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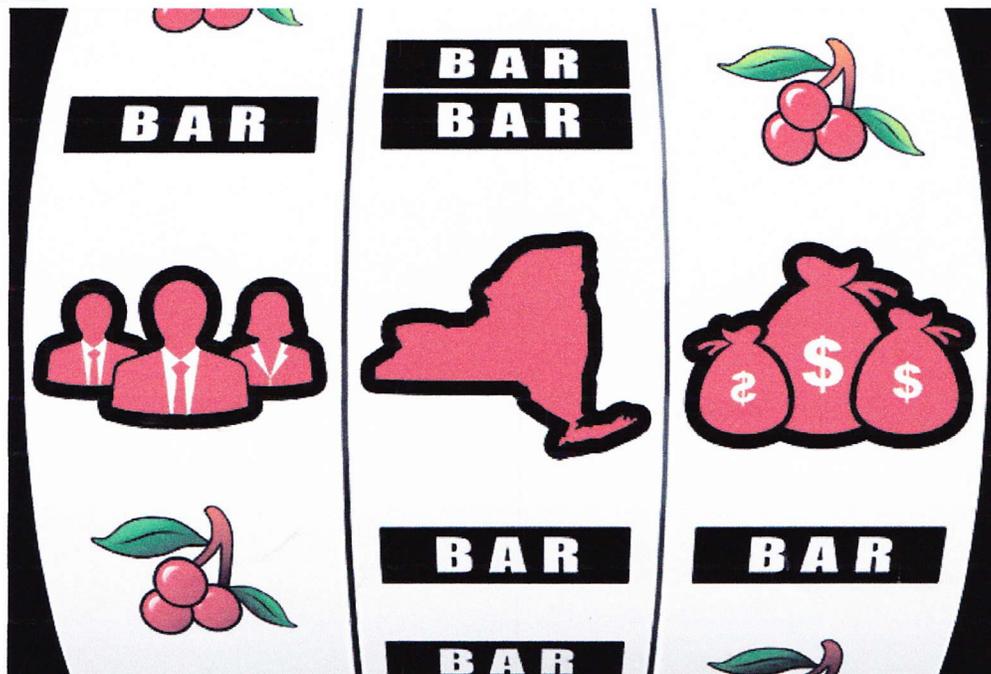
Proposition 1: Corruption on Steroids

by Joel Rose

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Everything you need to know about what's wrong with the state gambling referendum

On November 5, 2013, New Yorkers will be asked to vote on proposition 1—a proposed constitutional amendment that would legalize commercial casino gambling in New York. A great deal has been written about the damage casino gambling does to the economic health of the host communities and to the social fabric of the society. This article will focus instead on the corruption to the manner in which public policy is being made in the push to legalize commercial casino gambling. Everything about this amendment is corrupt: the way it has been promoted, the way it was pushed through the legislature, the enabling legislation, the referendum process, and the likely effect on the behavior of ordinary citizens and public officials alike if it passes.

The way this amendment has been promoted has been corrupt from the start.

- The governor set about selling his vision of New York as a gambling paradise using a fundamentally flawed argument. “We already have gambling,” he intoned. That statement was true but misleading. It implied that New Yorkers won’t gamble more if we allow seven casinos. He ignored the well-documented proximity effect: People gamble more if they live near more gambling venues. This common sense observation has been confirmed by several scientific studies, including a national survey conducted by the state’s own Research Institute on Addictions in Buffalo.

Cuomo's argument didn't pass the giggle test, and he knew it. He used it anyway, in a cynical attempt to persuade what he evidently regarded as a gullible electorate that more gambling will bring us only a benefit, with no cost.

- Governor Cuomo has not referenced any of the many independent economic or addiction studies relating to the effects of gambling. He has simply repeated an unsupported claim that it will spur economic development. As proof he cites a quote from the leader of the New York Gaming Association, James Featherstonhaugh.
- The same lies that were used to authorize the lottery, all those years ago, are being used now to sell commercial casino gambling:

—It will spur economic development: Really? Have you been to Niagara Falls lately? That's economic development if you're in the plywood business or the pawn shop business; otherwise, not. Former Governor Pataki told us it would bring "Jobs, jobs, jobs!" but that turned out to be wrong. No independent economist views casino gambling as a spur to economic development.

—It will fund education: In New York, lottery revenue has grown over the years, while aid to education from the lottery as a percentage of total state aid to education has remained stagnant. Nationally, states with lotteries spend less per child on education than states without lotteries.

- The gambling industry's job has been made easier by the laziness of many of our political leaders. I once tried to give a copy of Earl Grinols' outstanding treatment of the economic effects of gambling, *Gambling in America: Costs and Benefits*, to a major political leader. His response: "I'm not going to read a whole book!" My thoughts at the time: No, but you would base a major public policy on industry propaganda, without a second thought.

- The governor has made deals with the state's various Indian nations, or rather those that own casinos, settling long-standing disputes. These deals all have the explicit requirement that the Indian nations support, or at least refrain from opposing, the amendment. This amounts to vote-buying.

The agreements with the Indians, reached unilaterally by the governor, involve meaningless and unenforced promises. For example, New York State has yet to require the racinos to stop marketing themselves as casinos.

The deal with the Oneidas gives them casino gambling exclusivity on Cayuga land. Where does the state get the authority to do that? When did the Cayuga Nation surrender its own sovereignty?

- In the service of the gambling industry, even our language has been corrupted. Throughout the sales campaign, whenever possible, the governor and his fellow gambling promoters have used the term gaming when they were in fact referring to gambling. Gaming is an industry term, designed to trivialize the very real harm that their product causes. For our political leaders to use it would be pathetic if it were not so frightening.

Legislative approval of the amendment was corrupted.

- The *New York Times* has reported that, since 2005, the gambling industry has spent more than \$59 million on lobbying and political contributions in New York, directed both at the governor and at the legislature (see mobile.nytimes.com/2013/10/15/nyregion/casino-referendum-led-gambling-industry-to-spend-richly-in-albany.html). Since 2011, lobbying expenditures and political contributions have spiked. Does this money influence policy? If you doubt it, why else do you think the gambling interests would spend these huge sums?

- At first passage, the votes on the amendment were not considered independently. They were part of a deal worked out among the governor and the legislative leaders to pass a package of four bills, on four unrelated issues.

- At first passage in the Senate, because of a dispute over an unrelated matter, there were no Democrats present, except for the handful of Democrats who vote with the Republicans.

- The New York State Constitution ordinarily requires that any bill be held for three days following submission in its final form before it can be voted on. There is an exception: The governor can issue a message of necessity explaining why the legislation must be passed without delay.

This provision has been increasingly abused, and never more so than with the legislation passing the proposed amendment to legalize commercial casino gambling.

In accordance with the constitutional process of amendment, the proposed amendment had to be passed twice. Both times, the governor resorted to a message of necessity to forestall debate. In the case of first passage, when the proposed amendment could not possibly obtain final passage for at least a year, what possible justification could there have been for claiming a necessity for immediate passage?

Of course, a legislature with a spine could have rejected such a claim. Our legislators, or as they might otherwise be known, the sheep, accepted it. I suppose it saved them the trouble of actually reading the legislation.

- Prior to first passage and again prior to second passage, there were no hearings and no debate, despite the repeated requests of gambling opponents for an opportunity to testify.

The devil is in the details, but the details are not in the proposed amendment the people will be voting on. They're in the enabling legislation, which can be changed at any time by a simple act of the legislature.

- The amendment itself lacks specificity. It does not specify what games would be allowed, what percentage of the bets must be returned to the bettor, or even where the casinos would be located. Some of that is addressed in the enabling legislation, which can be modified at any time by the legislature.
- Even the enabling legislation lacks specificity. It provides that the Gaming Commission would determine casino sites and to regulate gambling activities. Consequently, the voters cannot really know what they're voting for. The commission lacks transparency and accountability to the voters. There is no public input into its decision-making process.
- In the proposed amendment, there is no requirement for the state to spend anything on prevention and treatment of gambling addiction. The enabling legislation provides that a fee of \$500 per machine and table game would be assessed annually to fund this need, thereby generating a total of \$6-7 million annually for this function. Compare that with the \$89 million that the Division of Lottery spends on promotion each year.
- The enabling legislation provides that 10 percent of the proceeds from each casino would go to the host municipality and county. But without specifying how that 10 percent would be divided up between the municipality and the county, this is a recipe for endless bickering, as we have seen in Niagara Falls and Niagara County. And because it puts public officials in the position in which the public interest is ambiguously defined, it is also an invitation to corruption. Such invitations are all too rarely declined.
- An early draft of the legislation contained a provision that would have banned political contributions to state officials from the gambling industry. This section was later removed, and the governor and his pro-gambling allies in the legislature subsequently received in excess of \$3 million from the gambling industry. The \$3.2 million contributed during the past two years has gone primarily to the governor (\$361,500), the speaker of the Assembly (\$414,750), the majority leader(s) of the Senate (\$403,750), and the chairs of the Racing and Wagering Committees (\$86,806 for Senator Bonacic and \$64,659 for Assembly Member Pretlow) (see commoncause.org/siye/apps/nlnet/content2.aspx?c=dkLNK1MQlwG&b=5287775&ct=13347463¬oc=1).

Gambling proponents used a variant of the time-tested technique, divide and conquer: The enabling legislation promises that there will be no casinos in New York City, where opposition is thought to be greatest, for seven years. That strategy is also intended to buy off potential competitors from Connecticut, New Jersey, and Pennsylvania. Nowhere is there an attempt to rationalize this promise with any sort of case that casino gambling would be good for upstate but not for downstate. This is a poor way to make public policy.

- In a cynical variation of the old "heads I win, tails you lose" gambit, the enabling legislation provides that, if the referendum is defeated, the state would expand its "legal" gambling activities by adding at least four new video lottery terminal (slots) venues. So if the citizens of this state vote against this gambling expansion amendment, we will have an expansion of gambling anyway. There is, in other words, no way to express a preference for no additional gambling in this referendum. Perhaps that so-called "poison pill" is designed to make gambling opponents just give up. Please, don't even think about it.

The referendum on final passage of the amendment has already been corrupted.

- It has been traditional practice, but unfortunately not a requirement of law, that ballot measures be presented in the order in which they were proposed. In the case of the ballot measure for final passage of the amendment, this tradition has not been followed. The amendment has been moved up to first position on the ballot.
- It has also been traditional practice that ballot measures be presented in neutral, informative language. The governor and his allies have seen fit to discard that tradition as well: The wording is a sales pitch for the measure that states as fact claims for the alleged benefits of casino gambling that have been largely discredited by any number of independent studies. It reads:

"The purpose of the proposed amendment to section 9 of article 1 of the Constitution is to allow the Legislature to authorize and regulate up to seven casinos for the legislated purposes of promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated."

Who could vote against that? All it lacks is an apple pie on every table!

Neutral wording had been proposed by the attorney general's office. It read:

"The purpose of the proposed amendment to section 9 of article 1 of the constitution is to allow the Legislature to authorize and regulate up to seven casinos. If approved, the amendment would permit commercial casino gambling in New York State."

That clear and simple wording was discarded by the governor's office and the state's Board of Elections.

This bit of ham-handed arm-twisting is so egregious that Eric Snyder, an attorney from Brooklyn, filed suit to have the revised ballot wording withdrawn. The New York Public Interest Research Group submitted a brief in support of the suit, alleging that the process by which the ballot was reworded violated the state's open meetings law, and the ballot wording was therefore illegal.

Governor Cuomo claimed not to have had a chance to study the wording, as if his office had nothing to do with it.

A very good article on the ballot wording issue is "Where Bettors Go to Lose, Some Doubts," by Michael Powell, in the *New York Times*, September 23, 2013, which can be found at mobile.nytimes.com/2013/09/24/nyregion/where-bettors-go-to-lose-some-doubts.html.

Incredibly, Snyder's suit was dismissed on the grounds that it was not filed within the 14-day window after the referendum was certified. But the Board of Elections had not posted the revised wording on its web site until three days after the close of the window (see nytimes.com/2013/10/17/nyregion/judge-rejects-suit-to-block-casino-referendum.html).

- Poll watchers have been instructed to remind voters of the propositions, of which the casino amendment is first. This instruction could easily be selectively observed,

and ignored in districts such as those in New York City where the proposed amendment is believed to be unpopular.

Casino gambling corrupts ordinary people, the media, and government alike.

- A recent example from the *Buffalo News*: A former Depew village trustee, the wife of a police lieutenant, was accused of embezzling \$100,000.

Another, more recent example from the *Buffalo News*: “Retired postal carrier sentenced to prison for \$400,000 embezzlement.” He stole the money from a close friend and gambled it away at area casinos, leaving his friend destitute.

We see story after story like these. There is nothing special or unusual about these. Some seven percent of people who enter a casino will eventually become addicted to gambling. That small group will account for about half of the casino’s revenue. Of those who do become addicted, a sobering two thirds will eventually turn to crime to feed their addiction. So something like one third of a casino’s revenue comes from crime.

The people who own and manage casinos know they are accepting stolen money. So do the governments that promote and profit from them. So if the proposed amendment passes and you become the victim of a crime perpetrated by a gambling addict, you may well wish to blame the criminal who victimized you directly. But you may also wish to ask your state senator and Assembly member how they voted on this amendment.

- In 2009-10, an investigation revealed that the awarding of the contract for operating the Aqueduct racino involved a shakedown and kickbacks. The contract had to be rescinded and rebid. Is anyone surprised?
- Why do these things happen? It is because, just as individuals become addicted to gambling, governments become addicted to gambling revenue. Even when shown strong evidence that each dollar of gambling revenue is associated with about three dollars in costs to society at large, all they seem to see is that need for revenue.

Some years ago, I had a conversation with a New York State senator who demanded, as a condition for dropping his support of expanded gambling, that I tell him where else we would get the revenue that more gambling could generate. Painless revenue is what he meant but didn’t say. Gazing over his beautiful walnut desk, nicely framed by his beautiful marble walls, I thought (but didn’t say), “Cut spending? Perhaps start with legislators’ creature comforts?” What I did say was “How about an honest tax increase?” Because make no mistake, gambling is a tax—on the poor, the unwary, the addicted. It is by no means fair, but it is nonetheless a tax.

- We depend on the media to keep us informed so that we can vote wisely. But the media has too often been muddle-headed on this issue. Opinions are tossed out willy-nilly, without any research or even serious analysis. *Newsday*, in an editorial that is unrivaled in its inscrutability (newsday.com/opinion/editorial-albany-should-approve-cuomo-plan-on-gambling-1.5524204), railed against the “poison pill” provision, the downstate exclusion, as well as other aspects of the casino proposal, and then urged its passage. Why? Because, of course, the state could use the money.

The corruption attendant to the proposed amendment has already occurred. It cannot now be prevented, so why worry about it?

- This issue comes down to a concern about how we are governed, now and in the years to come. With this consideration in mind, we need to ask ourselves whether we want to reward these distortions of democratic procedure.
- Government exists to promote the general welfare. Therefore government shouldn’t be in the gambling business, which detracts from the general welfare. Moreover, there is an inherent conflict of interest in government’s partnership in an industry it purports to regulate.
- By your vote, you will nudge the state and local governments slightly, whether in the direction of more corruption and more cynicism, or in the direction of honesty, fairness, and transparency. Which will you choose?

Joel Rose is co-chair of Citizens Against Casino Gambling in Erie County (www.nocasinoerie.org).

5 comments



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 **Dave Colavito** · 6 hours ago
Nice job Joel. Dave C.

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 **ArnieLieber** · 7 hours ago
Joel This is a knockout presentation. It deserves the widest circulation. Arnie Lieber

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Elena Sassower · 15 hours ago

Corrections and elaborations to my previous comment:

- (1) It was not Howard Samuels, but his civic-minded son, Bill Samuels, to whom I meant to refer;
- (2) the October 8th program he financially enabled and sponsored was entitled "A New New York: The Constitutional Dimension" and was additionally sponsored by SUNY/New Paltz' Center for Research, Regional Engagement & Outreach, Baruch College's School of Public Affairs, and City & State Magazine; and
- (3) The moderator of the panel to which I addressed my question as to legitimate legislative process was Eleanor Randolph, editorial board member of the New York Times.

Also, my e-mail address, for those wishing to contact me that way, directly, is:
elena@judgewatch.org

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-455-4373

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Elena Sassower · 16 hours ago

Wow! What a devastating presentation. Thank you Joel Rose for writing this -- and Artvoice for circulating it. I will e-mail it to reporter & editors, political and constitutional scholars & commentators -- and to the membership of our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), with a request that it be forwarded on, and on, and on.

I would note that on October 8th, Howard Samuels, who funds an organization called "Effective New York" and another called "New Roosevelt", held a conference on a new New York Constitution, with the first segment on the six constitutional propositions on this year's ballot, including one to raise the mandatory retirement age for various NYS judges from 70 to 80. In the question portion, I asked how many of these constitutional propositions were the product of a legitimate legislative process -- that is, introduced by legislators into committee, with public hearings then held at which citizens and experts could testify, followed by debate by committee members based thereon, mark-ups, amendments, committee votes -- embodied in committee reports -- then moved to the full Senate and Assembly, with debate and amendments before votes -- with the final legislation of each house then reconciled by conference committees. Only by such process are we protected against flawed legislation. The answer from the panelists was -- or so it seemed -- that none of the constitutional propositions on the ballot had resulted from such process.

We, the People, must take action to protect the desecration of legitimate, constitutional governance by our public officers -- and by their protectors in the media, academia, and elsewhere.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-455-4373



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Tell the Truth · 17 hours ago

Joel - you have done a fine job here. Please send your article to every major newspaper in the state - the word has to get out before election day.

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