

THE VIDEO GAMING ACT: GAMBLING WITH ILLINOIS' FUTURE

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Perceiving a need for information about the potential negative societal effects of legalized gambling, the U.S. Congress organized the National Gambling Impact Study Commission (Commission), which in 1999 concluded that gambling expansion should be suspended pending further research. In spite of the Commission's recommendations, in 2009 the Illinois General Assembly passed the Video Gaming Act, the largest gambling expansion in the state's history, which has the potential to quadruple the number of gambling positions in Illinois. Even more troubling, the new positions will consist entirely of video gambling machines, a variety of "convenience gambling" whose cost to benefit relationship for a state's citizens is highly questionable. The Commission has gone so far as to recommend that states not only halt expansion of convenience gambling, but roll back existing operations as well. In light of the Commission's research and recommendations, serious questions arise about whether the Illinois legislature acted in the best interests of Illinois' citizens when it passed the Video Gaming Act.

This Note contends that the decision to pass the Video Gaming Act was unjustified on both economic and ethical grounds and was motivated solely by the General Assembly's desire to raise revenues at any cost. The author begins by recounting the passage of the Video Gaming Act, noting the rushed passage of the Act and Illinois politicians' unwillingness to entertain public opinion on the matter. The author then argues that the Act is not economically justifiable because the lack of reliable information about video gambling precludes an effective cost-benefit analysis at this point, and the existing information shows that a video gambling expansion would likely fail a cost-benefit analysis should one be conducted. The author then proceeds to show that the Act is unjustifiable under a moderate deontological analysis as well, as the uncertain benefit to Illinois's citizens cannot override the acknowledged social costs that video gambling imposes. The Note concludes by arguing that Illinois lawmakers should resolve these problems by repealing the Act, gauging public opinion, conducting situation-specific research on video gambling, and erecting safeguards against future abuses of political power.

I. INTRODUCTION

In the past few decades, legalized gambling has transformed from an extremely limited activity that was legal in only a few states to a multi-billion dollar industry that is legal in all but two states.¹ The tremendous expansion of legalized gambling has been driven in part by state governments' hunger for revenues.² Legalizing gambling presented itself as a politically painless way of filling state coffers.³ Fearing that too little was known about the effects of gambling for state governments to make well-educated decisions, Congress organized the National Gambling Impact Study Commission (Commission) to study the social and economic impact of gambling and its relationship to addiction, bankruptcy, and crime.⁴ After two years of research and observation, the Commission concluded by calling for a "pause in the expansion of gambling" so that governments could examine the activity's costs and benefits in order to make informed future decisions.⁵ Ten years after the release of the Commission's final report, the Illinois General Assembly voted overwhelmingly in favor of the Video Gaming Act,⁶ which legalizes tens of thousands of video gambling machines across the state⁷ and thus introduces the form of gambling that is widely considered to have the strongest link to gambling addiction and organized crime.⁸ This move makes Illinois one of less than ten states to legalize video gambling outside of casinos.⁹ Perhaps more telling, the legislation could nearly quadruple the number of legal gambling positions in the state,¹⁰ making the Video Gaming Act the largest gambling expansion in Illinois history.¹¹

1. EARL L. GRINOLS, GAMBLING IN AMERICA: COSTS AND BENEFITS 14 (2004); NAT'L GAMBLING IMPACT STUDY COMM'N, NATIONAL GAMBLING IMPACT STUDY COMMISSION FINAL REPORT 1-1 (1999) [hereinafter COMMISSION REPORT], available at <http://govinfo.library.unt.edu/ngisc/reports/finrpt.html> (follow "Full Report" hyperlink); Earl L. Grinols & David B. Mustard, *Casinos, Crime, and Community Costs*, 88 REV. ECON. & STAT. 28, 28 (2006).

2. COMMISSION REPORT, *supra* note 1, at 1-5.

3. *Id.*

4. National Gambling Impact Study Commission Act, Pub. L. No. 104-169, 110 Stat. 1482 (1996) (codified at 18 U.S.C. § 1955 note (2006)); see also *Executive Summary*, in COMMISSION REPORT, *supra* note 1, at 2 (follow "Executive Summary" hyperlinks). The statute went into effect August 3, 1996. 110 Stat. at 1482.

5. COMMISSION REPORT, *supra* note 1, at 1-7 to 1-8 ("[T]he Commission's call for a pause should be taken as a challenge . . . to intensify the effort to increase our understanding of the costs and the benefits of gambling and deal with them accordingly.").

6. Video Gaming Act, Pub. Act No. 96-0034, 2009 Ill. Laws 469 (codified at 230 ILL. COMP. STAT. 40 (Supp. 2009)).

7. See 230 ILL. COMP. STAT. 40/25(e) (Supp. 2009); Erika Slife et al., *Video Gambling Takes Hit*, CHI. TRIB., Aug. 12, 2009, § 1, at 5.

8. See *infra* Part III.B.1.b.i.

9. See Mandy Rafool, *Gambling on Gaming*, ST. LEGISLATURES, Jan. 2005, at 26, http://www.heartland.org/custom/semod_policybot/pdf/17444.pdf.

10. The Riverboat Gambling Act provides for ten casino licenses in the State of Illinois with 1200 gambling positions each. 230 ILL. COMP. STAT. 10/7(e), (h) (2008). This legalized 12,000 gambling positions prior to the Video Gaming Act. The Commission on Government Forecasting and Accountability estimates that, taking into account the establishments that will choose not to participate in video gambling, the Video Gaming Act will result in between 45,000 and 65,000 new gambling positions. COMM'N ON GOV'T FORECASTING & ACCOUNTABILITY, GAMING IN ILLINOIS (2009),

It would be reasonable, in light of the Commission's call for a pause in gambling expansion, to assume that the General Assembly's decision to legalize video gambling was the product of extensive research and careful attention to the interests of Illinois citizens. On the contrary, the circumstances surrounding the passage of the Video Gaming Act betrayed a nearsighted, disproportionate demand for state revenue and a near-complete disregard for the interest of Illinois citizens. Knowing that just such a situation would be a temptation for state governments, the Commission concluded that the real question, and the reason more research is imperative, is "not simply how many people work in the industry, nor how much they earn, nor even what tax revenues flow from gambling. The central issue is whether the net increases in income and well-being are worth the acknowledged social costs of gambling."¹² The Video Gaming Act demonstrates the Illinois government's disturbing willingness to focus on state revenue at the expense of the "central issue," in direct contradiction with the Commission's recommendation.

This Note proceeds under the assumption suggested by the Commission's statement above: that good government transcends the search for state revenues and seeks the well-being of its citizens. This Note further assumes that seeking the well-being of citizens requires a government to engage and respect public opinion and, should the government deem it necessary to proceed without public approval, to have a solid justification for its actions.

The purpose of this Note is to demonstrate that, in passing the Video Gaming Act, Illinois lawmakers abused their political power by disregarding the interests of their citizens and passing potentially harmful legislation without adequate justification. First, this Note outlines the history and current state of legalized gambling in the State of Illinois. Second, it examines the circumstances surrounding the passing of the Video Gaming Act. Third, it demonstrates that Illinois' government lacked justification under both an economic theory and a deontological theory. Finally, this Note proposes that Illinois lawmakers repeal the legislation, conduct adequate research on the subject of video gambling, and pass legislation requiring a statewide referendum for any further gambling expansion; at a minimum, lawmakers should reduce, to a reasonable level, the number of signatures required for a local initiative to ban the machines.

<http://www.ilga.gov/commission/cgfa2006/Upload/GamingInILhearing12012009.pdf>. The term "gambling position" refers to an individual opportunity to participate in a gambling game. In other words, if a casino has 1200 gambling positions, a maximum of 1200 people could be gambling at one time.

11. The Riverboat Gambling Act was previously the largest gambling expansion in Illinois history, legalizing a total of 12,000 gambling positions. See *supra* note 10 and accompanying text. The Commission on Government Forecasting and Accountability estimates that the Video Gaming Act legalized between 45,000 and 65,000 gambling positions. See *supra* note 10 and accompanying text.

12. COMMISSION REPORT, *supra* note 1, at 7-29.

II. HISTORY AND BACKGROUND

A bird's eye view of legalized gambling in Illinois provides some important context for understanding the circumstances surrounding the passage of the Video Gaming Act. Since the passage of the Riverboat Gambling Act in 1990, attempts to expand gambling have been constant.¹³ The fact that the Video Gaming Act was proposed was not unusual; in fact, the bill was similar to nearly two decades of predecessors. The readiness with which Illinois lawmakers embraced it, however, was a surprising about-face in comparison with their previous aversion to large-scale gambling expansion.

A. *Legalized Gambling in Illinois*

Illinois has a long history of legalized gambling. It began with the state lottery.¹⁴ The lottery began as a weekly drawing.¹⁵ The weekly drawing quickly expanded to daily drawings and instant games.¹⁶ In 1985, the Illinois lottery set a record of \$1 billion in sales in a single year.¹⁷ In 2009, the Illinois lottery reached an all-time high of single-year sales of \$2.1 billion.¹⁸ In conjunction with the Video Gaming Act, Illinois lawmakers legalized internet lottery, allowing citizens to gamble without leaving their homes.¹⁹

Illinois passed the Riverboat Gambling Act²⁰ in 1990, making it the second state in the United States to legalize riverboat casino gambling,²¹

13. See, e.g., H.R. 4194, 95th Gen. Assemb., Reg. Sess. (Ill. 2007) (proposing casino in Chicago, electronic poker); H.R. 2035, S. Floor Amendment 008, 95th Gen. Assemb., Reg. Sess. (Ill. 2007) (proposing land-based casino, advanced deposit wagering, expansion of gambling positions at existing casinos); H.R. 0480, 95th Gen. Assemb., Reg. Sess. (Ill. 2007) (proposing expansion of gambling positions for riverboat casinos, legalization of slot machines at racetracks, and creation of four additional casino licenses); H.R. 0025, S. Floor Amendment 003, 95th Gen. Assemb., Reg. Sess. (Ill. 2007) (proposing land-based casino and additional casino licenses, expansion of gambling positions at existing casinos); S. 0011, S. Floor Amendment 001, 95th Gen. Assemb., Reg. Sess. (Ill. 2007) (proposing land-based casinos, electronic poker for casinos, and account deposit wagering); S. 2378, 94th Gen. Assemb., Reg. Sess. (Ill. 2006) (proposing internet lottery); H.R. 1919, 94th Gen. Assemb., Reg. Sess. (Ill. 2005) (proposing loosening restrictions on riverboats to allow them to move five miles off the Mississippi River); S. 0198, 94th Gen. Assemb., Reg. Sess. (Ill. 2005) (proposing internet lottery pilot program); Jodi S. Cohen & John Chase, *State Gaming Expansion Backed to Fund Schools*, CHI. TRIB., April 1, 2005, § 2, at 1 (discussing then Governor Blagojevich's proposal to expand number of gambling positions at casinos). This list represents *some* of the proposals for gambling expansion from 2005 to 2007.

14. The Illinois State Lottery was created on July 1, 1974. *The Illinois Lottery—A History*, ILL. LOTTERY, <http://www.illinoislottery.com/subsections/Gamehist.htm> (last updated Dec. 2010).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Act of July 1, 2009, Pub. Act No. 96-0034, sec. 900, § 7.12, 2009 Ill. Laws 469, 482–83 (codified at 20 ILL. COMP. STAT. 1605/7.12 (Supp. 2009)) (creating the internet pilot program). Internet lottery's implementation, however, awaits a determination from the Department of Justice regarding its legality under federal law. *Id.*

20. Pub. Act No. 86-1029, 1990 Ill. Laws 735 (codified as amended at 230 ILL. COMP. STAT. 10 (2008)).

and the fifth to legalize casino gambling of any sort.²² In the years after the passage of the Riverboat Gambling Act, campaign contributions from the gambling industry jumped to above \$1 million,²³ reaching a high of over \$2 million in 2006.²⁴ Initially, the state placed restrictions on riverboat casinos in an effort to limit gambling's impact on the state.²⁵ One such restriction limited gambling activity to "excursions"; in other words, gambling was not permitted while the riverboat was moored to a dock.²⁶ The excursion restriction was one of several restrictions that Illinois lawmakers eliminated in 1999,²⁷ thus allowing riverboat casinos to be moored to a dock and to control their own ingress and egress.²⁸ This allowed more gambling activity by eliminating the dead time between excursions and allowing people to gamble for as long as they liked without interruption.²⁹

The U.S. Congress expressed a concern in the mid-1990s about the astronomic growth of legalized gambling in the United States and the relatively little data available regarding its social and economic impacts.³⁰ Accordingly, Congress formed the Commission³¹ to assess gambling's relationship to crime and pathological and problem gambling; impact on individuals, families, businesses, social institutions, and the economy; and effectiveness as a revenue stream for state and local governments.³²

21. ILL. GAMING BD., <http://www.igb.illinois.gov/> (last visited Feb. 1, 2011).

22. See ROGER DUNSTAN, CAL. RESEARCH BUREAU, GAMBLING IN CALIFORNIA, ch. I (1997), available at <http://www.library.ca.gov/crb/97/03/crb97003.html>.

23. *National Overview Map*, FOLLOW THE MONEY, <http://www.followthemoney.org/database/nationalview.phtml?l=0&f=0&y=1998&abbr=0&b%5B%5D=G6500> (last visited Feb. 1, 2011).

24. *Id.* (select "2006" from the drop down box).

25. For example, the Riverboat Gambling Act prohibited dockside gambling; placement of riverboat casinos on non-navigable streams; placement of a casino in a county with a population greater than three million; relocation of a previously issued, non-operational license; and ownership of more than ten percent of more than one casino. 230 ILL. COMP. STAT. 10/3(c), 7(a)(7), 11(a)(1) (1998) (current version at 230 ILL. COMP. STAT. 10 (2008)); ILL. GAMING BD., 1999 ANNUAL REPORT 5 (2000), <http://www.igb.illinois.gov/annualreport/web99igb9.pdf> (reporting the changes to the Riverboat Gambling Act that eliminated all of these restrictions).

26. 230 ILL. COMP. STAT. 10/11(a)(1).

27. Illinois lawmakers were very favorable to gambling interests in 1999, eliminating all of the restrictions listed *supra* note 25. ILL. GAMING BD., *supra* note 25, at 5. Furthermore, lawmakers approved the relocation of a casino license from Jo Daviess County to the Village of Rosemont—a move that was later halted because of links between the Village of Rosemont and organized crime. Chris Fusco et al., *Madigan Alleges Casino Mob Ties*, CHI. SUN-TIMES, Mar. 26, 2004, at 12; Editorial, *Image—Illinois Integrity*, CHI. TRIB., Dec. 23, 2008, § 1, at 32.

28. The Riverboat Gambling Act was amended on June 25, 1999, to permit gambling regardless of whether the boat was conducting an "excursion." Act of June 25, 1999, Pub. Act No. 91-0040, sec. 15, § 3(c), 1999 Ill. Laws 1184, 1238 (codified at 230 ILL. COMP. STAT. 10/3(c) (2008)).

29. *Dockside Gambling Paying off Big in Illinois*, COURIER-NEWS (Elgin, Ill.), July 12, 2000, at A6.

30. *Executive Summary*, *supra* note 4, at 2.

31. *Id.*

32. National Gambling Impact Study Commission Act, Pub. L. No. 104-169, § 4(a), 110 Stat. 1482, 1484 (1996).

The Commission issued its final report in 1999,³³ after two years of conducting studies and gathering data.³⁴ They concluded that the research surrounding gambling was scarce enough and the potential costs of gambling were severe enough that a pause in gambling expansion was in order while further research was conducted.³⁵ The Commission further recommended that “states should not authorize any further convenience gambling operations and should cease and roll back existing operations.”³⁶ Convenience gambling includes video gambling.³⁷

Since the publication of the Commission’s final report, there have been several noteworthy efforts to pause the expansion of gambling in Illinois; in each case, however, the actors’ resolve caved under the prospect of easy state revenue. Former Illinois Governor Rod Blagojevich promised during his campaign that he would not expand gambling.³⁸ Although he staved off some proposals for gambling expansion,³⁹ his tenure was soon marked by multiple unsuccessful attempts to expand gambling; specifically, he tried to introduce Keno,⁴⁰ lease the state lottery,⁴¹ expand casino operations,⁴² and partner the state with the casino industry, all in the name of increasing state revenue.⁴³ Current Governor Pat Quinn was Lieutenant Governor to Blagojevich while Blagojevich was trying to expand casino operations.⁴⁴ Quinn gave Blagojevich this counsel in a letter dated December 17, 2007:

We must consult with the people who elected us before taking an action that will allow wide-open gambling throughout Illinois and affect our state’s quality of life for decades to come.

33. Kay C. James, *Introduction to COMMISSION REPORT*, *supra* note 1, <http://govinfo.library.unt.edu/ngisc/reports/intro.pdf>.

34. COMMISSION REPORT, *supra* note 1, at 1-7.

35. *Id.*

36. *Id.* at 3-18.

37. *Id.* at 2-4.

38. *In Shadow of Death Penalty Crisis, Illinois Swears in New Governor*, L.A. TIMES, Jan. 14, 2003, at A12; Kevin Robinson, *Quinn Calls for Statewide Gambling Referendum*, CHICAGOIST, (Dec. 18, 2007, 8:50 AM), http://chicagoist.com/2007/12/18/quinn_calls_for.php; *see also* John Patterson, *Governor Has New Reasons for Casinos*, DAILY HERALD (Arlington Heights, Ill.), Sept. 27, 2007, at 8 (discussing then-Governor Blagojevich’s response when asked why he was going back on his campaign promise not to expand gambling).

39. Matt Adrian, *State Senate May Push New Gambling Expansion*, HERALD & REV. (Decatur, Ill.), Apr. 21, 2004, at A6.

40. *See* Editorial, *Budgetary Dog-and-Pony Shows Must End*, ST. J.-REG. (Springfield, Ill.), Jan. 18, 2009, at 14.

41. *Budgetary Dog-and-Pony Shows Must End*, *supra* note 40; Charles Duhigg & Jenny Anderson, *Illinois Is Putting Lottery on Block for Quick Payoff*, N.Y. TIMES, Jan. 23, 2007, at A1.

42. Doug Finke, *Governor Sets Stage for Gambling Talk*, HERALD-News (Joliet, Ill.), Apr. 4, 2005, at A10; Patterson, *supra* note 38.

43. Blagojevich presented a plan whereby the state would seize existing casinos and hire the casino companies as managers. *See* Aaron Chambers, *A Timeline of Blagojevich’s Term*, ROCKFORD REG. STAR (Nov. 5, 2007, 11:53 AM), <http://www.rrstar.com/news/x9489327>.

44. *See Open Letter to Gov. Rod Blagojevich from Lt. Gov. Pat Quinn*, ILL. CHANNEL BLOG (Dec. 17, 2007), <http://illinoischannel.spaces.live.com/blog/cns!B0DB128F5CD96151!2882.entry> [hereinafter *Letter*].

You remember, as I do, our campaign pledge . . . to oppose any large-scale expansion of gambling in our state. . . .

. . . .

. . . We should ask for [the people's] guidance before we take steps to make Illinois the Las Vegas of the Midwest.

. . . .

I hope you will join me in calling for a referendum on the proposed massive expansion of gambling in Illinois.⁴⁵

Quinn replaced Blagojevich as governor after Blagojevich was removed from office.⁴⁶ Less than two years after writing the letter above and

45. *Id.*; see also Editorial, *Did Quinn Forget?*, CHI. TRIB., July 12, 2009, § 1, at 22. The rest of Quinn's letter to Blagojevich is ironic, given Quinn's willingness to sign the Video Gaming Act into law without a referendum.

Dear Governor Blagojevich:

I am writing to express my concern about the proposed massive expansion of gambling in our state. I urge you to insist that this serious question of public policy be submitted to the people of Illinois in a referendum on February 5, 2008. We must consult with the people who elected us before taking an action that will allow wide-open gambling throughout Illinois and affect our state's quality of life for decades to come.

You remember, as I do, our campaign pledge – made in 2002 and repeated in 2006 – to oppose any large-scale expansion of gambling in our state. Now we face proposed legislation to allow the greatest expansion of gambling in Illinois history.

I believe the Illinois General Assembly should place this question on the statewide Feb. 5 primary ballot and let the voters decide the wisdom of this historic expansion of gambling. It seems only appropriate to devote the next 50 days to a vigorous public discussion of a legislative proposal that would change the face of our state for the next 50 years, or more.

It is worth noting that, since you and I took office in 2003, voters in 12 statewide, county-wide and local referendums have soundly defeated attempts to expand gambling in their home communities. The people of our state deserve the same opportunity to express their will on this critically important issue of public policy. We should ask for their guidance before we take steps to make Illinois the Las Vegas of the Midwest.

This past Sunday, December 16 marked the 234th anniversary of the Boston Tea Party, when our nation's founders took direct action to oppose the high-handed government of King George III. Their spirit lives on today in the people who elected us; we have a responsibility to let them speak before we take unalterable steps to change their lives, and the lives of their children and grandchildren.

Our democracy is based on the principle that government of the people, by the people, and for the people shall not perish from the earth. In the Land of Lincoln, we must never forget that the Governor, the Lt. Governor, and all elected officials are duty-bound to serve the will of the people. A public policy issue of this magnitude requires a clear mandate from the voters of Illinois.

I hope you will join me in calling for a referendum on the proposed massive expansion of gambling in Illinois.

Sincerely,
Pat Quinn
Lt. Governor

Letter, supra note 44.

46. Malcolm Gay & Susan Saulny, *Blagojevich Is Removed by Illinois Senate, 59-0*, N.Y. TIMES, Jan. 30, 2009, at A19. Not surprisingly, one of the activities that Blagojevich was later indicted for was soliciting campaign contributions in exchange for legislation favoring horse-race betting. Superseding Indictment, Count Two at 29–31, *United States v. Blagojevich*, No. 08 CR 888 (N.D. Ill. Apr. 2, 2009), 2009 WL 874042; see also Tamara Audi & Douglas Belkin, *Affidavit Alleges Blagojevich Sought Racing Official's Contribution*, WALL ST. J., Dec. 24, 2008, at A7. For a list of articles regarding Blagojevich's many improper links to the gambling industry, see *Political Corruption: Blagojevich, Burris, Rezko and Kelly*, CASINO WATCH (Feb. 17, 2009), <http://casinowatch.org/alerts/PoliticalCorruptionBlago.html>.

without calling for a referendum,⁴⁷ Quinn signed the Video Gaming Act into law, rolling out the largest gambling expansion in Illinois history.⁴⁸

B. *The Video Gaming Act*

The Video Gaming Act was passed as a means of funding a \$31 billion capital projects bill; the Act legalizes and establishes a tax on the proceeds of up to five video gambling machines in any establishment licensed to pour alcohol, qualifying truck stops, and qualifying fraternal and veterans organizations.⁴⁹ It is currently estimated that the Act legalizes between 45,000 and 65,000 gambling positions statewide.⁵⁰ To put that into perspective, if 45,000 video gambling machines are placed, it will be the equivalent of opening thirty-eight casinos and spreading them across every participating community in the state.⁵¹

The circumstances surrounding the passage of the Video Gaming Act reveal a determination to expand gambling regardless of who objects. The State's agenda was evidenced by the rash manner in which the General Assembly passed the legislation and the lack of public notice.

The Video Gaming Act was introduced and passed in both the Senate and the House in just over twenty-four hours at the very end of the

47. Quinn did unsuccessfully attempt to make it easier for local governments to hold a referendum, stating a belief that the people should have a voice on the subject. S. 1595, Governor Amendatory Veto Message, 96th Gen. Assemb., Reg. Sess. (Ill. 2009), <http://www.ilga.gov/legislation/96/SB/PDF/09600SB1595gms.pdf> [hereinafter Veto Message]. The attempt, however, came after he had already signed the Act into law; the bill died in the Senate. *Bill Status of SB1595*, ILL. GEN. ASSEMBLY, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1595&GAID=10&DocTypeID=SB&LegID=44213&SessionID=76&GA=96> (last visited Feb. 1, 2011).

48. See *supra* note 11 and accompanying text.

49. 230 ILL. COMP. STAT. 40/25(e) (Supp. 2009); see also David Mercer, *\$31 Billion Construction Plan Signed*, ASSOCIATED PRESS, July 14, 2009, available at <http://www.allbusiness.com/education-training/education-systems-institutions/12561492-1.html>. The proceeds from the video gambling machines will be distributed as follows: 25% will go to the state, 5% will go to local government, 35% will go to the owner of the video gambling machine, and 35% will go to the owner of the licensed establishment. 230 ILL. COMP. STAT. 40/25(c), 60(a), (b) (Supp. 2009). Illinois's Commission on Government Forecasting and Accountability estimates that the state and local governments' portion of the proceeds will generate between \$344.9 million and \$640.6 million annually. COMM'N ON GOV'T FORECASTING & ACCOUNTABILITY, *WAGERING IN ILLINOIS: 2009 UPDATE 63* (2009), http://www.ilga.gov/commission/cgfa2006/Upload/2009wagering_in_il.pdf. In addition to legalizing video gaming machines, the Illinois General Assembly also legalized account deposit wagering—online horse race betting—and online lottery during the 96th Legislative Session. Act of July 1, 2009, Pub. Act No. 96-0034, sec. 900, § 7.12, 2009 Ill. Laws 469, 482–83 (codified at 20 ILL. COMP. STAT. 1605/7.12 (Supp. 2009)) (online lottery); Act of Aug. 25, 2009, Pub. Act No. 96-0762, sec. 5, § 26(g), 2009 Ill. Laws 7519, 7523–31 (codified at 230 ILL. COMP. STAT. 5/26(g) (Supp. 2009)) (account deposit wagering).

50. COMM'N ON GOV'T FORECASTING & ACCOUNTABILITY, *supra* note 49, at 63. The Video Gaming Act puts no cap on the number of available licenses, so the potential for growth in the number of video gambling machines is only limited to the number of establishments that apply for licenses to serve alcohol. See 230 ILL. COMP. STAT. 40 (Supp. 2009).

51. Under the Riverboat Gambling Act, each casino license permits 1200 gambling positions. 230 ILL. COMP. STAT. 10/7(h) (2008). Thus, using the estimates discussed in COMM'N ON GOV'T FORECASTING & ACCOUNTABILITY, *supra* note 49, 45,000 gambling positions would be the equivalent of thirty-eight casinos, and 65,000 gambling positions would be the equivalent of fifty-five casinos.

legislative session.⁵² It was hasty enough that, following the statute's passage, two "clean-up bills" were passed.⁵³ In the time between the General Assembly's passing of the bill and Quinn's signing it into law, the Better Government Association⁵⁴ urged Quinn to hold public hearings before making any decision⁵⁵—the exact same request Quinn made of Blagojevich in 2007.⁵⁶ Quinn disregarded the request.⁵⁷

Considering the political debate in Illinois over gambling expansion during the past decade, the rapid passage of this legislation is surprising—a situation one would expect from a bill about which there was no debate. The ease with which the General Assembly passed the Video Gambling Act contrasts starkly with the tremendous debate that took place when Rosemont, Illinois, applied for a casino license. Rosemont lost a ten-year battle for a license because of alleged links between the casino and organized crime.⁵⁸ A casino license grants 1200 gambling positions⁵⁹ and arguably promotes economic development and employment.⁶⁰ The Video Gaming Act, on the other hand, legalizes over thirty-seven times as many positions,⁶¹ does not directly encourage economic development or employment,⁶² and involves a form of gambling that already has strong ties to organized crime.⁶³ If a casino license produced

52. See Editorial, *Choking Video Poker*, CHI. TRIB., Oct. 6, 2009, § 1, at 16; Editorial, *Repeal Video Gambling*, CHI. TRIB., Sept. 11, 2009, § 1, at 28; Andy Shaw, Op-Ed., *Quinn's Dangerous Gamble*, CHI. TRIB., July 16, 2009, § 1, at 23; *Gambling Update: House and Senate Pass HB 255 – Video Poker and Internet Lottery*, ILL. CHURCH ACTION ON ALCOHOL & ADDICTION PROBLEMS (May 22, 2009), http://www.ilcaaap.org/legislative_information/action_alerts/2009-05-22.php.

53. See H.R. 2424, 96th Gen. Assemb., Reg. Sess. (Ill. 2009), available at <http://www.ilga.gov/legislation/96/HB/PDF/09600HB2424lv.pdf>; S. 0349, 96th Gen. Assemb., Reg. Sess. (Ill. 2009), available at <http://www.ilga.gov/legislation/96/SB/PDF/09600SB0349lv.pdf>; ILL. MUN. LEAGUE, THE VIDEO GAMING ACT (CONSOLIDATED LANGUAGE) 1 (2009).

54. According to the Better Government Association (BGA) website, the BGA "works for integrity, transparency, and accountability in government by exposing corruption and inefficiency; identifying and advocating effective public policy; and engaging and mobilizing the electorate to achieve authentic and responsible reform." *Mission & Organization*, BETTER GOV'T ASS'N, http://www.bettergov.org/about/mission_organization.aspx (last visited Feb. 1, 2011).

55. Christopher Placek, *Watchdogs Ask Quinn to Delay Signature*, DAILY HERALD (Arlington Heights, Ill.), July 11, 2009, at 15.

56. See *Letter*, supra note 44 ("It seems only appropriate to devote the next 50 days to a vigorous public discussion of a legislative proposal that would change the face of our state for the next 50 years, or more.").

57. See *Repeal Video Gambling*, supra note 52.

58. Placek, supra note 55; see also Shaw, supra note 52. Ironically, the City of Rosemont is one of the municipalities that has banned video gambling machines subsequent to the passage of the Video Gambling Act. See Bob Sexter & Rick Pearson, *Video Poker Gets Low Marks*, CHI. TRIB., Sept. 9, 2009, § 1, at 1.

59. 230 ILL. COMP. STAT. 10/7(h) (2008).

60. COMMISSION REPORT, supra note 1, at 7-6.

61. See supra note 51 and accompanying text.

62. COMMISSION REPORT, supra note 1, at 2-5. The Act does, however, indirectly encourage economic development and/or employment because legislators intend for the tax revenue to fund capital construction projects, which will potentially provide jobs for Illinois citizens. Monique Garcia & Ray Long, *Here Come the New Taxes: Quinn Signs \$31 Billion Package that Also OKs Video Gambling*, CHI. TRIB., July 14, 2009, § 1, at 1.

63. See Editorial, *Legalizing Video Poker Would Bankroll Crime*, CHI. SUN-TIMES, May 14, 2009, at 20, available at NewsBank Access World News, Record No. 200905140029; Joseph Ryan, *Crit-*

such protracted debate, how did the Video Gaming Act make it out of the General Assembly in just over twenty-four hours? According to Anita Bedell, lobbyist and director of Illinois Church Action on Alcohol and Addiction Problems, the General Assembly put the bill to a vote and passed the legislation without the typical request for comments—thus squelching any attempted opposition.⁶⁴ How did the bill make it across Quinn's desk? Perhaps he, like Blagojevich, found that the lure of new tax revenues was too strong to compete with old convictions.⁶⁵

III. ANALYSIS

When deciding upon taking a course of action that will have potentially harmful ramifications for its citizens, it behooves a government to seek and respect public opinion on the subject.⁶⁶ In the case in which it is necessary to move forward without public approval, however, a government should have solid justification for its actions. This Part demonstrates that Illinois lawmakers abused their political power by passing the Video Gaming Act without regard to public opinion and without adequate justification for their actions.

A. Public Opinion

Not only were legislators not interested in Anita Bedell's opinion,⁶⁷ they were not interested in the opinions of their constituents either.⁶⁸ If legislators had made any attempt to gather public input, they might have discovered what the *Chicago Tribune* revealed in a poll several months after the passage of the bill: fifty-eight percent of voters would vote against video gambling if they had the chance.⁶⁹

Perhaps more telling are the sixty-nine local governments that have taken advantage of the Video Gaming Act's provision allowing them to ban the machines within their borders.⁷⁰ For example, the County Board of DuPage County, the second-largest county in the state, banned the

ics Slam Video Poker as Addictive, Dangerous, DAILY HERALD (Arlington Heights, Ill.), May 30, 2009, at 6; Steve Warmbir, *Video Poker Brings Mob Buckets of Profits*, CHI. SUN-TIMES, August 18, 2002, at 19A; Steve Warmbir, *Video Poker King Target of Federal Investigation*, CHI. SUN-TIMES, Feb. 7, 2010, at 4A; Carol Marin & Don Moseley, *Feds Raid Video Poker Bars in Bridgeport*, NBC CHICAGO (Dec. 7, 2009, 10:15 PM), <http://www.nbcchicago.com/news/local-beat/FBI-Raids-Mobs-Alleged-Video-Poker-Ring-78740427.html>.

64. E-mail from Anita Bedell, Exec. Dir., Ill. Church Action on Alcohol & Addiction Problems, to author (Nov. 3, 2010, 17:23 CST) (on file with author).

65. See *supra* notes 38–48 and accompanying text.

66. This was clearly the sentiment expressed by Quinn in his letter to Blagojevich in 2007. See *Letter*, *supra* note 44.

67. See discussion *supra* Part II.B.

68. See *Choking Video Poker*, *supra* note 52.

69. Sectar & Pearson, *supra* note 58.

70. This number reflects the local governments that have banned video gambling as of this draft. For an up-to-date list, see ILL. CHURCH ACTION ON ALCOHOL & ADDICTION PROBS., <http://www.ilcaap.org/home/index.php> (last visited Feb. 1, 2011).

machines in unincorporated areas of the county in a unanimous vote, and the County Board of Cook County, the largest county in the state, imposed a similar ban in a ten-to-four vote.⁷¹

These sixty-nine bans have not prompted the General Assembly's Commission on Government Forecasting and Accountability to revise its revenue projections because the forty-five communities on the list as of November 2009 made up less than ten percent of Illinois's population.⁷² This figure, however, does not account for the local governments that imposed bans on video gambling prior to the Video Gaming Act.⁷³ According to a spokeswoman for Illinois Attorney General Lisa Madigan, the Attorney General's office believes that "any local video gambling bans on the books before the legalization was signed . . . trump that state law."⁷⁴ For these communities to allow video gambling machines in their borders, local lawmakers would have to repeal the existing restrictions.⁷⁵

Chicago had a ban prior to the passage of the Video Gaming Act.⁷⁶ Although Mayor Richard Daley initially expressed support for the legalization of video gambling,⁷⁷ he now acknowledges a lack of public motivation to lift the current ban.⁷⁸ When asked in an interview whether he would like to see the law changed, he replied, "No one's asked us to change it. It's as simple as that."⁷⁹ If Chicago is excluded from the projections mentioned above, the percentage of Illinois' population living in communities that have banned video gambling machines will be nearly thirty-two percent.⁸⁰ More recently, the Commission on Government Forecasting and Accountability estimated that Chicago's ban could cost Quinn's capital project program \$118 million annually—nearly \$1.2 billion over the course of the ten years during which the program will be in place.⁸¹ Video gambling proponents are currently trying to gather support to lift the ban in Chicago.⁸²

71. Jake Griffin, *DuPage Prohibits Video Gambling*, DAILY HERALD (Arlington Heights, Ill.), Aug. 12, 2009, at 1; Hal Dardick, *Cook County Board Bans Video Gambling Again*, CLOUT ST. (Oct. 6, 2009, 11:56 AM), http://newsblogs.chicagotribune.com/clout_st/2009/10/cook-county-board-weighs-in-on-video-gambling.html.

72. Chris Fusco et al., *Is Video Poker Still in the Game?*, CHI. SUN-TIMES, Jan. 10, 2010, at A2, available at NewsBank Access World News, Record No. 201001100002.

73. Joseph Ryan, *Support for Video Gambling Fading*, DAILY HERALD (Arlington Heights, Ill.), Jan. 28, 2010, at 6.

74. *Id.*

75. See *Choking Video Poker*, *supra* note 52.

76. See *id.*; Fusco et al., *supra* note 72.

77. Editorial, *Governments Should Reject Gambling Law*, ST. J.-REG. (Springfield, Ill.), Aug. 6, 2009, at 6.

78. See Fusco et al., *supra* note 72.

79. *Id.*

80. *Id.*; see also Ryan, *supra* note 73.

81. See COMM'N ON GOV'T FORECASTING & ACCOUNTABILITY, FY 2011 ECONOMIC FORECAST AND REVENUE ESTIMATE 39 (2010), <http://www.ilga.gov/commission/cgfa2006/Upload/03162010econforecastrevestFY2010-2011.pdf>.

82. See, e.g., Fran Spielman, *Radio Host Pushes for Video Gambling*, CHI. SUN-TIMES, Feb. 2, 2010, at 9.

The magnitude of pushback is stunning in light of the Illinois General Assembly's apparent attempts to weaken the influence of public disapproval. In addition to ensuring that the bill "raced through the General Assembly in the frenzied end-of-session chaos in Springfield,"⁸³ Illinois legislators limited the ability of citizens to object to the legislation.⁸⁴ Lawmakers provided means for local communities to vote on the issue; however, putting the referendum on the ballot requires the signatures of twenty-five percent of registered voters.⁸⁵ For Cook County, that means 250,000 signatures.⁸⁶ To put that into perspective, it only requires 5000 signatures to run for county office and get your own name on the ballot.⁸⁷ Furthermore, as local governments began banning the machines, proponents scrambled to curb the efforts, putting pressure on local governments not to opt out or to reverse the ban for those who already have opted out.⁸⁸ Specifically, legislators who support video gambling proposed legislation, which was quickly withdrawn at Quinn's request, that would have blocked local governments that opted out of video gambling from receiving any of its tax revenue.⁸⁹ One bill would force local governments that opt out to pay a monthly "surcharge" equal to the revenue that would have been generated had the maximum number of machines been placed in the jurisdiction.⁹⁰ Essentially, the bill would serve to penalize those who think that video gambling is a bad idea and to send a clear message to those who are still considering a ban in their community that the State will not tolerate opposition.

In addition to disregarding public opinion as demonstrated above, the General Assembly apparently failed to mention the bill to the Illinois Gaming Board,⁹¹ the entity that would be in charge of regulating the new machines.⁹² Aaron Jaffe, a former Cook County judge and current chairman of the Illinois Gaming Board, said, "If I sound frustrated it is

83. Shaw, *supra* note 52.

84. *Choking Video Poker*, *supra* note 52.

85. 230 ILL. COMP. STAT. 40/70 (Supp. 2009). Note that Quinn proposed a change to this requirement in an amendatory veto to Senate Bill 1595 on August 25, 2009. Veto Message, *supra* note 47. The amendatory veto suggested that the requirement be reduced from twenty-five percent to eleven percent. *Id.* The amended bill subsequently died in the Senate. *Bill Status of SB1595*, *supra* note 47.

86. Shaw, *supra* note 52.

87. *Id.*

88. Editorial, *Video Poker Extortion*, CHI. TRIB., Feb. 11, 2010, § 1, at 22; Kathleen Foody, *Video Gambling Differences Put Illinois Governor on the Spot*, STLTODAY (Mar. 5, 2010, 12:00 AM), http://www.stltoday.com/news/state-and-regional/illinois/article_a92054e9-8226-5b5c-835c-79f222d45216.html.

89. Foody, *supra* note 88.

90. S. 2816, 96th Gen. Assemb., Reg. Sess. (Ill. 2010), available at <http://www.ilga.gov/legislation/96/SB/PDF/09600SB2816lv.pdf>. A similar bill has been proposed in the House of Representatives. H.R. 5313, 96th Gen. Assemb., Reg. Sess. (Ill. 2010), available at <http://www.ilga.gov/legislation/96/HB/PDF/09600HB5313lv.pdf>.

91. See Maggie Borman, *Concerns Surround Video Gaming Law*, THE TELEGRAPH (Sept. 26, 2009, 9:48 PM), <http://www.thetelegraph.com/articles/gaming-31476-video-board.html>.

92. See Joseph Ryan, *Is Video Gambling Regulation in Jeopardy?*, DAILY HERALD (Arlington Heights, Ill.), July 27, 2009, at 1.

because, to some extent, I am. . . . We were never consulted about bringing this in and we were never consulted about what had to be done.”⁹³ Rather than consulting the Illinois Gaming Board, legislators charged the Board with creating a comprehensive centralized computer monitoring system and licensing scheme and, after passing the legislation, gave the Board a sixty-day time frame in which to draw up regulations for the new machines.⁹⁴ “I don’t even know what that computer system would look like,” said Jaffe.⁹⁵ “This is a very complex thing. Every day a new question pops up.”⁹⁶ Jaffe pointed out that getting everything up and running in that time would be “basically impossible to do.”⁹⁷ The legislation added burdens to an already heavily burdened agency.⁹⁸ The Illinois Gaming Board is currently charged with regulating nine functioning casinos as well as a tenth one soon to be placed in Des Plaines.⁹⁹ Jaffe and the Board failed to meet the sixty-day time limit, estimating that it would realistically take more than one year to do what the legislature had mandated.¹⁰⁰

The Illinois government’s failure to take into account public opinion, as well as the opinion of the agency charged with regulating the machines, means either that it had a solid justification that necessitated moving forward without public approval, a proposition that will be explored in the next Section, or that it abused its political power.

B. *The Video Gaming Act Is Unjustifiable*

One could argue that Illinois lawmakers failed to take into account public opinion because Illinois’ current economic crisis does not allow for protracted public debate. This argument, however, still relies on the assumption that legalizing video gambling was justifiable. This Section demonstrates that legalization of video gambling is both economically and deontologically unjustifiable.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. See Editorial, *Counties Against Gambling Get a Window of Chance*, CHI. SUN-TIMES, Aug. 26, 2009, at 22; Mark J. Konkol, *Hold ‘em*, CHI. SUN-TIMES, July 15, 2009, at 3.

99. *Repeal Video Gambling*, *supra* note 52 (referring to the overwhelming responsibility the Video Gaming Act imposes upon the Illinois Gaming Board); see also Editorial, *The Video Poker Fiasco*, CHI. TRIB., Aug. 25, 2009, § 1, at 14.

100. Konkol, *supra* note 98; Amy Lee, *Video Gaming Stalled*, SOUTHTOWNSTAR (Tinley Park, Ill.), Sept. 23, 2009, at 6; Ryan, *supra* note 92. At the time of the legislation, the Illinois Gaming Board employed only 150 people, half of them state police officers assigned to the nine casinos, and had a budget of only \$20.2 million. Ryan, *supra* note 92. Several months after the bill was signed into law, the Illinois Gaming Board was given \$4.4 million to get the video gambling machines up and running. James Warren, *In Turning to Video Gaming, the State Chases Fool’s Gold*, N.Y. TIMES, Dec. 18, 2009, at 33A, available at NewsBank Access World News, Record No. 2009-12-18-714950. The Illinois Gaming Board plans to increase the number of employees from 150 to 300 and assign 75 of them the job of overseeing the video gambling machines. Editorial, *We’d Rather Not Be Flush with Sad Stories*, CHI. SUN-TIMES, Dec. 8, 2009, at 34.

1. *The Video Gaming Act Lacks Economic Justification*

In order for the Video Gaming Act to be economically justifiable, it has to pass a cost-benefit analysis.¹⁰¹ The Video Gaming Act is economically unjustifiable because research on the costs and benefits of video gambling, and gambling in general, suffers from several limitations that preclude a conclusion that video gambling would pass a cost-benefit analysis.¹⁰² Illinois lawmakers made no effort to address these limitations or to conduct research of their own; therefore, they could not have come to the conclusion that the Video Gaming Act is economically justifiable. Furthermore, of the research that has been done, much of it suggests that video gambling would potentially fail a cost-benefit analysis. Illinois lawmakers made no effort to refute this research; therefore, even if the current research did not suffer from fatal limitations, Illinois lawmakers could not have reached the conclusion that video gambling was economically justifiable without ignoring this substantial body of research.

a. Limitations in Current Video Gambling Research

Cost-benefit analyses of video gambling are problematic for several reasons.¹⁰³ First, the existing cost-benefit analyses typically focus on forms of gambling other than video gambling. Second, although research has produced a number of cost-benefit analyses of gambling generally, the results vary widely and are therefore inconclusive. Third, cost-benefit analyses may depend on a number of locality-specific variables. Finally, gambling research tends to be driven by biased interests that make it difficult to gauge the objectivity of the study.

Cost-benefit analyses typically focus on the economic impact of types of gambling other than video gambling.¹⁰⁴ The studies that have addressed a singular form of gambling tend to focus on forms other than video gambling that are more prevalent and are more often at issue.¹⁰⁵ For example, one study found that, whereas horse racing and lottery tend to increase state revenues, greyhound racing and casino gambling tend to

101. See GRINOLS, *supra* note 1, at 7 (“An economic development proposal – this could be adding a new industry to the economy, as in the case of casinos, or something as far afield as choosing an immigration policy that decides whether to add new residents to a geographical nation – is desirable if it enhances the utility of existing residents.”).

102. See discussion *infra* Part III.B.1.

103. The list of limitations in this Note is not exhaustive. For a discussion of additional limitations, see Douglas M. Walker, *Problems in Quantifying the Social Costs and Benefits of Gambling*, 66 AM. J. ECON. & SOC. 609, 614–28 (2007).

104. See, e.g., GRINOLS, *supra* note 1, at 55–167 (analyzing the costs and benefits of casino gambling).

105. See, e.g., *id.* Whereas casino gambling, in some form, is present in thirty-seven states, video gambling is only present in six states other than Illinois. See AM. GAMING ASSOC., 2009 STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT 4 (2009), http://www.americangaming.org/assets/files/uploads/aga_sos2009web_FINAL.pdf.

decrease state revenues.¹⁰⁶ The problem with using these analyses to inform decisions about video gambling is that different types of gambling may have disparate costs and benefits.¹⁰⁷ If we accept that different forms of gambling have differing impacts, then a cost-benefit analysis of any form of gambling other than video gambling will be an unreliable indicator. The absence of cost-benefit analyses for video gambling means that its net effect on well-being is, to some degree, inestimable.

Even where cost-benefit analyses of gambling exist, the results vary widely because few studies agree on which costs and benefits are attributable to gambling and to what extent they are attributable.¹⁰⁸ An Iowa study found that the long-term cost-to-benefit ratio of casino gambling is three to one.¹⁰⁹ Other studies claim that gambling has little negative impact or that it even has a positive impact.¹¹⁰ The debate over which costs and benefits to attribute to gambling and to what degree causes the analysis to be manipulable—proponents of gambling bolster the benefits side of the analysis by attributing fewer costs to gambling, whereas opponents do the converse.¹¹¹ As long as the debate continues, cost-benefit analyses will likely generate wildly disparate results and will consequently be of limited use in determining whether a measure is economically justified.¹¹²

Even if the issue of attribution of costs and benefits were settled, some studies suggest that the analysis itself is not so simple; the results depend on a number of locality-specific variables. For example, existing forms of gambling in the locality affect the analysis.¹¹³ Because some forms of gambling tend to be substitutes for other forms, the existence of a substitute form of legalized gambling may mean that gambling revenues are merely redistributed.¹¹⁴ Another variable is taxation structure.¹¹⁵

106. See Douglas M. Walker & John D. Jackson, *The Effect of Legalized Gambling on State Government Revenue*, CONTEMP. ECON. POL'Y (forthcoming) (manuscript at 1), <http://walkerd.people.cofc.edu/pubs/2010/CEP.pdf>.

107. See *id.* at 10–13.

108. Compare, e.g., John M. Barron et al., *The Impact of Casino Gambling on Personal Bankruptcy Filing Rates*, 20 CONTEMP. ECON. POL'Y 440, 454 (2002) (suggesting that casino gambling results in increased local bankruptcy filing rates), and Grinols & Mustard, *supra* note 1, at 44 (suggesting that casino gambling increases crime in communities surrounding casinos), with Jon E. Grant et al., *Pathologic Gambling and Bankruptcy*, 51 COMPREHENSIVE PSYCHIATRY 115, 118–19 (2010) (suggesting that bankruptcy rates associated with problem gambling may be the result of correlate factors), and Douglas M. Walker, *Do Casinos Really Cause Crime?*, 5 ECON. J. WATCH 4, 15 (2008) (suggesting that flaws in Grinols and Mustard's research linking crime and casino gambling resulted in overstatement of the strength of the connection between the two).

109. GRINOLS, *supra* note 1, at 180.

110. See, e.g., PHINEAS BAXANDALL & BRUCE SACERDOTE, RAPPAPORT INST. POL'Y BRIEFS, BETTING ON THE FUTURE: THE ECONOMIC IMPACT OF LEGALIZED GAMBLING (Jan. 13, 2005), http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/rappaport/policybriefs/betting_final.pdf.

111. See Walker, *supra* note 103, at 614–15.

112. See DOUGLAS M. WALKER, THE ECONOMICS OF CASINO GAMBLING 136–37 (2007); Walker, *supra* note 103, at 628.

113. See Walker & Jackson, *supra* note 106.

114. *Id.* at 3.

115. William N. Thompson & Christopher Stream, *Casino Taxation and Revenue Sharing: A Budget Game, or a Game for Economic Development?*, 22 T.M. COOLEY L. REV. 515, 516 (2005) (“In

The lower the tax rate, the greater the potential for economic development; the higher the tax rate, the lower the potential for job creation, capital investment, and economic development.¹¹⁶ Locality-specific variables suggest that a one-size-fits-all analysis will not be an accurate guide for policy decisions.

Overlaying all of the preceding issues is the question of why the research was conducted in the first place and whether it had any effect on the results or the reporting of the research.¹¹⁷ Although research often appears to be objective and driven by a desire to produce accurate and truthful results, it can also be a means to bolster a preformed conclusion.¹¹⁸ In the case of gambling, much research is conducted by those who have a vested interest in the result—they either financially or politically benefit from gambling or they oppose gambling for moral or other reasons.¹¹⁹

With such powerful forces driving the research, it is difficult to gauge the quality of the research.¹²⁰ For this reason, the Commission included both parties in the gambling industry and parties which were morally opposed to gambling.¹²¹ It is debatable whether even these measures were effective in attaining objectivity. For example, the Commission's report cited a study performed by the director of Illinois State Police, Jeremy Margolis, during the period when the Riverboat Gambling Act was passed.¹²² Margolis "found little documentation of a causal relationship between [crime and casinos]."¹²³ The Commission fails to mention, however, that Margolis, prior to conducting this study, was a lobbyist for gambling interests such as Harrah's, Hilton, Caesar's World, Circus Circus, and the Jo Daviess Riverboat Corporation¹²⁴ or that, on a separate occasion, Margolis was hired by casinos to study crime

deciding on tax rates, lawmakers should ask themselves this question: what kind of gambling industry do the people . . . want? Tax rates north of 50% mean . . . straight machine gaming undiluted with entertainment . . . Tax rates this high mean minimal capital investment and minimal job creation. Lawmakers . . . are trading jobs for government revenues. They are also imposing maximum social costs on the communities hosting machines. Tax rates in the 20% range shift the policy emphasis away from revenue generation and toward economic development . . . Rates below 20% . . . maximize job creation and capital investment . . . Single digit tax rates . . . make the development of labor-intensive diversified entertainment properties possible . . . Lawmakers . . . are putting economic development . . . first and government revenue second. They are saying their communities want a new Bellagio . . . not storefront video poker." (quoting Eugene Martin Christiansen, *Taxes and Regret: A Review of 2002 US Casino Results in a Discussion of the Tax Rates Behind the Fiscal and Economic Policies of Various US Regulatory Jurisdictions*, 1 INSIGHT, no. 3, 2003 at 12)).

116. *Id.*

117. See Grinols & Mustard, *supra* note 1, at 28; Walker, *supra* note 103, at 614–15.

118. See Grinols & Mustard, *supra* note 1, at 28; Walker, *supra* note 103, at 614–15.

119. See Grinols & Mustard, *supra* note 1, at 28; Walker, *supra* note 103, at 614–15.

120. See Grinols & Mustard, *supra* note 1, at 28; Walker, *supra* note 103, at 614–15.

121. James, *supra* note 33, at 1; see also COMMISSION REPORT, *supra* note 1, app. I.

122. COMMISSION REPORT, *supra* note 1, at 7–14.

123. *Id.*

124. John Warren Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*, 22 MANAGERIAL & DECISION ECON. 17, 34 (2001).

issues and report to a government commission.¹²⁵ Cases like this raise questions about whether the researcher is more committed to producing and reporting accurate, objective results than to producing results that confirm a preformed conclusion. Coupled with the manipulability discussed above, overriding commitment to a preformed bias poses real problems for accurate, helpful cost-benefit analysis of gambling.

The Illinois government has made no effort to justify the Video Gaming Act by weighing its costs and benefits.¹²⁶ Had they attempted to weigh the costs and benefits, they would have discovered a need to address these limitations and conduct additional, state-specific, video gambling-specific, objective research. One recent study recommended just such an approach:

States or localities that are searching for ways to raise revenue should carefully research their particular situation before introducing new forms of gambling, as the effect on total state revenues is not necessarily positive. Legalized gambling may not always be the “golden egg” that it is sometimes promoted to be.¹²⁷

Without conducting this research and thus addressing these limitations, Illinois lawmakers could not have legitimately concluded that the Video Gaming Act was economically justifiable.

b. Gambling May Fail a Cost-Benefit Analysis

Amidst the existing cost-benefit analyses of gambling, a substantial body of research suggests that gambling in general, and video gambling in particular, would fail a cost-benefit analysis.¹²⁸ Even if Illinois lawmakers had decided that existing cost-benefit analyses were sufficient to inform their decision, they could not have concluded that the Video Gaming Act was economically justifiable without ignoring this entire body of research. This Subsection will outline the social costs associated with legalized gambling and will describe the research that suggests that legalized gambling results in a net loss.¹²⁹

125. Fran Spielman & Alf Siewers, *Casino Developers Hire Ex-State Police Director*, CHI. SUN-TIMES, Apr. 17, 1992, at 44.

126. See *The Video Poker Fiasco*, *supra* note 99.

127. Walker & Jackson, *supra* note 106 (manuscript at 13).

128. The Institute on Taxation and Economic Policy (ITEP) points out that “there is growing evidence that state-sponsored gambling is both inequitable and inadequate as a long-term revenue source—and that the associated social costs of encouraging destructive gambling behavior may offset much of the revenue gains enjoyed by states in the short run.” INST. ON TAXATION & ECON. POLICY, UNCERTAIN BENEFITS, HIDDEN COSTS: THE PERILS OF STATE-SPONSORED GAMBLING 2 (2005), <http://www.itepnet.org/pdf/pb19gamb.pdf>. According to ITEP’s website, it is a “non-profit, non-partisan research organization that works on federal, state, and local tax policy issues. ITEP’s mission is to ensure that elected officials, the media, and the general public have access to accurate, timely, and straightforward information that allows them to understand the effects of current and proposed tax policies.” *Mission & History*, INST. ON TAXATION & ECON. POLICY, <http://www.itepnet.org/about/about.php> (last visited Feb. 1, 2011).

129. As discussed above, scholarship specific to video gambling is lacking. See *supra* notes 102–07 and accompanying text. For this reason, this Section will cite video gambling-specific studies where

i. Social Costs

To conduct a cost-benefit analysis, the benefits must be weighed against all of the social costs caused by the activity. Some of the social costs of state-sponsored gambling have been called the ABCs of legalized gambling—addiction, bankruptcy, and crime.¹³⁰

Research shows that state-sponsored gambling facilitates the spread of pathological gambling.¹³¹ Although the strength of the dependence on gambling has been the subject of debate, most studies agree that pathological gamblers “engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves,”¹³² and that, “[w]ith the increased availability of gambling and new gambling technologies, pathological gambling has the potential to become even more widespread.”¹³³

Research also demonstrates that video gambling in particular contributes to the costs of pathological gambling. One study, for example, found that 48.2% of machine gambling revenues derive from problem and pathological gamblers.¹³⁴ Studies such as this one have earned video

available, but will otherwise largely rely on studies involving casino gambling. Casino gambling is not entirely unrelated, as eighty-seven percent of the revenue generated by casinos in Illinois comes from their video gambling machines. *Illinois Gaming Survey*, UNIV. OF NEV. LAS VEGAS, CTR. FOR GAMING RESEARCH, http://gaming.unlv.edu/abstract/il_main.html (last updated Jan. 7, 2010) (drawing from 2008 figures). Furthermore, for purposes of this section, evidence of social costs will be taken for granted. Contrary evidence will be cited in the footnotes.

130. See, e.g., Kristen Kridel, *1 State's Experience Bodes Ill for Illinois*, CHI. TRIB., July 24, 2009, § 4, at 1; *Cause for Concern (Gambling)*, FOCUS ON THE FAMILY, <http://www.focusonthefamily.com/socialissues/gambling/gambling/cause-for-concern.aspx> (last visited Feb. 1, 2011).

131. See Brian J. Cox et al., *A National Survey of Gambling Problems in Canada*, 50 CAN. J. PSYCHIATRY 213, 214–16 (2005). But see Debi A. LaPlante & Howard J. Shaffer, *Understanding the Influence of Gambling Opportunities: Expanding Exposure Models to Include Adaptation*, 77 AM. J. ORTHOPSYCHIATRY 616, 622 (2007) (suggesting that proximity interacts with adaptation in affecting prevalence rates); Serge Sévigny et al., *Links Between Casino Proximity and Gambling Participation, Expenditure, and Pathology*, 22 PSYCHOL. ADDICTIVE BEHAV. 295, 295 (2008) (finding no link between casino proximity and prevalence rate of pathological or problem gambling).

132. COMMISSION REPORT, *supra* note 1, at 4-1 (quoting COMM. ON THE SOC. & ECON. IMPACT OF PATHOLOGICAL GAMBLING, NAT'L RESEARCH COUNCIL, PATHOLOGICAL GAMBLING: A CRITICAL REVIEW 3 (1999)).

133. *Id.* A study from the Harvard Medical School determined that 0.9%–1.38% of gamblers in the general adult population can be classified as pathological gamblers and an additional 1.95%–3.65% can be classified as problem gamblers. See HOWARD J. SHAFFER ET AL., ESTIMATING THE PREVALENCE OF DISORDERED GAMBLING BEHAVIOR IN THE UNITED STATES AND CANADA: A META-ANALYSIS iii (1997), <http://www.divisiononaddictions.org/html/publications/meta.pdf>. The same study found that, among gamblers in the general youth population, 3.17%–8.37% are pathological gamblers, and 8.99%–20.66% are problem gamblers. See *id.* For an overview of several prevalence studies, see COMMISSION REPORT, *supra* note 1, at 4-6.

134. AUSTRALIAN INST. FOR GAMBLING RESEARCH, SURVEY OF THE NATURE AND EXTENT OF GAMBLING AND PROBLEM GAMBLING IN THE ACT 114 (2001), [http://www.problemgambling.act.gov.au/Survey of Problem Gambling in the ACT.pdf](http://www.problemgambling.act.gov.au/Survey%20of%20Problem%20Gambling%20in%20the%20ACT.pdf); see also Ryan, *supra* note 63 (discussing a study conducted in South Carolina prior to the recriminalization of video gambling that found that twenty percent of non-casino video poker players are pathological gamblers); 1800GAMBLER, CLINICAL AND DEMOGRAPHIC DATA AUGUST 2000 — AUGUST 2009 (2009), [http://www.1800gambler.net/Portals/0/data oct 2009.pdf](http://www.1800gambler.net/Portals/0/data%20oct%202009.pdf) (reporting that, of the 8045 people who called a problem gambling hotline in West Virginia over a nine year period, 5156 of the callers reported that their gambling problem stemmed from “neighborhood slots” found in bars, restaurants, etc.).

gambling the nickname, the “crack cocaine of gambling.”¹³⁵ While proponents of video gambling complain that the nickname is overused and has lost its credibility,¹³⁶ it is difficult to refute the fact that video gambling has a disproportionate effect on the number of pathological gamblers. For example, when the State of South Carolina recriminalized video gambling because of its social costs,¹³⁷ the number of Gamblers Anonymous groups dropped by half within six months of video gambling’s removal.¹³⁸ It dropped by another twenty-five percent in the following six months.¹³⁹ Montana, the state with the highest number of video gambling machines per capita, also has the highest number of Gamblers Anonymous meetings.¹⁴⁰ South Dakota, the state with the second highest number of machines per capita, has the second highest number of Gamblers Anonymous meetings.¹⁴¹

Illinois has recognized the addictive nature of gambling and has made some laudable efforts to rehabilitate. Namely, the Illinois Gaming Board established the self-exclusion list.¹⁴² When a gambler who has placed himself on the list tries to return to a casino, casino security is notified and confiscates the gambler’s chips, tokens, and gambling proceeds.¹⁴³ The proceeds are then donated to a designated organization.¹⁴⁴ To give some sense of the magnitude of the problem of gambling addiction, since the self-exclusion list’s inception in 2002, more than \$550,000 has been confiscated.¹⁴⁵ As of 2009, 7215 gamblers have placed themselves on the self-exclusion list.¹⁴⁶ The list has grown steadily since 2003 at an average rate of approximately 1000 names per year.¹⁴⁷ Of the self-excludes that voluntarily filled out demographic information upon applying for the self-exclusion list, 1116 of them reported that they predominately played video poker.¹⁴⁸ The passage of the Video Gaming Act raises concerns about whether tens of thousands of video gambling terminals across the state will largely neuter one of the only state-provided

135. COMMISSION REPORT, *supra* note 1, at 2-6; Robert B. Breen & Mark Zimmerman, *Rapid Onset of Pathological Gambling in Machine Gamblers*, 18 J. GAMBLING STUD. 31, 32 (2002). The nickname refers to video gambling’s particularly addictive effect. Breen & Zimmerman, *supra*, at 32.

136. See Bennett Liebman, *Not All that It’s Cracked up to Be*, 9 GAMING L. REV. 446, 446 (2005).

137. Kridel, *supra* note 130.

138. Ryan, *supra* note 63.

139. *Id.*

140. Kridel, *supra* note 130.

141. *Id.*

142. *Statewide Voluntary Self-Exclusion Program for Problem Gamblers*, ILL. GAMING BD., <http://www.igb.illinois.gov/selfxclude/Default.aspx> (last visited Feb. 1, 2011). The program was launched in 2002. *Id.*

143. *Frequently Asked Questions About Self-Exclusion*, ILL. GAMING BD., <http://www.igb.illinois.gov/selfxclude/Faq.htm> (last visited Feb. 1, 2011).

144. *Id.*

145. ILL. GAMING BD., STATEWIDE VOLUNTARY SELF-EXCLUSION PROGRAM ANNUAL REPORT 2008, at 2 (2008), <http://www.igb.illinois.gov/selfxclude/2008selfxcludeannualreport.pdf>.

146. ILL. GAMING BD., 2009 ANNUAL REPORT 10 (2009), <http://www.igb.illinois.gov/annualreport/2009igb.pdf>.

147. ILL. GAMING BD., *supra* note 145, at 7.

148. *Id.* at 5.

preventative avenues of self-help for problem and pathological gamblers.¹⁴⁹

Numerous studies have also linked gambling to insolvency and bankruptcy.¹⁵⁰ One study cited by the Commission showed that twenty-eight percent of the sixty pathological gamblers that attended a particular Gamblers Anonymous meeting reported that they had filed for bankruptcy or reported debts of \$75,000 to \$150,000.¹⁵¹ Coleen Moore, coordinator of resource development at the Illinois Institute for Addiction Recovery,¹⁵² reports that among the approximately seventy-five pathological gamblers that they help each year, the average debt for men ranges from \$50,000 to \$60,000, and the average debt for women is \$23,000.¹⁵³ SMR Research Corporation¹⁵⁴ reported that “[t]he 298 U.S. counties which have legalized gambling within their borders had a 1996 bankruptcy filing rate 18 percent higher than the filings in counties with no gambling, and the bankruptcy rate was 35 percent higher than the average in counties with five or more gambling establishments.”¹⁵⁵ Three years later, in follow-up studies, SMR Research Corporation concluded that “[v]irtually all studies (other than commentary or sponsored work by the gaming industry) show a relationship between compulsive gambling and insolvency.”¹⁵⁶ The adverse financial effects of gambling extend beyond debts and bankruptcy. The National Research Council¹⁵⁷ found that “[r]oughly one-fourth to one-third of gamblers in treatment in Gamblers Anonymous report the loss of their jobs due to gambling.”¹⁵⁸

149. See Commentary, *It'll Take Time, Cash to Fix Video Poker Mess*, CHI. SUN-TIMES, July 20, 2009, at 23.

150. See GRINOLS, *supra* note 1, at 139–41. But see Grant et al., *supra* note 108, at 117–19 (suggesting that bankruptcy rates associated with problem gambling may be the result of correlate factors).

151. COMMISSION REPORT, *supra* note 1, at 4–13.

152. According to the Illinois Institute for Addiction Recovery (IIAR) website, IIAR “started the nation’s most comprehensive gambling addiction treatment program in 1993.” *History*, ILL. INST. FOR ADDICTION RECOVERY, <http://www.addictionrecov.org/proctorinfo.aspx?SubCategoryID=65> (last visited Feb. 1, 2011). They offer both inpatient and outpatient rehabilitation. *Services*, ILL. INST. FOR ADDICTION RECOVERY, <http://www.addictionrecov.org/proctorinfo.aspx?SubCategoryID=62> (last visited Feb. 1, 2011).

153. Kridel, *supra* note 130.

154. According to SMR Research Corporation’s website, they provide “lenders and other companies with industry and market research on consumer lines of business.” SMR RESEARCH CORP., <http://www.smrresearch.com/> (last visited Feb. 1, 2011).

155. GRINOLS, *supra* note 1, at 140–41.

156. *Id.* at 141.

157. According to the National Research Council (NRC) website, the NRC is part of a private, nonprofit institution that provides science, technology, and health policy advice The mission of the NRC is to improve government decision making and public policy, increase public education and understanding, and promote the acquisition and dissemination of knowledge in matters involving science, engineering, technology, and health. NAT’L RESEARCH COUNCIL, <http://sites.nationalacademies.org/NRC/index.htm> (last visited Feb. 1, 2011).

158. COMMISSION REPORT, *supra* note 1, at 4–13.

Another adverse effect of gambling is increased crime.¹⁵⁹ The crime associated with gambling can be split into two categories: crimes committed by problem and pathological gamblers and crimes linked to the proliferation of the gambling industry—specifically organized crime and political corruption. Regarding crime committed by problem and pathological gamblers, one study found that in counties that had class III gambling,¹⁶⁰ which includes video gambling,¹⁶¹ 8.6% of property crime and 12.6% of violent crime was attributed to gambling.¹⁶² An average county with a population of 100,000 introducing class III gambling into its borders can expect 772 more larcenies, 357 more burglaries, 331 more auto thefts, 12 more rapes, 68 more robberies, and 112 more aggravated assaults per year.¹⁶³ In a news release shortly after Governor Quinn signed the Video Gaming Act into law, the Chicago Crime Commission¹⁶⁴ stated that, due to the Video Gaming Act, law enforcement and other regulators would be left with a “virtually uncontrollable situation.”¹⁶⁵

Gambling has also been linked to organized crime and political corruption.¹⁶⁶ John Pastuovic, Director of Public Affairs for the Chicago Crime Commission, stated that “[i]t is a fact that organized crime is known to gravitate towards gambling and other ancillary businesses.”¹⁶⁷ Video gambling in particular has a history of connections with organized crime in Illinois.¹⁶⁸ There are currently tens of thousands of “amusement only” machines in Illinois, many of whose owners illegally pay out.¹⁶⁹ These “gray machines” are known to be linked to organized crime.¹⁷⁰ Proponents argue that legalizing and regulating the machines is a way of severing the connection.¹⁷¹ Statements by participants in organized crime, however, suggest otherwise. One “mob turncoat,” for example,

159. See Grinols & Mustard, *supra* note 1, at 44. *But see* Walker, *supra* note 108, at 15 (suggesting that flaws in Grinols and Mustard’s research linking crime and casino gambling resulted in overstatement of the strength of the connection between the two).

160. Class III gaming is defined by the Indian Gaming Regulatory Act as “all forms of gaming that are not class I gaming or class II gaming.” 25 U.S.C. § 2703(8) (2006). Video gambling is not class I or class II gaming; therefore, it is classified as class III gaming. *Id.* § 2703(6), (7)(b)(ii).

161. See sources cited *supra* note 160.

162. See Grinols & Mustard, *supra* note 1, at 44.

163. EARL L. GRINOLS, N.C. FAMILY POLICY COUNCIL, THE ECONOMICS OF GAMBLING: SUMMARY POINTS 2 (2003), <http://www.ncfamily.org/pdffiles/GrinolsGamblingSummary-30APR0311.pdf>.

164. According to the Chicago Crime Commission’s website, it is a “non-partisan, non-profit organization of civic and business leaders committed to improving the quality of public safety and justice.” *About*, CHI. CRIME COMM’N, <http://www.chicagocrimecommission.org/CustomPages/About.aspx> (last visited Feb. 1, 2011).

165. Press Release, Chi. Crime Comm’n, Illinois Gaming Board Warned that Video Gambling Machines Will Create Uncontrollable Situation (Aug. 25, 2009), https://www.chicagocrimecommission.org/util/Press/FinalIllinoisGamingBoardVideoGamblingRelease_2_.pdf.

166. See *supra* note 63 and accompanying text.

167. See Press Release, Chi. Crime Comm’n, *supra* note 165.

168. See *supra* note 63 and accompanying text.

169. See *Legalizing Video Poker Would Bankroll Crime*, *supra* note 63; Walter B. Stowe, Jr., Letter to the Editor, *Law Aids Gaming Crackdown*, CHI. SUN-TIMES, Mar. 5, 2010, at 20.

170. See *Legalizing Video Poker Would Bankroll Crime*, *supra* note 63.

171. See, e.g., Stowe, *supra* note 169.

testified before the House Judiciary Committee that, “[the Chicago Outfit’s] long-range business interests were aided by an ambitious, though naive, ally: the Statehouse. . . . [A]ny new form or expansion of existing state-controlled licensed gambling always increased [their] market share.”¹⁷² Aaron Jaffe, chairman of the Illinois Gaming Board, acknowledged this fact, saying that it will be “an almost impossible job” keeping the mob out.¹⁷³ In addition to promoting organized crime, gambling has a history of questionable ties to politics. The list of Illinois politicians who have also been lobbyists for the gambling industry includes a former governor, former attorney general, former director of the state police, two former U.S. attorneys, a former Chicago mayor, a former Senate president, a former House majority leader, and many former state legislators.¹⁷⁴ Close connections to politics and enormous campaign contributions raise concerns about political corruption.¹⁷⁵ Former Governor Blagojevich serves as a hometown example. In addition to the other reasons for his indictment, he was indicted for soliciting campaign contributions from the horse race–betting industry.¹⁷⁶

ii. Research Suggesting that Gambling Results in a Net Loss

Much research has been conducted on the economics of gambling with little consensus. Policymakers are left to interpret the results the best they can. Although the task is daunting, the potential for significant costs is real enough that policymakers should examine all of the research before making a decision involving gambling expansion.

In examining the research, policymakers inevitably encounter a substantial body of research that suggests that gambling results in a net loss to society. For example, Earl Grinols’s¹⁷⁷ research places the cost-to-benefit ratio of casino expansion between 3.9 to 1 and 6.3 to 1.¹⁷⁸ A study performed by the Iowa Department of Human Services places the cost-to-benefit ratio of introducing a casino to an area that did not have one before at three to one.¹⁷⁹ Based on the Iowa study’s findings, at a tax rate of twenty percent, the social cost per tax dollar of casino taxes is \$3.04.¹⁸⁰

172. Michael Briggs, *‘Naive’ Illinois Called Illegal Gambling Ally*, CHI. SUN-TIMES, Sept. 29, 1995, at 1, available at NewsBank Access World News, Record No. CHI999318.

173. *We’d Rather Not Be Flush with Sad Stories*, *supra* note 100; Joseph Ryan, *Regulator: We Hope to Contain Gambling’s Ills*, DAILY HERALD (Arlington Heights, Ill.), Nov. 7, 2009, at 1.

174. Kevin Sack, *Gambling Owners Spend Lavishly to Gain a Voice in Many States*, N.Y. TIMES, Dec. 18, 1995, at B12.

175. See GRINOLS, *supra* note 1, at 20, 36.

176. See *supra* note 46 and accompanying text.

177. Earl Grinols is a Distinguished Professor of Economics at Baylor University. In 1994 testimony before Congress, he was one of the first academicians to recommend that Congress establish a national commission to study the impact of casino gambling. *Earl Grinols*, BAYLOR U., <http://www.baylor.edu/provost/index.php?id=28260> (last visited Feb. 1, 2011).

178. GRINOLS, *supra* note 1, at 178. *But see* WALKER, *supra* note 112, at 162–63 (critiquing GRINOLS, *supra* note 1).

179. GRINOLS, *supra* note 1, at 180.

180. *Id.* at 180–81.

According to Grinols, the social cost per dollar of a conventional tax is roughly \$1.57.¹⁸¹ The social cost of casino taxes does not drop to the level of a conventional tax until the tax rate on casino revenues exceeds seventy-one percent.¹⁸² Bear in mind that these figures involve casinos, which are generally recognized as producing greater benefits than video gambling.¹⁸³

The accuracy of figures like these is the subject of much debate.¹⁸⁴ Researchers that conduct cost-benefit analyses of gambling acknowledge the limitations of gambling studies and the need for more research and consensus in the field regarding which costs and benefits are attributable to gambling and to what extent.¹⁸⁵ Arguable or not, Illinois lawmakers had to encounter the body of research described above if they made a reasonable attempt to justify the Video Gaming Act economically. The absence of any acknowledgement or attempt to refute the research demonstrates that Illinois lawmakers either ignored the entire body of research suggesting that gambling fails a cost-benefit analysis or that they made no effort to justify the legislation on economic grounds.

2. *The Video Gaming Act Lacks Deontological Justification*

Opponents of video gambling argue that government should not engage in activities that harm its citizens, even if it generates much-needed tax revenue. Similarly, moderate deontological theory imposes a constraint against harming people that can only be overridden if the outcomes at stake are sufficiently good (or bad).¹⁸⁶ This Subsection gives a

181. *Id.*

182. *Id.* at 181.

183. COMMISSION REPORT, *supra* note 1, at 7-3 to 7-4 (“Destination casino resorts bear little resemblance to convenience gambling. The former provides numerous jobs, restaurants, shopping and entertainment as well as a number of games in a highly regulated setting, while the latter involves a relatively small number and type of games, creates few or no jobs, is far less regulated and fails to create significant beneficial economic impact.”).

184. *See supra* notes 131, 150, 159.

185. *See, e.g.,* GRINOLS, *supra* note 1, at 183–84 (“With respect to the future, it is evident that there is the need for more quality research on both the benefit and cost sides. . . . There is a need for greater uniformity in the manner in which costs and benefits are classified and treated. Focusing future research questions and methodologies on a clearly formulated theoretical foundation will allow us to make our estimates of both the costs and benefits of casino gaming more precise. . . . Peer-review-quality studies not funded by the casino industry or by progambling or antigambling groups are especially needed to refine and improve the cost-benefit numbers.”); Walker, *supra* note 103, at 613–14 (“Gambling research would improve significantly if we could adopt a standardized methodology for identifying and measuring the costs and benefits of gambling. . . . Developing a standardized methodology would have at least three positive effects on research. First, it would allow researchers to more effectively contribute to the policy debate over gambling. Second, it would enable comparisons of costs and benefits across regions and through time. Third, it would provide a foundation by which the effectiveness of various pathological gambling treatment mechanisms could be tested.”).

186. A classic example is a hypothetical where the deliberate killing of one innocent person will save the lives of two people. *See* Eyal Zamir & Barak Medina, *Law, Morality, and Economics: Integrating Moral Constraints with Economic Analysis of Law*, 96 CALIF. L. REV. 323, 326 (2008). Assuming there are no other costs associated with the deliberate killing of the one, the action passes muster under a strict economic analysis. This result, however, is uncomfortable for some—it violates common sense morality. If the deliberate killing of the one were to save thousands of lives, it might seem more

brief example of applied moderate deontological theory and demonstrates that, under a moderate deontological approach, the Video Gaming Act lacks justification.¹⁸⁷

Opponents of capital punishment often use moderate deontological theory as a basis for their opposition.¹⁸⁸ For example, capital punishment may have a deterrent effect on would-be murderers.¹⁸⁹ On the other hand, it involves taking a person's life, and, where our justice system is imperfect, it could potentially involve taking an innocent person's life.¹⁹⁰ For some individuals, the prospect of allowing the government to take a life—perhaps an innocent one—even if it will deter capital offenses, offends their moral intuitions.¹⁹¹ Under moderate deontological theory, the decision of whether to engage in capital punishment would be subject to a constraint against harming other people.¹⁹² If the outcomes at stake were sufficiently good (if they deterred 10,000 murders, for example) or sufficiently bad (if the murder rate would be out of control absent capital punishment, for example) then it might override the constraint such that capital punishment would be justified.¹⁹³ Where the outcomes at stake are marginally good or bad or are unclear, however, capital punishment would lack sufficient justification.¹⁹⁴

Analysis under moderate deontological theory involves two threshold questions: First, is there some constraint that prevailing moral intuition imposes on the action?¹⁹⁵ Second, are the outcomes at stake sufficiently good or sufficiently bad that they override the constraint and justify the action?¹⁹⁶ With regard to the first question, the Video Gaming Act gives rise to the constraint against harming people. As to the second question, Illinois lawmakers could not have reached the conclusion that

justified; where the cost-to-benefit ratio is close, however, and the action involves harming another person, the economic analysis is unsatisfactory and further constraints should be imposed. *Id.* at 326–27 & n.7.

187. This Note does not discuss absolute deontological theory. Under absolute deontological theory, “[t]he pursuit of good consequences is subject to constraints. Certain acts are inherently wrong and are therefore impermissible even as a means to furthering the overall good. The central constraint is against harming other people.” *Id.* at 325–26. Because the Video Gaming Act has the potential to increase rates of addiction, bankruptcy, and crime, it would presumably lack justification under absolute deontological theory. *See id.*

188. *Id.* at 379 & n.212.

189. Louis P. Pojman, *Why the Death Penalty Is Morally Permissible*, in *DEBATING THE DEATH PENALTY* 51, 54–55 (Hugo Adam Bedau & Paul G. Cassell eds., 2004); *see Zamir & Medina, supra* note 186, at 379.

190. FRANKLIN E. ZIMRING, *THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT* 157 (2003).

191. *Cf. Zamir & Medina, supra* note 186, at 326 (noting that moderate deontological theory tends to track prevailing moral intuitions).

192. *See id.*

193. *See id.*

194. The hypothetical in *supra* note 186 involving a case where deliberately killing one person would save two people is an example of an outcome that is only marginally beneficial.

195. *See Zamir & Medina, supra* note 186, at 325–26.

196. *Id.*

the outcomes overcome the restraint because they failed to perform a cost-benefit analysis that would adequately predict the outcomes.

a. The Video Gaming Act Harms Illinois Citizens

In the case of the Video Gaming Act, Illinois lawmakers are harming Illinois citizens. Specifically, under the Video Game Act, the State exploits the weaknesses of its citizens and participates in imposing the social costs of video gambling upon them.

The National Opinion Research Center¹⁹⁷ found that the rate of pathological gambling doubled within a fifty-mile radius of a casino.¹⁹⁸ The Video Gaming Act essentially brings the operative ingredients of the casinos to multiple locations in every willing town and county in the State of Illinois. Because problem and pathological gamblers make up a disproportionate percentage of those who use video gambling machines,¹⁹⁹ Illinois lawmakers are exploiting the weaknesses of their constituents to pay for the state's projects.

One can argue that governments impose taxes on addictive activities all the time—taxes on alcohol and tobacco sales, for example—without being accused of exploitation. The taxes on such activities are informally called “sin taxes,” and they are imposed in hopes of limiting the addictive activity.²⁰⁰ The legalization and taxation of video gambling, however, is different from that of alcohol or tobacco. The amount of tax revenue that the Illinois government derives from taxes on alcohol and tobacco is relatively small.²⁰¹ Taxes on video gambling proceeds, on the other hand, are the largest source of funding for the \$31 billion capital projects program.²⁰² The relatively modest amount of tax revenue generated by sin taxes is consistent with the Illinois government's desire to limit the activity. The tremendous amount of revenue derived from video gambling means that the capital projects program is more reliant on video gambling than on the other funding sources. Consequently, Illinois lawmakers have an interest in maximizing video gambling revenue.²⁰³

197. According to the National Opinion Research Center (NORC) website, they are affiliated with the University of Chicago and conduct social science research in areas of public interest. *About NORC*, NORC AT THE UNIV. OF CHI., <http://www.norc.uchicago.edu/Aboutus/> (last visited Feb. 1, 2011); *University of Chicago Affiliation*, NORC AT THE UNIV. OF CHI., <http://www.norc.uchicago.edu/Aboutus/univofchicago/> (last visited Feb. 1, 2011). NORC prepared a report for the Commission. NAT'L OP. RESEARCH CTR. U. CHI., *GAMBLING IMPACT AND BEHAVIOR STUDY* (1999), <http://gov.info.library.unt.edu/ngisc/reports/gibstdy.pdf>.

198. COMMISSION REPORT, *supra* note 1, at 4-4. *But see* LaPlante & Shaffer, *supra* note 131, at 622; Sévigny et al., *supra* note 131, at 299-301.

199. *See supra* notes 134-41 and accompanying text.

200. Jendi B. Reiter, *Citizens or Sinners?—The Economic and Political Inequity of “Sin Taxes” on Tobacco and Alcohol Products*, 29 COLUM. J.L. & SOC. PROBS. 443, 443 (1996).

201. For example, taxes on alcohol will provide twenty percent to thirty-eight percent of the revenue that video gambling will for the capital projects program. COMM'N ON GOV'T FORECASTING & ACCOUNTABILITY, *supra* note 81, at 38.

202. *Id.* at 37-38.

203. The scenario has similarities with state-owned lottery, about which the Commission noted,

This explains the frustration some lawmakers have expressed as local governments choose to ban video gambling within their borders.²⁰⁴ Thus the Video Gaming Act gives the Illinois government an incentive to promote an activity that potentially increases addiction, insolvency, and crime. In promoting the activity, lawmakers are exploiting the weaknesses of their constituents.

b. The Outcomes of the Video Gaming Act Fail to Override the Constraint Against Harming People

Illinois lawmakers are at a disadvantage in regard to the question of whether the outcomes of the Video Gaming Act override the constraint against harming people; as demonstrated in Part III.B.1, they could not have reached the conclusion that video gambling passes a cost-benefit analysis at all, much less that the outcomes were *sufficiently* good that they override the constraint.²⁰⁵

On the other hand, one could argue the converse—that the absence of the revenues that video gambling could generate would be a sufficiently bad outcome that it would override the constraint.²⁰⁶ This argument, however, fails for the same reasons. Without having performed an adequate cost-benefit analysis, Illinois lawmakers have no way of knowing whether legalizing video gambling will ameliorate or exacerbate the situation. If video gambling is a net loss to society, as suggested by the body of research described above, then it will only serve to make a bad outcome worse. The argument would work if video gambling were a net gain to society, but Illinois lawmakers could not have come to that conclusion without performing an adequate cost-benefit analysis.

By passing the Video Gaming Act, lawmakers harm their constituents by exploiting their weakness in order to fund capital projects. With-

One theme that emerged at the Commission hearings is the contradictory role of state government as an active promoter of lotteries while imposing a heavy “sin” tax on the lottery buyer. . . .

Another important issue regarding lotteries is the ability of government at any level to manage an activity from which it profits.

COMMISSION REPORT, *supra* note 1, at 2-3 to 2-4. Although the state does not own video gambling machines, it will derive tremendous revenue from them, which will give rise to the same contradictory role and questions about government’s ability to manage the situation.

204. The *Chicago Tribune* quoted the following conversation between State Representative Angelo Saviano and Michael Fries, general counsel to the Illinois Gaming Board:

Some of the stuff you read in the newspapers and in the editorials, we feel that certain Gaming Board members or their designees are talking to them, giving them information, to stall this (roll-out of video gambling). And we have an immense amount of pressure on us to get this capital bill up and running. So if you could relay a message. . . . Could they just keep their mouths shut and get the job done? Cuz we need, we need this capital bill. We need it for our schools, we need it for everybody else. And for them to keep fueling the fire with the newspapers trying to get communities out of this is, is a *crime*.

Video Poker Extortion, *supra* note 87 (alteration in original).

205. See *supra* Part III.B.1.

206. Recall that a constraint is overridden if the outcome is sufficiently good *or bad*. Zamir & Medina, *supra* note 186, at 326.

out adequate research to give some idea of what to expect in terms of costs and benefits, it is impossible to come to the conclusion that the outcomes override the constraint. Therefore, Illinois government could not have justified its actions under a deontological theory.

3. *Summary*

If the Video Gaming Act is unjustifiable on both economic and deontological grounds, then how did Illinois lawmakers justify the legislation? They focused on the immediate benefits of gambling expansion—more tax revenue, which leads to more capital construction, which leads to more jobs.²⁰⁷ These are undoubtedly benefits of the Video Gaming Act. Lawmakers' focus on these immediate benefits, however, disingenuously skirts the real issue at stake: "whether the net increases in income and well-being are worth the acknowledged social costs of [video] gambling."²⁰⁸ An isolated estimate of tax revenue cannot justify the Video Gaming Act. The temptation for lawmakers to focus exclusively on a few isolated benefits is precisely why the Commission called for a pause in gambling expansion to allow for further research.²⁰⁹ Of course, if Illinois lawmakers were to give credence to the Commission's report, they would also have to address the recommendation to not authorize any further convenience gambling operations.²¹⁰

It is difficult to determine what motivated Illinois lawmakers' shift from years of shutting down proposed gambling expansion²¹¹ to the largest gambling expansion in Illinois history.²¹² At best, they were foolish and made the mistake of not examining the economic and deontological ramifications of the legislation. At worst, they cleverly tried to focus the public's attention on capital construction and job creation in order to reap the immediate benefits of video gambling tax revenue and leave the long-term costs for local governments and future leaders to deal with. In any case, passing the Video Gaming Act with no regard to public opinion and no legitimate justification was an egregious abuse of political power.

IV. RESOLUTION

Gambling taxes are an easy fix for a government in need of revenue. While broad public taxes tend to hurt politicians at election time, the

207. See Garcia & Long, *supra* note 62.

208. COMMISSION REPORT, *supra* note 1, at 7-29.

209. See *id.* at 1-7.

210. See *supra* note 36 and accompanying text.

211. For a list of unsuccessful attempts at gambling expansion from 2005 to 2007, see *supra* note 13.

212. The Riverboat Gambling Act legalized ten casino licenses with 1200 gambling positions each—a total of twelve thousand gambling positions. 230 ILL. COMP. STAT. 10/7(e), (h) (2008). The Video Gaming Act legalized an indeterminate number of gambling positions, but the Commission on Government Forecasting and Accountability estimates between 45,000 and 65,000 gambling positions. See *supra* note 10.

gambling industry is willing and ready to absorb the government's revenue needs. Unfortunately, once a government has sanctioned gambling and has come to rely on its revenues, it is very hard to turn back.²¹³ The Commission confirmed that "[p]olicy decisions taken in the establishment of a lottery are soon overcome by the ongoing evolution of the industry. It is often the case that public officials inherit policies and a dependency on revenues that they can do little or nothing about."²¹⁴ The effect is true of state-sponsored gambling in general.²¹⁵ If the purported ills of video gambling turned out to be true for Illinois, the momentum of the industry and the state's reliance on its revenues would overpower any policy considerations and afford the government little power to change the situation.²¹⁶ For this reason, and to rectify lawmakers' abuse of political power, something must change.

To resolve the current state of affairs, this Note proposes that Illinois lawmakers should repeal the current legislation, gauge public opinion, conduct adequate research, and safeguard against future abuses of political power. At a minimum, Illinois lawmakers should reduce the requirements for a local initiative to ban video gambling in a locality to a reasonable level.

The first, remedial step is for Illinois lawmakers to repeal the Video Gaming Act. Such action would require the government to find other sources of funding for capital projects, and/or trim the program back to a more fiscally manageable size.²¹⁷ Unfortunately, repealing the legislation is only a temporary resolution. History demonstrates that proposals for gambling expansion are constant and that the issue will be back on the table before long.²¹⁸ A repeal of the Video Gaming Act will, however, rectify the abuse of political power and will give lawmakers time to gauge public opinion, conduct adequate research, and safeguard against potential abuses in the future.

Once they have repealed the Video Gaming Act, lawmakers should engage the public in discussion on the subject of video gambling. Per-

213. Thompson & Stream, *supra* note 115, at 516–17.

214. COMMISSION REPORT, *supra* note 1, at 2–4.

215. See *id.*, at 7–18; Audie Blevins & Katherine Jensen, *Gambling as a Community Development Quick Fix*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 109, 121 (1998).

216. See Thompson & Stream, *supra* note 115, at 516–17. Change is, however, possible. South Carolina recriminalized video poker in 2000, removing an industry that was generating over \$500 million in gross gaming revenue. William R. Eadington, *Gambling with the Future*, in *THE ECONOMICS OF RISK* 51, 54 (Donald J. Meyer ed., 2003). Louisiana recriminalized video poker in thirty-four of its sixty-six parishes in 1996. *Id.* at 54–55. North Carolina recriminalized video poker in 2007. Beth Velliquette, *Video Poker: Time to Fold Nears—Machines Face a Flush by Next Summer, But Days of a Full House Already Over*, CHAPEL HILL HERALD (Durham, N.C.), Oct. 1, 2006, at 1, available at NewsBank Access World News, Record No. 0520808865.

217. Lawmakers may be tempted to think that it is too late to repeal the legislation now that they have chosen this path and devoted \$4.4 million to it. Warren, *supra* note 100. Recall, however, the cases of South Carolina, North Carolina, and Louisiana, which already had thriving video gambling operations when they reversed their legalization. See Eadington, *supra* note 216, at 54–55 (South Carolina and Louisiana); Velliquette, *supra* note 216 (North Carolina).

218. See *supra* note 13 and accompanying text.

haps the results will match what the *Chicago Tribune* found in a poll soon after the Video Gaming Act was passed—that a majority of citizens would vote against video gambling if they had been given the chance.²¹⁹ Perhaps, however, citizens have grown more comfortable with the idea of video gambling and the results will be different. In any case, the Illinois government should not neglect public opinion in matters that will have a potentially significant effect on public well-being.

The next imperative and long overdue²²⁰ step is to conduct adequate research on the costs and benefits of gambling expansion in general and video gambling in particular. Adequate research should be Illinois-specific,²²¹ gambling type-specific,²²² and ongoing.²²³ Future proposals for gambling expansion should not be considered without well-reasoned justification developed through adequate research.

In addition to repealing the Video Gaming Act, gauging public opinion, and conducting research, the Illinois government should safeguard against future abuses of political power involving gambling expansion. Specifically, this Note suggests that the government adopt Governor Quinn's former stance that gambling expansion should not be authorized without a statewide referendum.²²⁴ When legislation could potentially impose such significant social costs on the citizens of Illinois and the legislation is too difficult to reverse, a government that struggles to weed out corruption and maintain the trust of its citizens cannot afford to be less than transparent in its lawmaking. The citizens of Illinois should have a more direct voice in matters involving gambling expansion, just as they should have had a voice in the Video Gaming Act's passage.

Should Illinois lawmakers balk at the measures listed above, they should, at a minimum, reduce the requirements for putting a local referendum on the ballot to a reasonable level.²²⁵ This will give the citizens of Illinois more than a nominal voice in the matter and will allow the Illinois government to keep the revenues generated by communities that want to participate.

In the case that lawmakers adopt none of the measures outlined above, this Note urges Illinois citizens to recall the Illinois government's

219. Secter & Pearson, *supra* note 58.

220. This step is imperative and long overdue because it is precisely the measure recommended by the Commission over ten years prior to the passage of the Video Gaming Act. COMMISSION REPORT, *supra* note 1, at 1-7 to 1-8.

221. Illinois-specific research will help address the limitation involving locality-specific variables. See Walker & Jackson, *supra* note 106 (manuscript at 1, 13).

222. Gambling type-specific research will help address the limitation involving the disparate effects among different forms of gambling. See *id.* at 10-13.

223. Ongoing research will help develop a clearer picture of the costs and benefits of gambling in Illinois and will help take into account changing attitudes toward gambling.

224. This approach is not without precedent; Michigan requires a statewide referendum for any gambling expansion. Rafool, *supra* note 9, at 26, 28.

225. See *supra* notes 85-87 and accompanying text. This is the action that Quinn attempted to take soon after signing the Video Gaming Act into law. See *supra* note 85. Apparently, the action will have to be taken by legislators to be successful.

abuse of political power during the next election cycle and to call upon the political process to resolve the current state of affairs.

V. CONCLUSION

The National Gambling Impact Study Commission called for a pause in gambling expansion in 1996 so that further research regarding the costs and benefits of legalized gambling could be conducted. In spite of the Commission's recommendation, Illinois lawmakers recently passed the Video Gaming Act, the largest gambling expansion in Illinois history, without regard to public opinion and without legitimate justification, and in so doing, they abused their political power. The Illinois legislature should repeal the Video Gaming Act, gauge public opinion, conduct adequate research, and pass legislation requiring a statewide referendum prior to any further gambling expansion. At a minimum, the General Assembly should make the requirements for a local initiative to ban video gambling in a locality more reasonable.