000; no carryover, May 3, 2000); see also Dan Joling, *Video Gambling Bill to Remain in Committee*, ANCHORAGE DAILY NEWS, Apr. 8, 2000, at B3 (discussing status and stasis of House Bill 182, designed to allow charitable convenience gambling); Dan Joling, *Gambling Bill Messages Swamp Lawmakers*, ANCHORAGE DAILY NEWS, Feb. 11, 2000, at B4 (describing efforts of bar, hotel, and restaurant lobby using public opinion messages to support convenience gambling).

13. See *National Gambling Impact Study Comm'n Final Report: Hearing on the Final Report of the Nat'l Gambling Impact Study Comm'n Before the Senate Comm. on Indian Affairs*, 106th Cong. 115 (1999) (executive summary submitted for the record).

representative of Native American interests on the panel.¹⁴ After conducting extensive discourse on the issue with Americans directly impacted by gambling, and sponsoring outside research, the NGISC presented its findings in a final report in June of 1999.

The NGISC final report offered a number of suggestions. For instance, gambling on the Internet should be developed under federal rather than state law, particularly as it would require federal resources and the federal government's "singularity of voice" to implement the NGISC's recommendation: a prospective ban on any Internet gambling not already authorized.¹⁵ The report also recommended that the expansion of legal gambling in the United States should be halted for the present time. Although characterized in the press as a negative evaluation of gambling, the NGISC findings were actually fairly sympathetic toward at least some aspects of legal gambling, but the glaring absence of substantial, scientific research into the long-term economic and social impact of legalized gambling fomented a desire for caution among NGISC members, quite reasonable especially given the wildfire spread of legal gambling nationwide within the last decade. In no way did the NGISC final report advise prohibitions or future restrictions on currently legal forms of gambling (aside from betting on collegiate athletics, and Internet gambling, which currently has unclear legal status).

III. INTERNET GAMBLING

Few forms of new technology have had as pervasive and as instantaneous an impact on the lives of Alaskans, and in fact all Americans, as has the development of the Internet. The way we communicate with one another, the manner and speed in which we obtain information, the way we buy and sell things, and even the language that we use in conversation have all changed dramatically as a direct effect of the Internet.¹⁶ The Internet also impacts the way people entertain themselves, including those with a passion for gambling. A quick browse on the World Wide Web will readily reveal numerous sites whereby individuals may wager real money on real bets (and perhaps even hope for real winnings). The number of gambling websites and the amount wagered on these websites

14. See NGISC FINAL REPORT, *supra* note 4, at Statement of Commissioner Robert W. Loescher.

15. See *id.* at 5-12.

16. See generally Joshua Quittner, *An Eye on the Future: Jeff Bezos Merely Wants to Be Earth's Biggest Seller of Everything*, TIME, Dec. 27, 1999, at 56 (biography of Amazon.com founder and Time's 1999 Person of the Year).

have ballooned within the last couple of years, and will likely continue to expand rapidly for the near future.¹⁷

But are they legal? According to some federal government sources, gambling websites on the Internet have always been prohibited.¹⁸ Unfortunately, the law is unclear. The legal status of gambling is generally determined individually by the states, and a small number of states have passed legislation expressly addressing the legality of on-line gambling.¹⁹ Most of these states, including Nevada, Louisiana, Texas, and Illinois, are states featuring large-scale legalized gambling revenue that is placed at risk by allowing new forms of gambling to emerge from the Internet, and these states have recently banned (or introduced legislation banning) Internet gambling explicitly.²⁰ Although the State of Alaska has not specifically addressed the issue, Internet gambling may be deemed illegal in Alaska.²¹ But how does one enforce these state

17. See NGISC FINAL REPORT, *supra* note 4, at 5-1.

18. See Matthew E. Yarbrough, *Internet Gambling: The Risks and Rewards*, 547 P.L.I./PAT. 1213, 1218 (1999).

19. See NGISC FINAL REPORT, *supra* note 4, at 5-7.

20. See *id.*

21. Alaska Statutes section 11.66.200 reads:

- (a) A person commits the offense of gambling if the person engages in unlawful gambling.
- (b) It is an affirmative defense to a prosecution under this section that the defendant was a *player in a social game*.
- (c) Gambling is a violation for the first offense. Gambling is a class B misdemeanor for the second and each subsequent offense.

ALASKA STAT. § 11.66.200 (LEXIS 1998) (emphasis added). “Unlawful” gambling means any gambling “not specifically authorized by law.” *Id.* § 11.66.280(11). The blanket language appears comprehensive enough to cover *all* gambling, including new forms such as Internet gambling. However, may players gambling at home using their computers make use of the “player in a social game” affirmative defense? By statute, a “social game” is defined as “gambling in a home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game.” *Id.* § 11.66.280(9). Enforcement against individual computer users will be challenging enough in any circumstance, but when dealing with cyberspace gambling, identifying such traditionally *tangible* elements as the “house player” and “house bank” and specifying the “house income” introduces a heightened challenge unseen in conventional gambling enforcement. For more enterprising Alaskans wishing to create an Internet gambling website rather than simply play as end-users, Alaska Statutes section 05.15.180 may also pertain, as it reads, in part:

- (a) This chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement not expressly authorized by the department [of revenue].

laws on the World Wide Web, particularly when dealing with websites based out-of-state, or even outside American borders?²² To facilitate enforcement efforts, the legality of Internet gambling may be best handled on the federal level.²³

Thus turning to the federal level, the Wire Communications Act of 1961 (“Wire Act”)²⁴ is a relevant source of law pertaining to on-line gambling.²⁵ Passed well before the advent of the Internet, the Wire Act strictly prohibits interstate use of phone lines for the purpose of gambling.²⁶ The Act was intended primarily to impede the practice of bookies lining up bets on horse races, collegiate football games, and other athletic events.²⁷ Unfortunately, the statutory language is grounded in the technologies of the time, and the application of the Wire Act to Internet gambling is fraught with ambiguity. Internet wagering, taking place in the ethereal jurisdic-

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- (b) With the exception of raffles, lotteries, bingo games, pull-tab games, race classics, rain classics, goose classics . . . and king salmon classics, an activity may not be licensed under this chapter unless it existed in the state in substantially the same form and was conducted in substantially the same manner before January 1, 1959.

Id. § 05.15.180; *see also id.* §§ 11.66.200-280 (explicating criminal gambling offenses, particularly against gambling enterprise promoters and profiteers).

22. *See* NGISC FINAL REPORT, *supra* note 4, at 5-7 to 5-9.

23. *See id.* at 5-9.

24. 18 U.S.C. § 1084 (1994). The statute reads, in pertinent part:

- (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.
- (b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.
- (c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

Id.

25. *See* NGISC FINAL REPORT, *supra* note 4, at 5-6.

26. *See* 18 U.S.C. § 1084(a).

27. *See* H.R. REP. NO. 87-967, at 1 (1961), *reprinted in* 1961 U.S.C.C.A.N. 2631, 2631.

tion of cyberspace, arguably may not involve a “wire communication” for the conveyance of bets.²⁸

The Wire Act specifically prohibits wagering on “sporting event[s] or contest[s].”²⁹ Most Internet gambling sites, perhaps specifically to avoid targeting by federal laws, concentrate on traditional casino games (e.g., blackjack, roulette), and arguably fall outside of the ken of “sporting events or contests” and are thereby not illegal. According to the Department of Justice and the Federal Bureau of Investigations, the Wire Act nevertheless prohibits Internet gambling;³⁰ however, the Wire Act is limited in its application to punishing gambling for business purposes. That is, the “house” may be punished for running illegal Internet gambling establishments, but individual bettors are not targeted for prosecution.³¹ Indeed, a few Americans have been investigated recently for Internet-related gambling; however, most gambling websites are “physically located” offshore, outside the jurisdiction of federal enforcement officials.³² Further compounding the problem, Internet casinos can easily change the physical location of their host servers (computers) and Internet IP addresses (numerical addresses read by the ISP) of their casinos, keeping operations one step ahead of law enforcement, even while maintaining a continuously active website under an unchanging domain name (e.g., www.bigmoney.com).³³

In 1997, the United States Senate and House created legislation intended to amend the Wire Act to clear up ambiguities and sharpen the Wire Act’s applicability to Internet bettors.³⁴ The Senate-introduced bill passed ninety to ten, but neither it nor a similar measure introduced in the House were ever signed into law, and the effort was eventually relinquished.³⁵ In 1999, Senator Jon Kyl of Arizona spearheaded a new effort, introducing the Internet Gambling Prohibition Act (“IGPA”), a slightly revamped version of the 1997 bill.³⁶ Following minor amendments, Senator Kyl’s bill passed in the Senate on the third attempt in November 1999.³⁷

28. *See id.*

29. *Id.*

30. *See* Yarbrough, *supra* note 18, at 1216-25, 1232.

31. *See id.* at 1223.

32. *See id.* at 1226-34.

33. *See* NGISC FINAL REPORT, *supra* note 4, at 5-11.

34. *See id.* at 5-10.

35. *See* Anthony Cabot, *Internet Gambling in the Information Age*, NEV. LAW., Mar. 1999, at 20-21.

36. *See* Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (1999).

37. *See* 145 CONG. REC. S14863-02, S14870 (daily ed. Nov. 19, 1999).

Kyl's bill failed to pass in the House,³⁸ however, owing to a number of factors, including objections that the measures were too narrow. The bill specifically prohibited "a person engaged in a gambling business knowingly to use the Internet or any other interactive computer service . . . to place, receive, or otherwise make a bet or wager."³⁹ Although apparently intended to apply to bettors as well as gambling establishments, it is doubtful that most Internet users who gamble, even heavily, could be described as "engaged in a gambling *business*"⁴⁰ rather than pursuing a casual pastime on their computers. Although the proposed statute *could* have covered bookmaking agents and "professional gamblers," placing bets on the Internet often renders the need for a "bookie" middleman obsolete. Furthermore, considering the specious tax benefits to be gleaned from filing and claiming tax status as a professional gambler, it may be difficult to produce sufficient evidence that even the most successful gamblers do it as a professional business and can be identified as such. Meanwhile, Internet users will still be able to place their bets through the predominantly offshore gambling websites that, although "engaged in gambling business," present a serious challenge to law enforcement efforts in establishing jurisdiction.

In other respects Senator Kyl's bill was clearly too broad. The bill made it illegal "to send, receive, or invite information assisting in the placing of a bet or wager."⁴¹ It is difficult to pinpoint how broad this "information assisting in the placing of a bet"⁴² language may have been interpreted and thus what was and what was not covered. Most casinos are amazingly coy in their depiction of gambling in advertisements, whether in print, television spots, billboards, or on the Internet, and would seem to have fallen outside of the bill's scope. Nonetheless, was the simple fact that a Las Vegas hotel and casino featured gambling on the premises, and had a website designed to entice prospective visitors—even without explicit mention of the existence of "gaming" opportunities—enough of a nexus to have supported charges of violation of the proposed law? Did the posting of point spreads present sufficient betting information to bring charges? Because such enterprises as personal websites of dedicated fans and websites adjunct to sports channels

38. See, e.g., Andrew Beyer, *On Internet Bill, All Bets Are Off*, WASH. POST, July 26, 2000, at D1 (discussing failure of Internet Gambling Prohibition Act to pass in the House).

39. S.692 § 2(b)(1).

40. *Id.* (emphasis added).

41. *Id.* § 2(b)(1)(B).

42. *Id.*

(e.g., ESPN, CNN/SI) may have fallen within the penumbra of this bill's scrutiny, the bill's language may have been publicly perceived as being too expansive.

The effort to ban Internet gambling has not ceased. The Comprehensive Internet Gambling Prohibition Act of 2000⁴³ has been introduced into the House, featuring language remarkably similar to that of the predecessor Kyl bill. Note that even should the current effort or future anti-Internet gambling bills ever be signed into law, they may yet encounter constitutional challenges. In the 1997 case, *Reno v. American Civil Liberties Union*,⁴⁴ the Supreme Court found that the provisions of the Communications Decency Act, banning indecent (and obscene) materials from the Internet, were unconstitutionally broad.⁴⁵ The Court determined that the restrictions on "indecent" materials are content-based impositions on free speech and thereby infringe First Amendment rights,⁴⁶ even in the form of "commercial speech," which traditionally receives less protection than other more privileged forms of speech.⁴⁷ One may forcefully argue that Internet advertising by gambling enterprises, particularly advertising that does not offer explicit wagers, should receive protection at least equal to that granted individuals posting pornography on the Internet. An interesting irony of this situation is that anti-Internet gambling bills establish conditions under which the groups with perhaps the greatest desire to see Internet gambling operations *banned*—that is, the "live" casinos of Nevada and elsewhere—are simultaneously the "easiest targets" for enforcement of the ban, should the ban be broadly interpreted. As a result, the casinos may present one of the strongest contingents wishing to see the Kyl-inspired bills killed in Congress.⁴⁸

43. H.R. 5020, 106th Cong. (2000).

44. 521 U.S. 844 (1997).

45. *See id.* at 849.

46. *See id.* at 874.

47. *See, e.g., Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 772 n.24 (1976).

48. The Las Vegas casinos have had notable influence in Washington politics and until now have generally supported legislation that would impede the expansion of legalized gambling (in order to stifle potential competitors). Now, however, the casinos appear to be doing an about-face. Perhaps, in addition to seeing the dangerous double-edged sword that such Kyl-type gambling prohibition legislation may present to casino interests, the casinos have come upon an even more pragmatic reason to oppose such legislation: the casinos may be seeking to branch out into the business of Internet gambling, too. *See Marci McDonald, Betting the House*, U.S. NEWS & WORLD REPORT, Oct. 16, 2000, at 15 (reporting interest in Internet gambling investment opportunities by chiefs of large Las Vegas casinos);

IV. GAMBLING ON NATIVE AMERICAN LANDS

The emergence of legal gambling on Native lands and the resulting benefits (in revenue and provision of jobs) to Native Americans are the most salient developments—and perhaps the best news to be heard—over the last decade in American legalized gambling. Many Native communities have lifted themselves out of moribund economic conditions with the establishment of tribal casinos.⁴⁹ Foxwoods, a casino owned by the Mashantucket Pequot tribe in Connecticut, is not only one of the largest casinos in the world,⁵⁰ it is also the most profitable⁵¹ (and for accoutrements, lavishness, and “quality of stay” purposes, may be perceived as being on par with any of the Vegas casinos). The State of Connecticut sanctioned the efforts of the nearby Mohegan tribe to construct a rival casino, the Mohegan Sun, which has found similar success in recent years. Of course, Foxwoods and the Pequots capitalized on the rare fortune of being essentially the lone gambling opportunity in the densely-populated New England region, a circumstance other tribes will be unable to match in today’s nearly-saturated market. Nevertheless, many tribes have found the development and operations of gambling ventures to be worthwhile endeavors, particularly when faced with little else in the way of opportunity.⁵²

Native tribes in the contiguous United States are able to capitalize on unique federal-state-tribal sovereignty relationships to allow for the establishment of casinos, even in states which allow for some forms of gambling but do not otherwise allow for casinos (e.g., California and Washington).⁵³ Perhaps unfortunately, Alaska Natives are unable to exploit this same combination of factors (that allow tribal casinos), due to their anomalous legal status. In 1971, the Alaska Native Claims Settlement Act,⁵⁴ adopted by Congress, specified that Alaska Native tribes would no longer continue as

see also Donald L. Bartlett et al., *Throwing the Game; Why Congress Isn’t Closing a Loophole That Fosters Gambling on College Sports—and Corrupts Them*, TIME, Sept. 25, 2000, at 25 (reporting on political influence of gambling interest groups and impact of legalized sports betting on athletics).

49. See NGISC FINAL REPORT, *supra* note 4, at 6-6.

50. See *id.* at 6-1.

51. See James H. Frey, *Federal Involvement in U.S. Gaming Regulation*, in GAMBLING, *supra* note 6, at 148.

52. See generally NGISC FINAL REPORT, *supra* note 4, at 6-5 to 6-6 (discussing potential of gambling revenue to alleviate unemployment, poverty, and other socioeconomic problems faced by many Native American communities).

53. See NGISC FINAL REPORT, *supra* note 4, at 6-10.

54. Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified at 43 U.S.C. §§ 1601-1629(e) (1994)).

“tribes” *per se*, living on sovereign “reservations” (with inalienable land rights) under the trusteeship of the federal government.⁵⁵ Rather, Alaska “tribes” would be recharacterized as private corporations (with constituent Natives receiving shares) to be incorporated under Alaska state law and subject to Alaska jurisdiction.⁵⁶ “Reservation” lands would cease as such, and the newly formed Native corporations would receive conveyance and title (again, under state law) to forty-four million acres of *alienable* land and an award of \$962.5 million.⁵⁷ This status as state-governed corporations on privately owned Alaska land distinguishes Alaska Natives from Native tribes in the contiguous United States, and it is this same distinction that may render Alaska Natives unable to garner new wealth via the gambling industry in the same manner as Natives of the Lower Forty-Eight.

In *California v. Cabazon Band of Mission Indians*,⁵⁸ the Supreme Court held that tribes, as sovereign nations, were allowed to conduct gambling on “Indian lands” within a state as long as gambling of some form was permitted within that state.⁵⁹ Although the limits of this holding were never really examined, it follows that even if a state were only to allow such minor forms of gambling as pull-tabs and charity bingo, any tribe in that state could conduct *any* form of gambling, including casino table games and slot machines, as long as operations were conducted on Indian lands under tribal sovereignty.⁶⁰

Cabazon created a great deal of ambiguity in defining the limits of state-wide gambling operations. Perhaps to develop a consistent approach, Congress enacted, in the following year, the Indian Gaming Regulatory Act of 1988 (“IGRA”).⁶¹ This Act divides gambling operations into three classes.⁶² The first two classes consist of fairly minor and non-lucrative forms of gambling, such as social games, bingo, and pull-tabs.⁶³ As long as gambling of a particular class is legal in any form within a state, tribes are able to

55. *See id.*; *see also* Alaska v. Native Village of Venetie Tribal Gov’t, 522 U.S. 520, 523-24, 532-33 (1998) [hereinafter Venetie II]. The Metlakatla/Annette Island Reserve is excepted from these ANCSA provisions; Natives of this island reservation in Southeastern Alaska may be considered to possess similar legal status to that of Natives in the contiguous United States.

56. *See Venetie II*, 522 U.S. at 524.

57. *See id.*

58. 480 U.S. 202 (1987).

59. *See id.* at 210-11, 220-21.

60. *See id.* at 210-14.

61. 25 U.S.C. §§ 2701-2721 (1994).

62. *See id.* § 2703(6)-(8).

63. *See id.* § 2703(6)-(7).

conduct games of these sorts completely at their discretion without the constraints of state or federal oversight.⁶⁴ The third class (i.e., “Class III”) encompasses the most lucrative forms of gambling, including table games, slot machines, pari-mutuel horse racing, private lotteries, and so forth.⁶⁵ Under the IGRA, tribes wishing to develop Class III gambling ventures on Indian lands would have to work out a compact with the applicable state government to do so.⁶⁶ Most states now feature state-sponsored lotteries, and it would hardly be surprising that the same state government would be somewhat unwilling to extend gambling rights to rival Native operations, as that would permit the Native games to cut into the state’s business. Florida (which operates various state-sponsored lottery games) failed to participate in compact negotiations with the Seminole Tribe for gambling rights. The Seminole Tribe sought redress in the courts to force the state of Florida to negotiate in good faith. In the ensuing case, *Seminole Tribe of Florida v. Florida*,⁶⁷ the Supreme Court ruled that the Eleventh Amendment granted Florida sovereign immunity protection as a state, and thus the state was not subject to suit in federal court by the Seminoles.⁶⁸

The IGRA provides that in situations where state governments are unwilling or unable to develop compacts with Native tribes, the Secretary of the Interior may step in to determine the proper extent of gambling operations the Native tribes may undertake.⁶⁹ However, the IGRA dictates that the Secretary of the Interior will “negotiate” with the governor of the relevant state to come to the proper result.⁷⁰ Certainly, the state tactic of refusing to negotiate a compact with an enterprising tribe can be readily taken one step further by refusing to negotiate with the Secretary of the Interior. The IGRA is ambiguous as to whether the input of the state governor is required, or is rather a desirable act of consultation in the process.⁷¹ If the governor’s input is mandated, the Department of the Interior and Native tribes may be at a loss under the Eleventh Amendment to force a stubborn and taciturn governor to come to the bargaining table (this, in fact, is the common

64. *See id.* § 2710(b)(1)(A).

65. *See id.* § 2703(8).

66. *See id.* § 2710(d)(1)(C).

67. 517 U.S. 44 (1996).

68. *See id.* at 72.

69. *See* 25 U.S.C. § 2719.

70. *See id.*

71. *See id.*

view among the states and states' attorneys general).⁷² If, however, the governor's role is simply advisory, perhaps the "negotiations" may be conducted and concluded *without* the input of a state governor, and the Secretary of the Interior has a free hand in plotting the proper course for enterprising Native tribes.⁷³ Although the *Seminole* result hints that the IGRA may require the participation and approval of the state governor, the case does not specifically cover this ground and a strong argument may be advanced that the Department of the Interior has sole determinative authority.

The notion that the participation of the Secretary of the Interior is necessary, and that the participation of state executive officials *may* be necessary, in determining the legal parameters of Native use of *their own* sovereign lands, triggers separation of powers concerns, particularly under the Appointments Clause in Article II of the United States Constitution.⁷⁴ If a law contains a severability clause, and a portion of that law is found by the courts to be unconstitutional, the offending portions may be omitted, if possible, in such a way that the remainder of the statute can be maintained, rather than rendering the entire statute unconstitutional.⁷⁵ The IGRA contains such a severability clause, which may come into play owing to the convolutions surrounding interpretation of its language.⁷⁶

72. See Alex Tallchief Skibine, *Gaming on Indian Reservations: Defining the Trustee's Duty in the Wake of Seminole Tribe v. Florida*, 29 ARIZ. ST. L.J. 121, 122 (1997).

73. See Jason Kolkema, Comment, *Federal Policy of Indian Gaming on Newly Acquired Lands and the Threat to State Sovereignty: Retaining Gubernatorial Authority over the Federal Approval of Gaming on Off-Reservation Sites*, 73 U. DET. MERCY L. REV. 361, 363 (1996).

74. The Appointments Clause provides in pertinent part

[the President] shall appoint Ambassadors, other public ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. CONST. art II, § 2. There is no authority for Congress to delegate power to a state official (e.g., state governor), not properly "appointed" as a federal officer, to veto favorable determinations made by an Executive Branch official legislatively charged with making that determination (e.g., the Secretary of the Interior); such actions would violate general separation-of-powers principles and the Appointments Clause. See *Confederated Tribes of Siletz Indians of Oregon v. United States*, 110 F.3d 688, 696-97 (9th Cir. 1997).

75. See *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987).

76. See *Indian Gaming Regulatory Act of 1988*, 25 U.S.C. § 2721 (1994).

In *Confederated Tribes of Siletz Indians of Oregon v. United States*,⁷⁷ the Ninth Circuit wrestled together a compromise, putatively salvaging the constitutionality of the IGRA, while also allowing the Oregon governor to have determinative say over Native use of land (though the decision expressly *claims* that control is determined by Congress).⁷⁸ Meanwhile, the Secretary of the Interior has published a ruling claiming that, should negotiations between tribes and states fail, the Secretary has the power to approve a Native request to operate gambling facilities.⁷⁹ The Secretary has agreed not to implement the provisions of this ruling until a federal court has addressed the issue of his authority to issue such provisions.⁸⁰

Clearly, an interpretation of the IGRA acceptable to all interests is lacking, and this “intrinsic controversy” written into the IGRA might very well still be determined unconstitutional in its application. Should this be the case with the IGRA, restructuring the law while omitting the offending text (as to who has “final say”) would revert the resolution of “conflicts” between states and Natives residing “within the states” back to the federal common law precedent of *Cabazon*.⁸¹ Applying *Cabazon*, tribes would no longer need to negotiate Class III gambling rights with state governors or resort to the assistance of the Department of the Interior. Rather, tribes would be able to establish Class III gambling to the extent that tribal laws prescribe in all situations in which the state allowed any form of legal gambling.⁸²

Note that if states take an antagonistic approach to the concerns of tribes and are unwilling to negotiate Class III gambling agreements, but rather hide behind the comfortable protections of the Eleventh Amendment, the states are then faced with an unfortunate possible countermeasure. That is, the tribes may borrow the states’ own strategy, a strategy of determined refusal to negotiate. In 1998, the Supreme Court decided, in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*,⁸³ that tribes retained sovereign immunity and were not subject to civil suit in state courts, even in situations where the tribe had conducted business (or even tortious

77. 110 F.3d 688 (9th Cir. 1997).

78. *See id.* at 694-98.

79. *See* NGISC FINAL REPORT, *supra* note 4, at 6-11.

80. *See id.* at 6-12.

81. *See* Skibine, *supra* note 72, at 124-25.

82. *See* *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 210-14, 220-21 (1987).

83. 523 U.S. 751 (1998).

actions) *outside of reservation lands*.⁸⁴ Thus, a tribe might be able to establish a Class III gambling casino against the direct opposition of the state government, and yet the state would be left without any means of legal recourse.⁸⁵

This introduces the question as to whether members of Native corporations are also covered by the protections of *Kiowa* in their business dealings (though the Alaska Native Claims Settlement Act would strongly suggest exclusion, they not being “tribe” members), and it is difficult to predict how this already strained grasp for definitional boundaries would and should be handled by the courts. Would a tribe from the Lower Forty-Eight be able to come to Alaska and set up business, even gambling, unfettered by state jurisdictional concerns? These dances around the Eleventh Amendment, and these convoluted explorations around the boundaries of federal, state, and tribal sovereignty have posed difficult problems for the courts, and almost any result may seem to reveal its own stripe of inequity. One hopes that Congress, the courts, the tribes, and the states will be able to work out some kind of common ground in the near future that can serve to benefit both the tribes and the states.

A discussion of the current legal state of affairs for Native tribes of the other states is necessary to obtain a sense of what is conventional practice and considered equitable in the contiguous United States. However, as indicated previously, these laws, rulings, and attendant convolutions may not come to bear directly on the actions of Alaska Native corporations, a result made even more likely because of a recent Supreme Court case. In *Alaska v. Native Village of Venetie Tribal Government (Venetie II)*,⁸⁶ a unanimous Court held that the 1.8 million acres of land owned and occupied by the Venetie Natives *did not* qualify as “Indian lands,” as they were converted to alienable privately owned property (owned by the Native corporation) under the Alaska Native Claims Settlement Act, and thus were not to be characterized as lands under tribal sovereignty.⁸⁷ Rather, the lands are subject to the laws and jurisdiction of the state of Alaska.⁸⁸ The ruling nominally reinforces the notion that Alaska Natives are to be granted the same rights and privileges as other American citizens, but the ruling also leaves the Alaska Native corporations in an arguably worse position than that of other tribes living under federally supervised “res-

84. *See id.* at 760.

85. *See* NGISC FINAL REPORT, *supra* note 4, at 6-10.

86. 522 U.S. 520 (1998).

87. *See id.* at 523-24, 526-33.

88. *See id.*

ervations” or “allotments” in that they are unable to establish sovereign use of their own lands. The *Cabazon*, *Seminole*, *Kiowa*, and *Venetie II* Supreme Court decisions are all subject to sharp criticism that they have led to inconsistent and unfair results, and all cases seem to hinge to a great extent on brief passages of statutory construction, without perhaps fully addressing the federal, state, and tribal interests underlying the cases. Owing to the controversies stemming from these recent cases, it is highly likely that more cases dealing with Native and state rights will soon find their way to the Supreme Court. Ideally, the Court and a watchful Congress will work to assure that a coherent and equitable distribution of rights is achieved.⁸⁹

V. STATE LOTTERIES

Perhaps no other form of gambling has affected the American cultural consciousness as much as the recent proliferation of state lotteries. Lotteries have been around, and have been legal, since the birth of our nation.⁹⁰ Much of the public works of the American Colonies were funded with lotteries, and such institutions as Harvard, Yale, Princeton, King’s College (Columbia), and others received a portion of their initial capital through lotteries.⁹¹ Public support of legal lotteries has ebbed and flowed over the two centuries since that time, but the modern appreciation of state-sponsored lotteries springs from the establishment of the New Hampshire state lottery in 1964.⁹² New York followed suit in 1969, New Jersey in 1970, and as the promotional efforts developed in sophistication (as did the games themselves), the nationwide rush to develop state lotteries caught on.⁹³ Presently, thirty-seven states and the District of Columbia run government-sponsored lotteries.⁹⁴

89. The gambling business opportunities for Alaska Native corporations are perhaps not as limited as this section portends. Although unable to invest in gambling operations within Alaska borders, at least some Native corporations have capitalized on investments in gambling operations in other states that allow for a greater range of gambling ventures. See William J. Tobin, *Voice of the Times: We Don’t Want to Rush the Season, But . . .*, ANCHORAGE DAILY TIMES, Oct. 8, 2000, at J3 (commentary describing Sealaska Corp. investment in Native gambling operation in Southern California, and Cook Inlet Region, Inc., investments in Nevada resorts).

90. See Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 MISS. L.J. 291, 299 (1995).

91. See *id.* at 299-300.

92. See *id.* at 303.

93. See *id.*

94. See NGISC FINAL REPORT, *supra* note 4, at 2-1.

The main argument in support of state lotteries is that they produce large amounts of revenue, revenue that may reduce the need to levy taxes.⁹⁵ Lottery “taxation” also merits distinction as a tax only paid by those who choose to pay it; it is a strictly voluntary tax.⁹⁶ In further support, proponents and promoters of state lotteries may specify that a portion of the lottery revenue is to be earmarked for particular causes, such as improved education.⁹⁷ Earmarking revenue for sympathetic causes has helped win considerable popular support for state lotteries.⁹⁸ Lotteries are thus generally accepted, if not enthusiastically encouraged, by the people of most states, and lotteries perhaps pave the way to the acceptance of other forms of legalized gambling within the various states. For example, as California featured a well-publicized state lottery long before tribal casinos became an accepted and profitable industry, one can perhaps infer that Californians, now accepting the tribal casinos, would be willing to take the next step and legalize other casinos. In fact, pseudo-variants on casinos, card rooms, can be found in both San Jose and Los Angeles, and California voters approved earlier this year the largest expansion yet in the types and amount of Native gambling to be permitted in the state.⁹⁹

But lotteries are not all fun and games benefiting their respective states without costs. Lotteries are an especially heavily taxed form of gambling to pursue, far and away the least remunerative to players/taxpayers of any of the conventional forms of gambling.¹⁰⁰ Whereas a craps player can expect to win back about 99% of everything wagered, and slot players will win back generally between 85%-97% of every dollar they gamble,¹⁰¹ lottery players face a mere 55% expected return on the money they wager.¹⁰² Even as far as “sin taxes” go, the lottery players face an especially heavy one to enjoy this particular brand of entertainment.

95. See Clotfelter et al., *supra* note 5, at 6.

96. See Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 48 (1992).

97. See Clotfelter et al., *supra* note 5, at 6.

98. See *id.*

99. See Mark Gladstone, *Gambling Interests Have Strong Voices in State Politics*, SAN JOSE MERCURY NEWS, June 6, 2000 (noting that “California continues to loosen its historic restrictions against betting”); see also Mark Henry, *Indian-Gaming Measure Wins Easily; Inland Tribal Leaders Among Those Celebrating Prop. 1A Victory*, PRESS-ENTERPRISE, Mar. 8, 2000, at A14 (describing popular support for expansion of gaming at Native casinos).

100. See NGISC FINAL REPORT, *supra* note 4, at 2-3.

101. See DWIGHT CREVET & LOUISE CREVET, *SLOT MACHINE TRIVIA 5* (1989).

102. See Clotfelter et al., *supra* note 5, at 5.

Another shortcoming of lotteries is that the depiction of lottery money going to “good causes,” such as to further educational funding, may be disingenuous on the part of lottery promoters.¹⁰³ When lottery monies are used to fund specific, small-scale projects, it is fairly easy to track and match the lottery revenue with the intended distribution.¹⁰⁴ If, for example, a lottery *could* be created to fund widening portions of the Seward Highway, it would be fairly easy to track the revenue “contributed,” and to track the funds as they were applied to their purpose. However, for larger scale and ongoing efforts, in which the “earmarked” lottery money serves as only a small portion of budget allocations, the earmarked money may become lost in the budgetary shuffle.¹⁰⁵ For example, if lottery revenues are earmarked to provide for ten percent of a state’s educational budget, it becomes much easier for political considerations and other expediencies to lead to lottery revenues being siphoned off for other uses.¹⁰⁶ In a perfect situation, where revenue earmarked for education *actually contributes* to education, it may still simply substitute for other money *originally* budgeted for educational purposes, with this “original allocation” then used for alternate purposes (perhaps to help pay for administrative and marketing efforts in promoting the state lottery).¹⁰⁷ Seldom does the *total* money actually allocated to education increase.¹⁰⁸

The greatest disadvantage of legalizing state lotteries is the cost borne by those who play them the most and contribute (i.e., lose) the most money: the poor.¹⁰⁹ Whereas most forms of gambling tend to see higher participation by individuals as their income increases, research has shown that the greatest per capita participation in state lotteries is by minorities with little education and with incomes below the poverty line.¹¹⁰ Thus, although other forms of gambling may serve as income-neutral or even progressive taxes, state lotteries act as a very severe regressive tax. One could argue that the actual individual players would not want the lotteries structured otherwise; it is specifically the astronomical payoffs (un-

103. *See id.* at 6.

104. Dedicating lottery funds to such specialized, albeit worthy causes, will nonetheless encounter problems of constitutionality. As article IX, section 7 of the Alaska Constitution reads, “[t]he proceeds of any state tax or license shall not be dedicated to any special purpose.”

105. *See* Clotfelter et al., *supra* note 5, at 6.

106. *See id.*

107. *See* Rychlak, *supra* note 96, at 52.

108. *See id.*

109. *See* Clotfelter et al., *supra* note 5, at 13.

110. *See id.*

fortunately, against astronomical odds) that attract the lottery players, payoffs perhaps only available when “financed” by a low expected return for any given player. On an individual basis, the choice to participate in lotteries might be fine, but the aggregation of these individual choices to participate in lotteries seems a costly societal undertaking to pursue great risks. It is perhaps not surprising that lottery promoters and administrators draw little attention to the poor odds and the regressive tax aspects of lotteries in their marketing efforts.¹¹¹ Looking at how the whole is supported by its individual members, it is generally not a good policy for a community to have its taxes paid by those who can bear its burden least.¹¹²

Alaska simply would not stand to gain much by legalizing a lottery, state-run or otherwise. Alaska, perhaps singular among the states in this regard, runs at a tax surplus.¹¹³ Many Alaska programs are well-subsidized; the pressure to generate new sources of revenue is possibly not as great in Alaska as it may be in other less fortunate states.¹¹⁴ Furthermore, many states have joined in the lottery frenzy in a vicious race to the bottom, a race that Alaska can probably avoid.¹¹⁵ Rather than passively allowing its citizens to cross state lines to contribute money to lotteries in neighboring states, many states have approved lotteries simply to make sure that money earned by their own taxpayers remains within the state, whether put to productive use or not.¹¹⁶ Alaska, nearer to Russia and Canada than to the other American states, does not face this problem of citizens readily spending money on the lotteries of rival states.

Of course, adding tax dollars to an already existent tax surplus may not be a bad thing. With a state lottery, however, most of the revenue generated comes from the state’s own population, and as such, the money going to lotteries may be cheating other Alaska goods and services on which the money would otherwise have been

111. *See id.* at 16-17.

112. These regressive tax criticisms may be applied to pull-tabs, bingo, and some other forms of gambling as well, although research on the demographics of *who* participates in these games and *how much* they participate is not extensive enough to draw any conclusive parallels to lottery spending.

113. *Cf.* Tom Fink, *Cap Would Force Government to Face Problems*, ANCHORAGE DAILY NEWS, Oct. 2, 2000, at B4 (commentary putting the current state surplus at over \$30 billion dollars, and estimating state spending at over \$10,000 per capita annually).

114. *See id.*

115. *See* Rychlak, *supra* note 96, at 58.

116. *See id.*

spent.¹¹⁷ The most successful gambling operations are those that attract the expenditures of consumers residing outside the original community.¹¹⁸ Most Las Vegas, Mississippi Gulf Coast, and Foxwoods gambling revenue comes from out-of-state visitors, rather than from home state residents.¹¹⁹ This strategy for success may apply to lotteries as well. The Louisiana State Lottery, commonly known back then as “The Serpent,” was a highly successful late 1800’s enterprise that garnered *ninety-three percent* of its immense profits from non-Louisiana residents.¹²⁰ Venom spewed at the lottery by politicians in other states, as a result of its nationwide success (coupled with some inherent corruption in administration of the lottery), inspired the strong legal and moral prohibitions against most gambling in the late nineteenth century that continued until legal gambling found a resurgence in mid-1960’s America.¹²¹ Unless administered on the Internet (which creates its own problems, not the least of which is that those most likely to play the lottery are also among those least likely to have Internet access),¹²² there is simply little way for an Alaska lottery to attract out-of-state dollars. Beyond revenue generation, the most laudable goal for the legalization of gambling would be the creation of new jobs. State lotteries are not a particularly effective means of creating new jobs. Thus, although most Americans regard state lotteries as neutral or even beneficial enterprises, there is not much economic benefit in Alaska’s following the lead of its sister states by developing an Alaska lottery.

117. See generally Clotfelter et al., *supra* note 5, at 12 (noting that participation rates for lottery state residents are double those for non-lottery state residents, and per capita lottery spending in lottery states is triple that of non-lottery states; these figures may be interpreted various ways, but suggest that most lottery spending comes from in-state residents).

118. See William R. Eadington, *Contributions of Casino-Style Gambling to Local Economies*, in GAMBLING, *supra* note 6, at 53, 61.

119. See *id.* at 60-61.

120. See Rychlak, *supra* note 96, at 40-44.

121. See *id.* at 42-44.

122. Note that even though lottery participation *rates* increase slightly with increase in personal income (up to \$100,000 annual income), per capita spending is inversely correlated with wealth (i.e., people with lower incomes spend more on lotteries). Thus, Internet lotteries would face the compound problem of marketing to a smaller potential audience than would a conventional lottery as well as an inability to target the demographic likely to spend the most on the product. See Clotfelter et al., *supra* note 5, at 13, tbl.11.

VI. CONVENIENCE GAMBLING

Convenience gambling comprises mostly slot machines and video poker terminals found in establishments other than casinos, that is, convenience stores, gas stations, bars, restaurants, and the like.¹²³ This type of gambling has been under recent consideration in Alaska.¹²⁴ It is a fairly common form of legal gambling, but is not without controversy. Until very recently, South Carolina had the most extensive allotment of convenience gambling in the United States, but in 1999, the state legislature voted for an outright ban.¹²⁵ While not as readily characterized as a regressive tax as state lotteries, on the flip-side, convenience gambling does not generate the substantial revenue that lotteries do.¹²⁶ Furthermore, as people only infrequently travel across state lines to play slot machines in stores (even to closely neighboring states), convenience gambling would rely upon and draw revenue from the local Alaska population at least as much as a lottery would.¹²⁷ Convenience gambling also does not create new jobs in the way that destination gambling

123. See NGISC FINAL REPORT, *supra* note 4, at 2-4.

124. See Joling, *supra* note 12, at B3. Note that Juneau and one of Alaska's southernmost towns, Ketchikan, have strong interests in both supporting and opposing the adoption of gambling. These cities receive a heavy infusion of tourists and tourist dollars each year, in that some 600,000 cruise ship passengers come ashore in Juneau and Ketchikan annually. Gambling may intuitively seem an attractive enticement for the tourist crowd, but the reality of the situation undermines this presumption. When outside of American waters (and, according to critics, sometimes even while in Alaskan waters) these cruise ships feature lavish on-board gambling opportunities that might forestall any interest (or available funds) that tourists might have to gamble while ashore.

125. See Act of July 2, 1999, 1999 S.C. Acts 125 (comprehensive video gambling act). Much of the political opposition to legal convenience gambling was based on moral grounds. Note that the Act specified that a state-wide voter referendum would determine the continued existence of legal video gaming terminals. The South Carolina Supreme Court deemed the referendum plan unconstitutional, but owing to a severability clause in the Act, otherwise left the Act's prospective ban on convenience gambling in place. Convenience gambling became illegal in South Carolina on July 1, 2000. See *Joytime Distrib. and Amusement Co. v. State*, 338 S.C. 634 (S.C. Oct. 14, 1999), *reh'g denied*, Oct. 20, 1999, *cert. denied*, 120 S. Ct 1719 (Apr. 24, 2000); see generally Chris Burritt, *S.C. Pulling Plug on Video Poker; Luck Runs Out Tonight at Midnight for Thousands of Players and the Businesses that Raked in the Profits*, ATLANTA J. AND CONST., June 30, 2000, at 6C (analyzing impact on South Carolina jobs and revenue as result of ban).

126. See Clotfelter et al., *supra* note 5, at 2.

127. Cf. Adam Rose, *The Regional Economic Impacts of Casino Gambling: Assessment of the Literature and Establishment of a Research Agenda* 7 (Nov. 5, 1998), available at <<http://www.ngisc.gov>> (report to the National Gambling Impact Study Commission).

resorts may (via restaurants, lodging, shops, and other entertainment above and beyond gambling).¹²⁸

One criticism of all forms of gambling is based on the substitution effects theory.¹²⁹ It provides that money that would otherwise be spent on other aspects of the economy (e.g., food, shelter, clothing) is redirected to gambling.¹³⁰ That is, gambling spending substitutes for other expenditures. Revenue subject to substitution effects can be described as a transfer of wealth rather than the creation of wealth.¹³¹ This critique is especially cutting when applied to convenience gambling, as people going to the local market may spend their money on a slot machine rather than the night's meal. The paucity of scientific research on substitution effects and patterns of how gambling consumers allocate their expenditures requires application of the theory to be interpreted cautiously. Nonetheless, when forms of gambling are saliently marketed and made readily available in much the same manner as "impulse buys" (e.g., candy and tabloids) at the same locations, one might readily infer that convenience gambling merely redirects income that would otherwise reach other goods and services.

Slot machines, video poker and other video gambling terminals are considered the most efficient revenue-generating and perhaps most addictive forms of gambling.¹³² Most casinos devote the vast majority of their floor space to slot machines,¹³³ and would perhaps do away with much less profitable-per-square-foot table games (such as craps, blackjack, and poker) altogether if it were not for the fact that table games often draw a different group of target consumers, and that forsaking table games might lead to loss of market share to those neighboring casinos retaining table games. Thus, the types of games which are used in convenience gambling are perhaps the best option from the viewpoint of casino manage-

128. See discussion of destination gaming resorts *infra* Part IX; see also NGISC FINAL REPORT, *supra* note 4, at 2-3 to 2-6; William R. Eadington, *supra* note 118, at 59-62.

129. Substitution effects are also known as "cannibalization" effects. See Rose, *supra* note 127, at 5-8, 29. See generally Ricardo Gazel, *The Economic Impacts of Casino Gambling at the State and Local Levels*, in GAMBLING, *supra* note 6, at 74-79.

130. See *id.*

131. See PAUL A. SAMUELSON, ECONOMICS 425 (10th ed. 1976). But see Eugene Martin Christiansen, *Gambling and the American Economy*, in GAMBLING, *supra* note 6, at 48-49.

132. See NGISC FINAL REPORT, *supra* note 4, at 2-5.

133. See John Hoffman et al., *Analysis of the Casino Survey: Report to the National Gambling Impact Study Commission* tbl.3 (Apr. 14, 1999), available at <<http://www.ngisc.gov>>. Cf. VINSON, *supra* note 1, at 73.

ment,¹³⁴ but there is little reason why the government would focus on the factors of maximizing the addictive nature of state-sponsored gambling enterprises and maximizing profits-per-square-foot dedicated to gambling use, particularly when these factors will operate primarily on a local consumer base. Developing convenience gambling in Alaska is probably not advisable at this time, particularly in parts of the state drawing few out-of-state visitors to help offset convenience gambling's cannibalistic impact on Alaska's own citizens.

VII. SPORTS BETTING

Gambling on the outcomes of athletic events is the greatest source of *illegal* gambling revenue in America.¹³⁵ It is also the only form of *legal* gambling that sports a sizable contingent of professionals making comfortable livings purely off of choosing winners correctly more often than not (i.e., while not participating or influencing the outcomes directly). That said, this form of gambling is currently truly legal in but one state: Nevada. (Oregon, being quirkily Oregon, has a lottery based in part on the outcome of professional football games, but this is not sports betting in a conventional sense.¹³⁶) Atlantic City, New Jersey, features many professional boxing matches and was given the choice as to whether to allow legal sports betting on athletic events in 1976, when legal gambling in Atlantic City was first established, but officials refrained from exercising this option at the behest of professional sports leagues that wished to put a cap on the spread of legal sports betting (and perhaps minimize its impact on the athletes).¹³⁷ The NGISC Final Report severely criticizes aspects of sports betting (even more than Internet gambling), specifically recommending "that betting on collegiate and amateur athletic events that is currently legal be banned altogether."¹³⁸

Alaska could make betting on the outcomes of sporting events legal, and would stand to gain a considerable sum in revenue by allocating a portion of the handle to the state, but sports betting, of

134. Cf. JOHN GOLLEHON, LAS VEGAS TRIVIA 168 (2000).

135. See NGISC FINAL REPORT, *supra* note 4, at 2-14.

136. See *id.*

137. See James H. Frey, *Gambling on Sport: Policy Issues*, 8 J. GAMBLING STUD. 351, 360 (1992).

138. See NGISC FINAL REPORT, *supra* note 4, at 3-18. Curiously, it is college football where "professional" gamblers profit the most, it being the one sport where Vegas sportsbooks lose money. The sportsbooks consistently make the money back, and then some, the following day on *professional* football games. See VINSON, *supra* note 1, at 89.

the many forms of gambling available, encounters perhaps the strongest resistance *against* legalization. Although gambling may be looked upon as a reasonably harmless means of entertainment for many adults, it is highly inadvisable that such behavior be stimulated in underage children and young adults, a likely indirect effect of legalizing sports betting.¹³⁹ Many youths are intense sports fans, so a baseline of knowledge and interest in the activity is already present (whereas many forms of gambling, such as playing blackjack or betting on the horses, require a level of familiarity that are usually first acquired through the adult gambling experience itself). Unlike many forms of gambling that require specialized equipment, betting on sporting events is remarkably easy for underage youths to mimic and to actively participate in with little effort. Legalizing sports betting strongly impacts awareness of the practice in young minds, while implicitly condoning the activity as these youths grow older. Legalized sports betting also distorts the popular image of professional and amateur sports, which have expended great efforts to maintain an image of athletics as being distinct, more prestigious, and perhaps more legitimate than other related forms of entertainment, such as professional wrestling.¹⁴⁰

The professional and collegiate sports leagues have suffered through enough gambling scandals to have learned to invest great effort in restricting the amount of wagering over sports events.¹⁴¹ Legal sports betting is exclusive to Nevada; it is not even available at the various tribal casinos nationwide, even though these tribal casinos often face less of the legal and political pressures that casinos under “other jurisdictions” would encounter should they permit sports betting. This pressure is probably due, in no small part, to the lobbying efforts of the professional and collegiate sports leagues in most states. Alaska has no major professional sports teams, and relatively little in the way of collegiate athletics, thus weakening the possibility of arguments and threats by the lobbies of various sports leagues against legalizing sports betting in the

139. *Cf. id.* at 2-14 to 2-15.

140. *See, e.g.,* Elizabeth Wasserman, *Analysis: Should the U.S. Regulate or Ban Online Gambling?* (Aug. 14, 2000) <<http://www.cnn.com/2000/TECH/computing/08/14/gamble.or.not.idg/index.html>>.

141. *See* Cedric W. Dempsey, *NCAA Weighs in on Internet Gambling Bill*, WASH. TIMES, Sept. 28, 2000, at A22 (commentary by NCAA President warning of “threat Internet gambling poses to the integrity of our games and to the welfare of the athletes”); *see also, e.g.,* Lew Freedman, *NCAA: It’s a Losing Battle*, ANCHORAGE DAILY NEWS, Apr. 1, 2000, at 3A (sportswriter opinion column citing recent point-shaving scandals in basketball programs at Northwestern, Boston College, and Arizona State University).

state. Nonetheless, as legal sports betting reaps less revenue than other forms of gambling,¹⁴² and faces a stiff resistance from legalization opponents, legal sports betting is perhaps a less than prime candidate for consideration in the state of Alaska.

VIII. PARI-MUTUEL GAMBLING

Pari-mutuel gambling includes wagering on such live events as horse racing, dog racing, and jai alai.¹⁴³ Quasi-gambling activities along the lines of fishing derbies and dogsled races are common enough in Alaska, and are tightly regulated by state law, but the conventional pari-mutuel activities are mostly infeasible undertakings in Alaska, including jai alai. Even in climates optimally conducive to breeding and sporting thoroughbreds and greyhounds, horse racing and dog racing have become difficult and costly endeavors in the United States. While interest in legalized gambling has risen and profits boomed for most forms of gambling—from lotteries to traditional casino games—profits and market share for pari-mutuel events have steadily *declined* over the past several years.¹⁴⁴ Jai alai, the one common pari-mutuel event that could plausibly be staged in Alaska as well as anywhere, has perhaps weathered the changes in the gambling marketplace worst. Although previously featured in Las Vegas, jai alai is currently limited to Florida (the predominant market, yet with only six venues), Rhode Island, and Connecticut; the continued commercial viability of this form of entertainment is doubtful.¹⁴⁵

Pari-mutuel activities may provide benefits in the way of jobs, particularly for some highly-specialized skilled laborers, but simultaneously (and stemming partially from labor expenses), these activities are costly to operate.¹⁴⁶ Furthermore, pari-mutuel events lack the characteristics that appeal most to the contemporary gam-

142. Private sportsbooks bring in a constant “vig” (percentage of the money wagered) of about 5%, with only a fraction going to the state in taxes, while state-sponsored lotteries can bring in 40% or more of the money wagered as state revenue. See VINSON, *supra* note 1, at 88.

143. See NGISC FINAL REPORT, *supra* note 4, at 2-11. Jai alai, for those not acquainted with the pastime, is a Spanish Basque-originated sport somewhat akin to racquetball, but involves a scoop-like basket attached to the wrist instead of a racquet, and uses an extremely hard *pelota* (very similar in appearance to a billiard cue ball) instead of a springy rubber ball. The *pelota* often travels at speeds well in excess of 100 m.p.h., and this contributes to jai alai’s reputation as a fast-paced and quite dangerous sport.

144. See Christiansen, *supra* note 131, at 39.

145. See NGISC FINAL REPORT, *supra* note 4, at 2-12.

146. See *id.* at 2-12.

bling consumer, and suffer in popularity as a result. As manifested by trends in gambling profit reports, today's gamblers seem to favor events which feature control by the user (or at least the illusion thereof), little cognitive effort, and rapid resolution of betting outcomes. The illusion of control of a horse's performance may not be as clearly evident as choosing whether to hit or stay on a blackjack hand. Seeking a betting advantage by developing familiarity with the respective abilities of various horses, dogs, and jai alai players requires time and intellectual investment that many gamblers may be unwilling to expend. Finally, pari-mutuel event outcomes are resolved slowly. While with off-site betting, an avid gambler can spread bets around numerous racetracks, any one track will be lucky to stage a dozen races over the course of a day, and even the most avid gambler will have difficulty executing more than a score of bets per day. Meanwhile, most table games feature twenty or more gambling outcomes per hour, and slot machines and video gaming terminals allow gamblers *to control* the rate of gambling outcomes (which is often quite high, more than one per minute). It may be safe to bet that popular support and profit potential of pari-mutuel gambling is not sufficient to render legalization in the state of Alaska economically or politically advisable, even under the most pro-gambling zeitgeist.

IX. DESTINATION GAMING RESORTS

The term "destination gaming resorts" refers not to a form of gambling *per se*, but rather to a specific type of gambling facility and the accompanying gambling "experience."¹⁴⁷ Destination gaming resorts are hotels and casinos that attract tourists who come and stay at the resorts (in addition to day visitors) with the intent of gambling and being otherwise entertained (and spending money) at the resort. The hotels and casinos on the Las Vegas Strip are the archetypal examples of destination gaming resorts; such resorts tend to be highly concentrated in specific cities, such as Atlantic City, Reno, and Ledyard, Connecticut (Foxwoods and the nearby Mohegan Sun resorts). These resorts generally feature all of the accoutrements and lavishness that one would expect at other tourist destinations, plus gambling. Needless to say, these operations are extremely capital-intensive. Mirage Resorts (prior to its recent acquisition by MGM for \$6.7 billion) spent \$1.6 billion to construct the Bellagio resort in Las Vegas, which opened in October of 1998.¹⁴⁸ These operations can also be immensely profitable.

147. *See id.* at Executive Summary 25.

148. *See, e.g.,* Dave Berns, *Bellagio Announces End of Public Gallery Viewings*,

As one example, following the merger, MGM Mirage Resorts posted third-quarter 2000 profits of \$73.2 million (up 73% from third-quarter 1999).¹⁴⁹

Destination gaming resorts have the specific goal of drawing revenue from out-of-state tourists rather than focusing efforts on deriving income from the local population. These resorts also have proved a valuable source of jobs for the local population, particularly in such previously troubled areas as the Gulf Coast in Mississippi and Atlantic City. Arguments that gambling is a sterile industry, merely reallocating wealth rather than creating economic growth, lose their force when faced with the phoenix-like successes of such destination gaming resort cities as Las Vegas, Atlantic City, and Biloxi, Mississippi. Las Vegas has risen from an outpost in the desert between Los Angeles and Salt Lake City on I-15, to become far and away the fastest growing city in America.¹⁵⁰ No longer is the city exclusively a “gambling town.” Other industries (e.g., construction, housing, retail goods and services)¹⁵¹ have sprung up to support the growing population and have turned it into a metropolitan area largely indistinguishable—with the exception of two especially lively and garish streets lined with casinos—from any other vibrant large city in the United States. Although the successes of other gaming cities, such as Atlantic City, have not been quite as impressive as that of Las Vegas, the gambling industry in Atlantic City has turned what used to be a former vacation spot relic of the 1920’s into a viable, thriving city once again.¹⁵²

Only one Alaska city has the resources, including an international airport, to develop as a destination gaming resort locale: Anchorage. Perhaps Anchorage does not present itself as a leading

LAS VEGAS REV.-J., May 24, 2000, at 1D.

149. See Dave Berns, *MGM Mirage Profits Soar*, LAS VEGAS REV.-J., Oct. 20, 2000, at 3D. In addition to the opulent Bellagio resort and others, MGM Mirage Resorts lays claim to the largest hotel in the world, the MGM Grand in Las Vegas, at 5,005 rooms. Nine of the ten largest hotels in the world are in Las Vegas.

150. See NGISC FINAL REPORT, *supra* note 4, at 1-1.

151. See, e.g., Genaro C. Armas, *Big Apple, Vegas Top Census Metro Population Charts* (Oct. 20, 2000) <http://foxnews.com/national/102000/census_metrogrowth.sml> (reporting construction industry response to 62% growth in Las Vegas population between Apr. 1990 and July 1999).

152. For those skeptical of the truth of the assertion that Atlantic City (self-proclaimed as “America’s Favorite Playground”) is a thriving jewel on the New Jersey shore, a visit to compare Atlantic City with other portions of the Jersey Coast can serve as a reminder of how positive the impact of the gambling industry can be. Granted, much of this success may be attributed to exorbitant government allocations provided to Atlantic City. Nonetheless, the point that gambling has bolstered the economy of host cities remains a valid, albeit contentious, one.

candidate to become the next gambling resort town along the lines of Las Vegas and Atlantic City, and as far as American tourists and American tourist dollars are concerned, Anchorage is probably not suited for such a role.¹⁵³ Alaska is not easily accessible and the American gambling market is already too close to saturation to enable Anchorage to flourish as a gambling destination based strictly on projected American tourism. But the globally-minded will realize that there is another source of pro-gambling tourists to target: Asia.

With the exception of eight casinos in Macau, gambling is essentially prohibited in the Asian nations of China, India, and Japan¹⁵⁴ (the first, second, and seventh most populous markets in the world.¹⁵⁵) In some ways, this is rather curious, as the notions of luck, fortune, and “gambling” hold a prominent place in Japanese and Chinese cultures.¹⁵⁶ The fortunes of the casinos in Las Vegas are impacted to a remarkable extent by the winning and losing streaks of high-rolling Asian businessmen.¹⁵⁷ Casinos in Britain derive considerable revenue from Chinese visitors.¹⁵⁸ A visit to a card room in San Jose, California, will serve as a boisterous introduction to gambling’s popularity and how passionate large contingents of Chinese and Chinese-Americans are about gambling. There is even a large gambling room, the Dragon Room, adjacent to the main casino floor in the Taj Mahal, Atlantic City’s largest casino, specifically designed to cater to Chinese and Chinese-American tourists. There are few places in the world farther away from China than New Jersey; the fact that Chinese gamblers provide a large enough consumer demand to encourage supply as far away as New Jersey provides salient evidence as to how lucrative targeting these particular consumer markets may be.

153. Although miniscule in comparison to Anchorage, the stunning natural beauty of the surroundings and the idiosyncratic balance between outdoor activities and gambling attractions in Lake Tahoe, Nevada, may serve to make it a suitable model of a “gambling destination” for Anchorage to draw upon for inspiration.

154. See William N. Thompson, *Casinos de Juegos del Mundo: A Survey of World Gambling*, in GAMBLING, *supra* note 6, at 20-21.

155. See U.N. *Revision of the World Population Estimates and Projections* (visited Aug. 25, 2000) <<http://www.popin.org/pop1998/>>.

156. Cf. Thompson, *supra* note 154, at 20.

157. See, e.g., K.J. Evans, *Culture Talk*, LAS VEGAS REV.-J., Dec. 21, 1998, at 1D (noting that 17% of Las Vegas table game revenue, and 80% of revenue from traditionally “high-stakes” games, such as baccarat, comes from Asian high-rollers, known as “whales” in casino parlance).

158. See Thompson, *supra* note 154, at 20.

The vast majority of Asian tourists travelling to the United States with the intent to gamble visit Las Vegas. Anchorage is also a destination for Asian tourists, and a natural advantage that Anchorage possesses over Las Vegas is that a flight from Tokyo to Anchorage takes at minimum four hours *less* travel time (each way) than a flight from Tokyo to Las Vegas.¹⁵⁹ Advantages in flight times to Anchorage compared to Las Vegas may not be as pronounced for flights originating in Hong Kong or other Asian cities, but a general rule of thumb is that flights from Asian cities in the Northern Hemisphere will take less time to Anchorage than they will to Las Vegas—or any other American destination gaming resort city. (Hawai'i features similar travel time advantages, but Hawai'i currently does not allow *any* form of legal gambling, and the current structure of the highly sophisticated and mature Hawai'ian tourist industry makes it likely to be much more resistant to the introduction of gambling than the industry in Alaska.)¹⁶⁰ Total time of travel plays a key role in the way many tourists plan their vacations, and Anchorage can exploit its natural advantage on this dimension to the benefit of Alaska labor, the Alaska economy, and even for the sake of convenience for the Asian gambling consumer market. Alaskans with an aggressive entrepreneurial spirit may do well to carefully scrutinize the potential for profit in developing the Anchorage tourist gaming trade and to investigate the possibility of adapting state law to implement and regulate its growth.

X. SOCIETAL IMPACT OF GAMBLING

Critics of legalized gambling are quick to point out its costs to society, and this is a legitimate concern worthy of examination. The main fears about the introduction of gambling into a region focus on the potential increase in crime and potential increase in the

159. The distance one-way from Tokyo to Anchorage is 3487 miles (5612 km); one-way from Tokyo to Las Vegas is 5537 miles (8910 km). The “four” hour savings is an estimate based on assumptions of constant wind velocity, wind direction, and non-stop flights. Actual travel times will vary (especially until Tokyo to Anchorage becomes a common non-stop route).

160. *Cf.* Rose, *supra* note 127, at 3 (commenting on the underwhelming success of gambling ventures in New Orleans). New Orleans, like Hawai'i, is a long-time popular tourist destination for many reasons other than gambling, and this may severely hamper gambling enterprise efforts to capture tourist dollars. By inference, Hawai'i gambling would face a similar fate. Furthermore, established hotels and lodgings in Hawai'i (and New Orleans) are likely to resist an influx of competing Vegas-style hotel/casinos to a degree unlike that as would be encountered in Alaska.

incidence and effects of compulsive gambling.¹⁶¹ Before engaging in a detailed discussion of these issues, it is perhaps best to preface with the warning that research into the costs of gambling on society is woefully scant and incomplete.¹⁶² Much of the relevant research suffers from bias or unscientific methods, and the statistical data (which conventionally serves as the foundation upon which “persuasive” arguments are built) is inconclusive.

It would be disingenuous to say that the introduction of gambling into areas does *not* increase the crime rate; the development of *successful* gambling enterprises certainly *does* have an impact on crime. The question, then, is how great is this impact? An examination of pertinent data lends itself to a conclusion that the change is noticeable, but not particularly large.¹⁶³ Whether the benefits of the gambling revenue outweigh the attendant costs in crime is a subjective decision. One issue to keep in the foreground during this discussion is the issue of *causality*. Are increases in crime due to gambling *per se*, or are increases in crime due to increases in tourist volume?¹⁶⁴ Tourists, unfortunately, present an attractive target for crime, and regions that attract more tourists also demonstrate an increase in crime, whether that increase is due to the opening of casinos, theme parks, or shopping malls.¹⁶⁵ Cities in Nevada, such as Las Vegas and Reno, do not face crime rates exceeding other cities of similar size (in fact, the crime rate in Las Vegas is relatively low).¹⁶⁶ The evidence simply does not indicate

161. See Gazel, *supra* note 129, at 67, 73.

162. See NGISC FINAL REPORT, *supra* note 4, at 8-1.

163. See William J. Miller & Martin D. Schwartz, *Casino Gambling and Street Crime*, in GAMBLING, *supra* note 6, at 126-31.

164. See *id.* at 129.

165. See *id.* at 126-31.

166. This point is not without controversy. Las Vegas, although the archetypal gambling town, is perhaps not a good indicator of the relation between gambling and crime rates. Different reports may indicate nearly polar opposite results, and the juxtaposition of a burgeoning retirement-age population in America’s reputedly fabled “Sin City” and fastest growing city perhaps adds a curious volatility to a dimension of urban life generally considered fairly stable. That said, current reports indicate that Las Vegas crime rates do not seem out of line for a metropolis of its size. See, e.g., *Best Places to Retire* (last visited Oct. 31, 2000) <http://www.money.com/money/depts/tools/bpretire_citypages/lasvega_nv.html> (indicating violent crime rates slightly higher, and property crime rates lower than the national average); see generally, Marion Greene & Michael P. Krein, *Crime in Las Vegas: Stats on Las Vegas Crime Inaccurate* (last modified Jan. 28, 2000) <<http://www.las-vegas-real-estate.com/crime.htm>> (interesting, if perhaps biased, account of factors creating difficulty in fixing an accurate crime rate “value” in a rapidly expanding high-profile tourist destination like Las Vegas).

that the existence of gambling itself causes a change in crime rates, beyond the effects of population changes and tourist activity.¹⁶⁷

As with any reinforcing behavior, there are people who gamble to excess. Providing a legal gambling environment may exacerbate the problem of compulsive gambling, and is a cost to consider in the expansion of legalized gambling. As with most aspects of gambling behavior and its effects, there is a lack of good research into how threatening the compulsive gambling problem is, but most reports indicate that 1.5%-7.3% of Americans will face problems with compulsive gambling during their lifetimes.¹⁶⁸ Research into compulsive gambling in Las Vegas suggests a rate of 6.6%.¹⁶⁹ This number is probably something close to a maximal value for compulsive gambling incidence in America, as the Las Vegas population is, to some extent, self-selecting for gamblers and compulsive gamblers as a place to live. For sake of reference, as to the incidence of a costly social problem, the rate of alcohol abuse in the American population is slightly over 7%.¹⁷⁰

One may assert that compulsive gambling is limited to the gamblers, but one must also consider the impact on others dependent in some way on the compulsive gambler (e.g., family and co-workers).¹⁷¹ These indirect effects of compulsive gambling are extremely difficult to quantify and are beyond the reach of current studies. Each state must determine whether the benefits of gambling as a form of revenue, jobs, and entertainment (for the more than 90% of the population that does not compulsively gamble) outweigh the direct and indirect costs of the problem.

While legal gambling is a large force in today's economy, it pales in comparison to the volume of illegal gambling that takes place.¹⁷² Any assessment of the compulsive gambling problem has to include the incidence of illegal gambling in the equation to obtain a real sense of a baseline level of compulsive gambling. Only then may one properly draw inferences as to the impact of legaliza-

167. See Miller & Schwartz, *supra* note 163, at 126-31.

168. See NGISC FINAL REPORT, *supra* note 4, at 4-5.

169. The true incidence of problem gambling in Las Vegas may be somewhat higher, as this figure comes from a study based on voluntary self-reports (i.e., persons willing to admit to a gambling problem). See David Strow, *Study Pinpoints Prevalence of Problem Gambling* (May 24, 1999) <<http://www.lasvegassun.com/sunbin/stories/text/1999/may/24/508837298/htm>>.

170. This figure may also understate this problem, as it only reports incidence of alcoholism in those over 18 years of age. See *Alcoholism and Alcohol-Related Problems: A Sobering Look* (last visited Oct. 30, 2000) <<http://www.ncadd.org/problems.html>>.

171. See NGISC FINAL REPORT, *supra* note 4, at 4-13.

172. See *id.* at 2-14.

tion. If rates of compulsive gambling in a community do not increase with the introduction of legal gambling—that is, do not increase the rates already present and presumed attributable to illegal gambling—it is presumptive to conclude that the “legality” of gambling is a relevant dimension to the incidence of compulsive gambling.

Anti-gambling critics may attempt to link compulsive gambling to crime and substance abuse. Correlational studies may depict a positive correlation between the existence of compulsive gamblers and crimes committed by them (i.e., increases in the likelihood that a person has a gambling problem, or increases in the severity of the problem, relates positively to increases in the likelihood that the same person has been involved in crime, most commonly larceny).¹⁷³ Similar studies may likewise demonstrate a positive link between compulsive gambling and substance abuse.¹⁷⁴ These studies provide an emotional thrust to the arguments against legalization of gambling, but these correlational studies contain the same weakness present in all correlational studies. It is impossible to say, based on correlational evidence alone, whether the gambling *caused* either the problem with crime or substance abuse.¹⁷⁵ In fact, the cause-effect relationship may just as likely go the other way.¹⁷⁶ That is, the more likely people are to commit crimes, the more likely these same people, with exposure to gambling, are to become compulsive gamblers. It is rather likely that a certain thrill-seeking or risk-seeking set of personality traits confounds the causality issue in a manner rendering it difficult to disentangle *which* behavior is “causing” which other behaviors. That said, the argument that gambling *causes* crime demands a leap in logic that current research is unable to support.

One consideration that discussion of the legalization of gambling tends to downplay is the impact on children. Children may not legally gamble, so most gambling marketing and literature completely ignores their existence and the impact that gambling may have upon them. Most state lotteries are heavily advertised, and intuitively, children view more advertising, and are less numbed and resistant to its enticements, than the target adult population. Research suggests that today’s children, raised in an environment of incessant gambling promotions, may be more susceptible than their parents to the development of gambling prob-

173. See Henry R. Lesieur, *Costs and Treatment of Pathological Gambling*, in *GAMBLING*, *supra* note 6, at 157.

174. See *id.* at 158.

175. See, e.g., DAVID G. MYERS, *EXPLORING SOCIAL PSYCHOLOGY* 4-7 (1994).

176. See *id.*

lems at some point during their lifetimes.¹⁷⁷ A significant percentage of underage children in gambling communities reports having gambled.¹⁷⁸ As children have less experience with handling money and dealing with probabilistic outcomes and expectations, and generally have much less money to dispose of freely, it is quite reasonable to expect that the “gambling bug” may be more virulent in its attacks upon children, particularly teenagers, than it is on mature adults. Possible drastic steps that can be taken to reduce this present and future problem include bans on gambling and/or bans on gambling advertising to decrease the exposure and awareness of children to gambling.

In contrast to these blunt prohibitory measures, perhaps the best way to ameliorate the problem is through responsible education. Promoters of lotteries and other forms of gambling do little to educate the public to fully appreciate the risks involved in gambling, how to gamble “responsibly,” and how to recognize and respond to the symptoms of problem gambling. State regulations can amend this problem through better educational efforts. This education can apply equally to children. Although many may fear that teaching children about gambling somehow condones the behavior, the alternative options are blind ignorance or having attitudes toward gambling taught exclusively by gambling promotional advertisements. Gambling is a relatively innocuous form of entertainment for many Americans; there is little to be gained by not educating the public to a fuller awareness as to the ramifications of their pursuits and the choices they make, even at a young age.

This Note has discussed at some length the concern of the substitution effects of gambling in local economies. The multiplicative, or indirect, effects of gambling should be more fully covered as well.¹⁷⁹ A new industry can have multiplicative effects, in that money, coming into the local community on account of the new industry, may lead to complementary expenditures in other aspects of the local market. Families who travel to Las Vegas “to gamble” may spend additional money at theme park attractions, shopping malls, restaurants, theatres, and other goods and services while there. These additional expenditures can be characterized as multiplicative effects of legalized gambling in Las Vegas. Findings of strong multiplicative effects indicate that the introduction of a particular condition in the community “trickles across” to benefit

177. See NGISC FINAL REPORT, *supra* note 4, at 7-20.

178. *See id.* at 7-23.

179. The term “multiplicative effects” is synonymous with the “multiplier effects” usage more commonly found in economics literature. *See, e.g.,* Rose, *supra* note 127, at 5; Gazel, *supra* note 129, at 69-71.

other sectors of the community as well. Predicting the multiplicative effects of introducing gambling into new markets is a difficult undertaking, and current research is not at the level where one can apply models easily to determine with precision how different forms of gambling may impact the Alaska economy.¹⁸⁰ Nevertheless, experience indicates that the multiplicative effects of gambling *do* exist, and are a highly relevant factor to keep in mind as Alaska seeks out its role in the nationwide spread and acceptance of legalized gambling in the years ahead.¹⁸¹

XI. CONCLUSION

The type of gambling to legalize, if any, is a policy issue that each state is responsible for selecting and enforcing for its own jurisdiction. Most states feature state lotteries. Many states feature casino games, especially on Native lands. Several states allow convenience gambling, and a select few even allow destination gaming resorts. Participating states derive revenue and benefit from job creation through these gambling enterprises. Alaska currently allows none of these types of gambling. Rather, Alaska allows pull-tabs and charity bingo. This is perhaps not the optimal mix for Alaska, but the more complex challenge is to predict how the various forms of gambling would affect Alaska.

By examining popular forms of legal gambling in America, this Note has covered how these forms of gambling might be addressed in Alaska. Many unique aspects of Alaska shape how legalized gambling might impact the state, including: Alaska's enviable sources of tax revenue, the physical nature of the land and the widely-dispersed quality of its small population, the state-chartered corporate status of the Native population, and the lack of nearby rival gambling states to necessitate rapid "race to the bottom" maneuverings to exploit legal gambling opportunities. Because of these and other factors, the introduction of most new forms of legalized gambling in Alaska, including the creation of an Alaska state lottery, is not advised at this time. Furthermore, the forms of gambling currently allowed in Alaska provide little in the way of jobs or revenue, but do introduce the risks of crime as well as other socioeconomic costs; Alaska is perhaps best off curtailing these forms of gambling as well.¹⁸²

180. *See generally* Rose, *supra* note 127, at 9-13, 19.

181. *See id.* at 19.

182. Admittedly, these games *do* provide salient benefits for pull-tab parlor proprietors and a few other lucky Alaskans, and perhaps cause little general harm to others. The argument of "no harm, no foul" is perhaps an acceptable defense against the mild condemnations of this Note directed toward eradication of pull-

It would be advisable to legalize only one type of gambling in Alaska, and to limit its legalization within the confines of one city.¹⁸³ That city, Anchorage, is a uniquely attractive place to develop destination gaming resorts; however, the American gambling consumer market appears too near saturation for Anchorage gaming to target American gamblers exclusively. Rather, Anchorage should take advantage of the shorter flight times from Asia, compared to other American resort towns, and strive to cater to a high-rolling Asian clientele. With the exception of eight casinos in Macau, gambling is illegal in China, India, and Japan. As such, Anchorage's relative proximity to Asia makes Anchorage perfectly situated to capture the lion's share of the lucrative Asian consumer market. Efforts might be made to investigate the feasibility of expanding legalized gambling in Anchorage to a limited degree and developing Anchorage into a destination gaming resort city.¹⁸⁴

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tabs and bingo, but lacks persuasive force to justify the *expansion* of these enterprises in Alaska.

183. Eagle River, though small and currently lacking sufficient resources for the development of destination gaming resorts, is close to the international airport and connected to Anchorage by a wide, well-maintained highway, and perhaps would not make for an unreasonable addition to this singular list. Girdwood, as it already exists as a destination resort town, would make an intuitive and beautiful additional choice, but the dangerousness, low volume capacity, and sometimes impassable conditions of the Seward Highway argue against the notion of Girdwood serving as an attractive site for destination gaming resorts. Casinos, and the gambling culture, are not sufficiently resilient to survive the on-again, off-again business vagaries that are a part of life for ski resorts and winter sports enthusiasts.

184. Crazy? Hardly. Bugsy Siegel was crazy.