

# OVERWHELMED, IRRESPONSIBLE AND RECKLESS

## *THE URGENT NEED FOR REGULATORY REFORM IN NEW HAMPSHIRE'S GAMING INDUSTRY*

March 22, 2024

### Executive Summary

The landscape of casino gaming in New Hampshire is undergoing a significant transformation, with proposals for new and expanded facilities diverging from the original vision set by the legislature in 1949. The influx of national and international gaming giants is transforming locally-owned charitable casinos into sprawling commercial establishments, raising concerns due to the absence of a robust regulatory framework necessary to prevent adverse consequences.

- I. **Power of Regulation** – Effective regulation is the linchpin for a thriving gaming industry. Drawing on lessons from past industry expansions, including the rampant involvement of organized crime in the early expansion of gaming in Las Vegas, effective regulation helps strike a balance between fostering a thriving gaming sector and addressing potential negative consequences associated with uncontrolled growth – including consumer exploitation, problem gambling, fraud, corruption, and erosion of public trust. New Hampshire's current regulatory state has already seen the fallout of these issues.
- II. **Proliferation of Incremental Gaming in New Hampshire** – Although a bill to legalize gaming has never passed in New Hampshire, following the legalization of historic horse racing machines, foreign operators have flooded the market supplanting New Hampshire-style charitable casinos in favor of Las Vegas style-casinos. In the past year alone, gaming revenue has increased by almost 36%.
- III. **Unchecked Expansion Fallout** – The results of New Hampshire's back-door approach has created an environment marred by systematic abuse, lack of transparency, and criminal activity. Towns and cities across New Hampshire are ill-prepared to deal the onslaught and do not have the experience to handle the demands of well-funded and politically connected casino developers. As a result, the local Zoning and Planning Boards have been, at times, bullied into accepting proposals and have struggled to understand their role and authority.

While New Hampshire's gaming industry presents exciting opportunities for economic growth, the failure to adopt a robust regulatory framework poses a significant threat to its integrity and economic viability. Until the legislature can address the issues involved with the expansion of

gaming, all pending expansion should be halted immediately so that New Hampshire can ensure that its gaming industry grows appropriately, with the trust and confidence of all stakeholders. Now is the time to reassess the game plan before the State rolls the dice on its economic future.

## I. Introduction

Proposals for new and expanded casino gaming facilities are proliferating across New Hampshire. However, these proposals are not the locally-owned, neighborhood charitable casino facilities originally envisioned by the New Hampshire legislature when they approved gaming in 1949. Recent proposals include leading national and international gaming conglomerates intent on entering the New Hampshire market with large-scale gaming facilities. Although New Hampshire has repeatedly rejected efforts to legalize commercial gaming, it has turned a blind eye to the rampant expansion of these casinos under the existing “charitable” structure. As a result, these locally-owned neighborhood facilities are quietly and swiftly expanding into full-blown commercial casinos, taking full advantage of the lack of a robust gaming regulatory environment.

In jurisdictions where gaming grows unregulated, the negative consequences are significant, impacting the State, consumer, local interests, and the broader community. New Hampshire has thus far failed to develop critical infrastructure to effectively oversee and regulate casino gaming leaving dangerous gaps and loopholes that are already causing significant issues, as described herein. Until such time as New Hampshire can properly assess the market, develop a robust regulatory framework with oversight and enforcement authority, and protect consumer interests, further expansion of existing and new “charitable” gaming should be immediately halted, and the existing back door should be shut.

## II. Importance of Effective Regulation

It has long been established that effective regulation is the cornerstone of the gaming industry. Regulation helps strike a balance between fostering a thriving gaming sector and addressing potential negative consequences associated with uncontrolled growth. In jurisdictions where gaming grows unregulated or under-regulated, several potential consequences and challenges may arise, such as:

1. Lack of Consumer Protection/Unfair Business Practices. In regulated markets, there are regulatory bodies responsible for assuring consumer protection. In an unregulated or under-regulated market, consumers may lack legal recourse or protection against unfair practices, fraud, or deceptive behavior by gaming operators including rigged games, deceptive promotions, lack of transparency, and biased odds. In addition, consumer’s personal and financial information may be at risk due to a lack of adequate security measures.
2. Lack of Resources to Address Problem Gambling. In regulated, mature gaming markets, gaming operators and regulators partner to provide robust responsible gaming measures and treatment options. Without a strong commitment to responsible gaming, and associated funding, there may be an increased risk of addiction and the associated social and economic consequences.

3. Fraud. The absence of proper regulatory oversight provides an opportunity for criminal organizations to exploit gaming enterprises for money laundering and other fraudulent activities. In a regulated, mature gaming environment, both operators and regulatory agencies have robust anti-money laundering controls and reporting obligations that swiftly identify any illegal activity.
4. Financial Investment. Regulated environments provide opportunities for well-established, financially secure gaming operators to invest meaningful amounts in the development and operation of a gaming facility. A stable, regulated environment provides these operators with the ability to secure financing at favorable rates which enables them to develop facilities that enhance the consumer's experience, invest in the necessary infrastructure to mitigate adverse impacts (e.g., transportation improvements), and attract new consumers to the facility and surrounding areas.
5. Undermining Legitimate Operators. Unregulated or under-regulated gaming markets create an uneven playing field, making it difficult for well-established financially secure gaming operators to compete fairly and leading to a decline in their market share. Before entering any market, a responsible gaming operator will spend considerable time and expense assessing the economic viability of a project and determining the amount that can be responsibly invested. Any lack of certainty, for example, whether or not there is a limit on the number of permitted facilities, will adversely impact whether well-established, financially secure gaming operators will enter the market.
6. Inability to Address Emerging Issues. Without a robust regulatory framework, it becomes challenging to address emerging issues such as technological advancements, evolving forms of gaming (including on-line gaming), and changing consumer preferences.
7. Erosion of Public Trust. For many years, public perception of casino operators was fraught with concerns regarding social and ethical issues. Over the past few decades, casino operators have emerged as publicly traded companies operating in domestic and foreign domiciles. In addition to the unique regulatory environments in which these companies operate, they must also be fully compliant with (1) the Sarbanes-Oxley Act of 2002 and related Securities and Exchange Commission (SEC) regulations and (2) the Foreign Corrupt Practices Act (FCPA). Without a robust regulatory environment, companies and the individuals who operate them may have an opportunity to leverage their positions for personal gain. This not only undermines the principles of fair competition but also erodes public trust in the legitimacy of gaming operations.

Under the current state of regulation, New Hampshire has already succumbed to many of the foregoing enumerated consequences.

### III. Expansion of Offshore Gaming

The rapid expansion of offshore gaming provides a vivid example of the perils of unregulated gaming expansion. Offshore gaming operators offer online gaming platforms operated out of places such as Malta, Gibraltar, the Isle of Man, and the Philippines. The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) prohibits a gambling business from accepting real-money wagers over the Internet (with exceptions for operators in states that have authorized iGaming and online sports betting).<sup>1</sup> As a result, offshore gaming operators are operating in violation of US law and without a regulatory structure.

The American Gaming Association (AGA) estimates that more than \$500 billion is wagered, unlawfully, through these offshore websites exposing players to financial and cyber vulnerabilities.<sup>2</sup> Further, these operators do not have protocols to address money laundering, gaming integrity, responsible gaming, or age restrictions. Players have no safeguard against fraudulent activity and unscrupulous operators.

Notwithstanding the passage of the UIGEA, federal law enforcement agencies have made little progress in shutting down offshore and illegal online gaming. On April 13, 2022, the AGA sent a letter to Attorney General Merrick Garland, the Attorney General of the United States Department of Justice (DOJ) stating, in pertinent part:

“Similarly, illegal online casinos operate openly and often target U.S. customers through paid advertising. These illegal sportsbooks and casinos create numerous societal costs. In addition to violating the law, the games offered by these sites do not meet testing or regulatory standards to ensure fair play and payouts, age-verification, or security of personal and financial data. Jurisdictions with authorized gaming implement rigorous responsible gaming protections and widely offer self-exclusion lists to assist users who may have difficulty controlling their play – but clearly the illicit platforms do not implement such lists and as a result, the most vulnerable users are likely to end up using these options. Illicit gambling operations have also been known to at times simply disappear, walking away with their customers’ funds in the process. Our current state-based licensing and regulatory regime ensures this cannot happen in the legal market.”<sup>3</sup>

In June 2022, 28 members of Congress sent the DOJ a similar letter noting that “predatory operations [offshore sports books] expose our constituents to financial and cyber vulnerabilities; do not have protocols to address money laundering, sports integrity, or age restrictions; and undermine states’ efforts to capture much needed tax revenue through legal sports betting channels.”<sup>4</sup> In April 2023, a coalition of gaming regulators further urged the DOJ to prioritize combating illegal offshore sportsbooks and online casinos.<sup>5</sup>

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<sup>1</sup> <https://www.ftc.gov/legal-library/browse/statutes/unlawful-internet-gambling-enforcement-act>

<sup>2</sup> [https://www.americangaming.org/wp-content/uploads/2022/04/AGA\\_DoJIllegalGambling-4.13.22.pdf](https://www.americangaming.org/wp-content/uploads/2022/04/AGA_DoJIllegalGambling-4.13.22.pdf)

<sup>3</sup> [https://www.americangaming.org/wp-content/uploads/2022/04/AGA\\_DoJIllegalGambling-4.13.22.pdf](https://www.americangaming.org/wp-content/uploads/2022/04/AGA_DoJIllegalGambling-4.13.22.pdf)

<sup>4</sup> [https://titus.house.gov/uploadedfiles/letter\\_to\\_doj\\_on\\_illegal\\_offshore\\_sportsbooks\\_final\\_signed.pdf](https://titus.house.gov/uploadedfiles/letter_to_doj_on_illegal_offshore_sportsbooks_final_signed.pdf)

<sup>5</sup> <https://www.nevadacurrent.com/wp-content/uploads/2023/05/Illegal-Gambling-Letter-to-DOJ.pdf>

In August 2023, the DOJ responded stating:

“The Department takes seriously the issue of illegal gambling, including illegal online gambling, and continues to successfully investigate and prosecute illegal Internet gambling. The FBI works hard to establish and maintain strong partnerships with both public and private entities to combat illegal gaming. The Department appreciates the impact adverse illegal gaming has on individuals and communities and will continue to use all available tools to detect, investigate, and prosecute illegal activity.”<sup>6</sup>

Notwithstanding, unregulated offshore operators have continued to proliferate unfettered.

In 2021, researchers at Central Queensland University published a study evaluating the evolving landscape of interactive gaming.<sup>7</sup> The primary finding of the study was that the prevalence of interactive gambling had doubled since the researcher's previous study in 2014 and an estimated 17.5% of the Australian adult population engage in online gaming (47% had used an illegal offshore gambling site). The study further observed that “[p]roblem gambling amongst offshore bettors on sports, racing, novelty events, esports or daily fantasy sports (38.5%) was over three times higher than for non-offshore bettors (11.4%).” Respondents in the study cited the following disadvantages of using offshore sites: poor consumer protection (41.8%), inability or difficulty of withdrawing winnings (38.6%), and delayed withdrawals (29.4%). Other disadvantages included foreign currency exposure and transaction fees, and a previous experience of being scammed by an offshore operator.

The impact of offshore operators on consumers and the legalized gaming industry is a blatant reminder of the importance of properly regulated casino growth.

#### IV. History of Gaming in New Hampshire

Legalized gaming in New Hampshire dates back to 1933 when the New Hampshire legislature legalized thoroughbred horse racing and harness racing.<sup>8</sup> In 1949, charities were permitted to operate games such as bingo, raffles, and “Lucky 7.”<sup>9</sup> In 1977, gaming was expanded to include

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<sup>6</sup> <https://twitter.com/NevadaGCB/status/1696528097502515469>

<sup>7</sup> Hing, N., Russell, A., Browne, M., Rockloff, M., Greer, N., Rawat, V., Stevens, M., Dowling, N., Merkouris, S., King, D., Breen, H., Salonen, A. H., & Woo, L. (2021). *The second national study of interactive gambling in Australia (2019-20)*. Gambling Research Australia. <https://www.gamblingresearch.org.au/publications/second-national-study-interactive-gambling-australia-2019-20>.

<sup>8</sup> <https://www.compliance.lottery.nh.gov/about-us#:~:text=1933%20-%20State%20Racing%20Commission%20was,regulate%20both%20classes%20of%20racing.>

<sup>9</sup> <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj1oICYmcSCAxXnrokEHZ-BD74QFnoECA0QAw&url=https%3A%2F%2Fwww.nh.gov%2Fgsc%2Fcalendar%2Fdocuments%2Fnhrcgc.ppt%23%3>

“Games of Chance.”<sup>10</sup> Under the law passed in 1977, “Games of Chance” could only be conducted by qualified non-profit organizations.<sup>11</sup>

In 2006, House Bill 1744 was enacted, which allowed casinos in New Hampshire on the condition that 35% of their gross gaming revenue would be donated to approved charities and 10% of their gross gaming revenue would be paid to the New Hampshire Lottery to support public education.<sup>12</sup> Most casinos operating in New Hampshire sponsor a particular charity for a seven- to 10-day schedule (with 10 being the maximum number of days allowed for any given charity).<sup>13</sup> During that period, the casino will donate 35% of its gross gaming revenue to the specified charity.<sup>14</sup> After the expiration of that particular cycle, another charity will be the beneficiary. As a result, each casino supports between 75-104 charities in a year. Casinos that offer historic horse racing machines are required to sponsor two charities per cycle, thereby increasing the number of participating casinos.<sup>15</sup> Over 575 charities are licensed to participate.<sup>16</sup>

In 2009, New Hampshire Governor Lynch issued an Executive Order creating the “New Hampshire Gaming Study Commission” for the purpose of conducting a “thorough and comprehensive review of various models for expanded gaming and their potential to generate state revenues, as well as an assessment of the social, economic and public safety impacts of gaming options on the quality of life in New Hampshire.”<sup>17</sup> In 2010, the Commission published its final report including the following findings:

Potential market saturation can lead to reduced economic activity and revenues...Even in southern New Hampshire, expansion beyond one or two new facilities may maximize how much new revenue the state would generate from expanded gaming.

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A~%3Atext%3DBingo%2520games%2520and%2520sale%2520of%2Cthe%2520Department%2520of%2520Safety%2520respectively.&usg=AOvVaw1n8FjD1S9cnsBN9d5tMZOf&opi=89978449

<sup>10</sup> <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj1oICYmcSCAxXnrokEHZ-BD74QFnoECA0QAw&url=https%3A%2F%2Fwww.nh.gov%2Fgsc%2Fcalendar%2Fdocuments%2Fnhrcgc.ppt%23%3A~%3Atext%3DBingo%2520games%2520and%2520sale%2520of%2Cthe%2520Department%2520of%2520Safety%2520respectively.&usg=AOvVaw1n8FjD1S9cnsBN9d5tMZOf&opi=89978449>

<sup>11</sup> <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj1oICYmcSCAxXnrokEHZ-BD74QFnoECA0QAw&url=https%3A%2F%2Fwww.nh.gov%2Fgsc%2Fcalendar%2Fdocuments%2Fnhrcgc.ppt%23%3A~%3Atext%3DBingo%2520games%2520and%2520sale%2520of%2Cthe%2520Department%2520of%2520Safety%2520respectively.&usg=AOvVaw1n8FjD1S9cnsBN9d5tMZOf&opi=89978449>

<sup>12</sup> <https://www.gencourt.state.nh.us/legislation/2006/HB1744.html>

<sup>13</sup> <https://www.gencourt.state.nh.us/legislation/2006/HB1744.html>

<sup>14</sup> <https://www.gencourt.state.nh.us/legislation/2006/HB1744.html>

<sup>15</sup> <https://legiscan.com/NH/text/HB626/id/2385194>

<sup>16</sup> <https://news.yahoo.com/commission-charity-casinos-complete-look-035900358.html>

<sup>17</sup> <https://www.nh.gov/gsc/documents/20100520.pdf>

A data-driven, proactive analysis about the impact of expanded legalized gaming on the state's image and brand is needed in order to better determine and manage potential risks and opportunities.

[L]egalized gaming will increase the number of pathological and problem gamblers in New Hampshire, government structures will need to address this increase of pathological behavior, just as they support the prevention and treatment of alcohol and substance abuse.

[I]f New Hampshire expands legalized gaming, the state should develop and implement procedures to continually measure social impacts after new facilities open.

New Hampshire needs to review its regulation of gaming, with or without an expansion of legalized gaming. To insure integrity and public confidence, this review should be completed and necessary changes implemented before any expansion is enacted.

Gaming regulation is currently divided between the Lottery Commission and the Racing and Charitable Gaming Commission. That divided structure, as well the staffing level of each agency in view of current gaming activity, raise issues about whether the state's current structures are adequate to properly regulate current, let alone expanded, gaming. Even if New Hampshire does not authorize slot machines or full casinos, the current level of legal gaming is likely to further increase through new Lottery games and in other ways, if for no other reason than that the state has come to rely upon the revenue gaming activity generates.

Despite the findings of this report, charitable gaming continued to expand without any market analysis, increased regulation, or enforcement.

In 2021, House Bill 626 was enacted, which legalized historic horse racing machines.<sup>18</sup> Nine of the current casino locations have historic horse racing machines and, according to the New Hampshire Lottery Commission, approximately three more facilities will be operating historic racing machines in 2024.<sup>19</sup> From the consumer perspective, these machines have the look and feel of a traditional slot machine, but they generate results using the outcomes of past horse races. In states, like New Hampshire, where commercial slot machines have not been legalized, these machines provide customers with a slot machine experience. Of the gross gaming revenue generated by these machines, 75% is retained by the casino operator, 8.75% is donated to charity, and 16.25% is given to the state to support public education.<sup>20</sup>

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<sup>18</sup> <https://legiscan.com/NH/text/HB626/id/2385194>

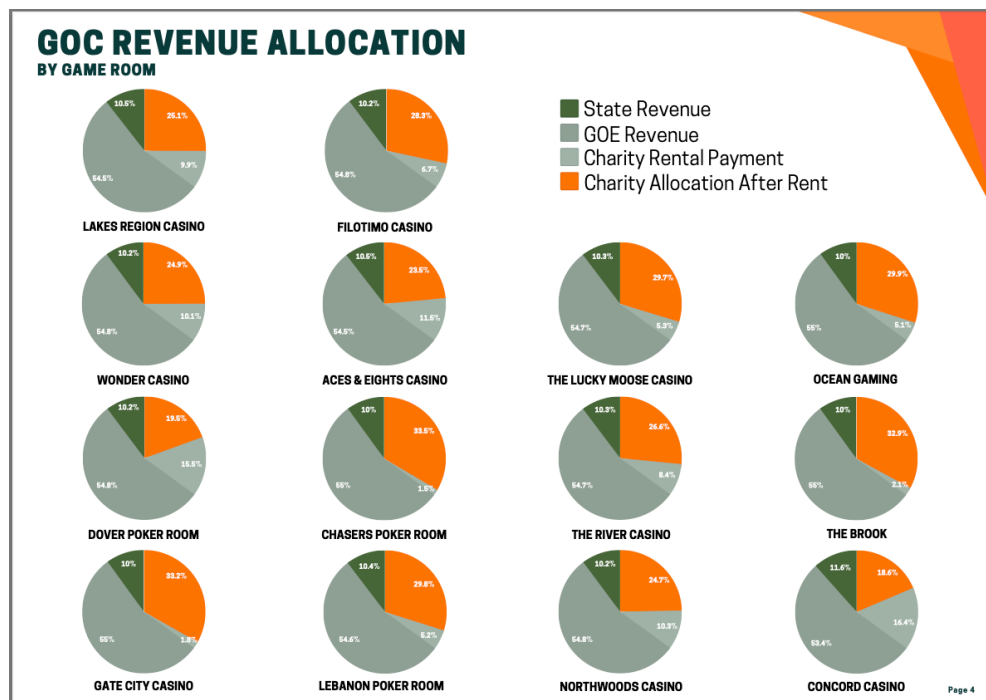
<sup>19</sup> [https://www.nhlottery.com/Files/PDFs/News/NHLC\\_RFP\\_2023-01-85.aspx](https://www.nhlottery.com/Files/PDFs/News/NHLC_RFP_2023-01-85.aspx)

<sup>20</sup> <https://legiscan.com/NH/text/HB626/id/2385194>



A further nuance of this charitable gaming model, codified in Title XXIV, Games, Amusements, and Athletic Exhibitions, Chapter 287-D, Games of Chance, provides that a casino operator may charge a charity “rent” for the seven- to 10-day cycle during which such charity receives a share of the gross gaming revenue.<sup>21</sup> The law is clear that such charge must be in a written agreement, must be a fixed payment, cannot be based on a percentage of what the charitable organization receives from the Game of Chance, and shall reflect the fair rental value of the property for any use, not only as a place to hold a Game of Chance.<sup>22</sup>

As set forth in the September 2023 Games of Chance & Historic Horse Racing Gaming Revenue Report (the “September 2023 Report”), as seen below, these rental payments vary between casino operators and facilities who are charging between 1.5 to 16.4% of gross gaming revenue derived from Games of Chance reducing the allocation to charities to as low as 18.6%.<sup>23</sup>



Effective as of July 1, 2023, Senate Bill 120 allowed players to spend up to \$50 per individual wager in a Game of Chance, up from the previous cap of \$10.<sup>24</sup> The law also dramatically increased the amount that each player can spend in total in a game of chance from \$150 per game to \$2,500 per game.

<sup>21</sup> <https://law.justia.com/codes/new-hampshire/2017/title-xxiv/chapter-287-d/>

<sup>22</sup> <https://law.justia.com/codes/new-hampshire/2017/title-xxiv/chapter-287-d/>

<sup>23</sup> [https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-sept-2023\\_0.pdf](https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-sept-2023_0.pdf)

<sup>24</sup> <https://legiscan.com/NH/text/SB120/2023>

Per the September 2023 Report, gross gaming revenue for charitable casinos for 2023 is on track to hit approximately \$110 million, almost double the gross gaming revenue for 2022.<sup>25</sup> According to an article published by the Concord Monitor, New Hampshire casinos grossed \$54 million in 2022, an increase of 24% from 2021.<sup>26</sup>

In October 2023, Gate City Casino in Nashua opened its expanded gaming facility in Nashua, New Hampshire, positioning it as one of the largest charitable gaming venues in the State.<sup>27</sup> The newly named casino (previously known as the Boston Billiard Club) was purchased by Delaware North, one of the largest hospitality companies in the United States, with annual revenues exceeding \$2 billion.<sup>28</sup> The expansion includes 540 historic horse racing machines (up from 80), a DraftKings Sportsbook, and a new poker room.<sup>29</sup> Delaware North has revealed plans for further expansion involving the relocation of the facility to a 337-room Sheraton Nashua hotel, which it has acquired.<sup>30</sup>

Boston Billiard Club before it became Gate City Casino:



<sup>25</sup> [https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-sept-2023\\_0.pdf](https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-sept-2023_0.pdf)

<sup>26</sup> <https://home.concordmonitor.com/newcm/2023/09/Gaming-Commission-Meeting-52679654.php>

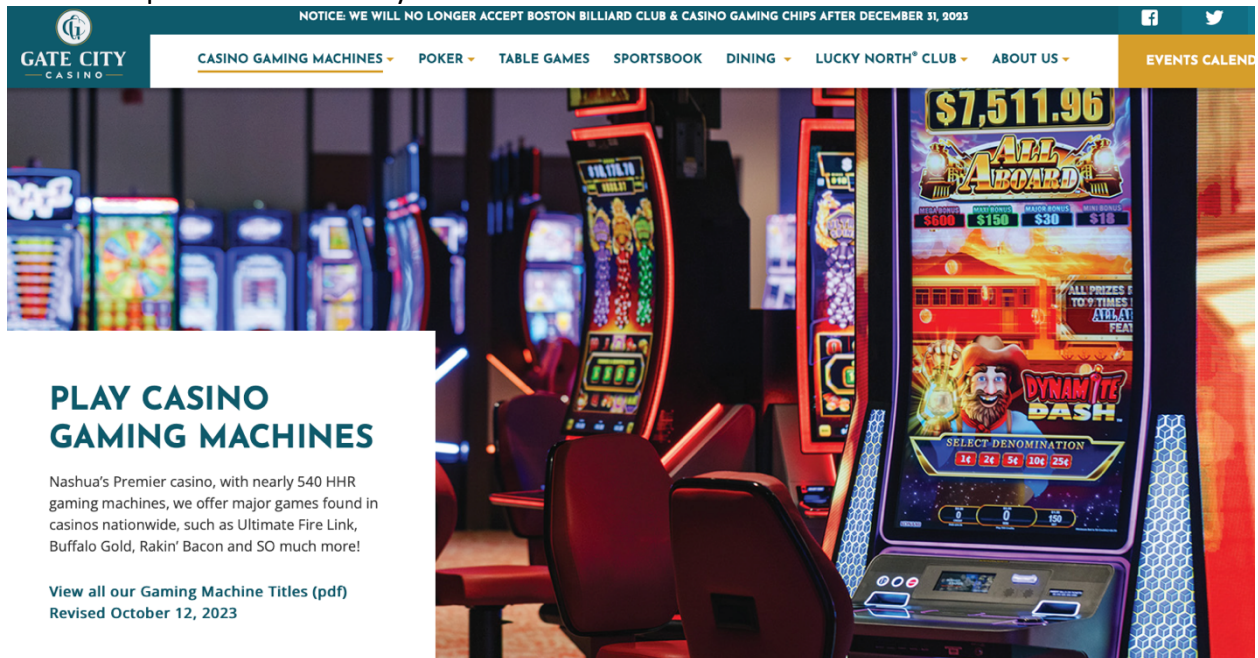
<sup>27</sup> <https://www.playusa.com/nashua-new-hampshire-gate-city-casino-grand-opening/>

<sup>28</sup> <https://www.tdgarden.com/corporate-info/about-delaware-north>

<sup>29</sup> <https://www.playusa.com/nashua-new-hampshire-gate-city-casino-grand-opening/>

<sup>30</sup> <https://www.playusa.com/nashua-new-hampshire-gate-city-casino-grand-opening/>

After its expansion to Gate City Casino:



This image from Gate City Casino aptly illustrates the striking resemblance between a historic horse racing machine (seen above) and a commercial slot machine (seen below).



Proposed new location at the Sheraton Hotel, Nashua.



In May 2023, Clairvest Group, a Canadian private equity firm, announced a partnership with ECL Entertainment, based in Las Vegas, Nevada, and run by Marc Falcone, a veteran Las Vegas casino operator, to acquire the Lucky Moose Casino and Tavern and The River Casino & Sports Bar, both located in Nashua.<sup>31</sup> The Nashua Planning Board voted 4-1 on September 7, 2023 to approve a plan to turn an old Sears store at the Pheasant Lane Mall into a 169,000 square foot casino. The proposal for “The Mint” features 1,200 historic horse racing machines (up from 65), three restaurants, 62 gaming tables, and parking for 1,375 vehicles in a parking lot located in neighboring Tynsgsborough, Massachusetts.<sup>32</sup> This expansion would make it larger than the commercially-operated Plainridge Park Casino located in Plainville, Massachusetts which has 1,200 slot machines on a 106,000 square foot casino floor.<sup>33</sup>

Before and after photos:

The River Casino and Sports Bar

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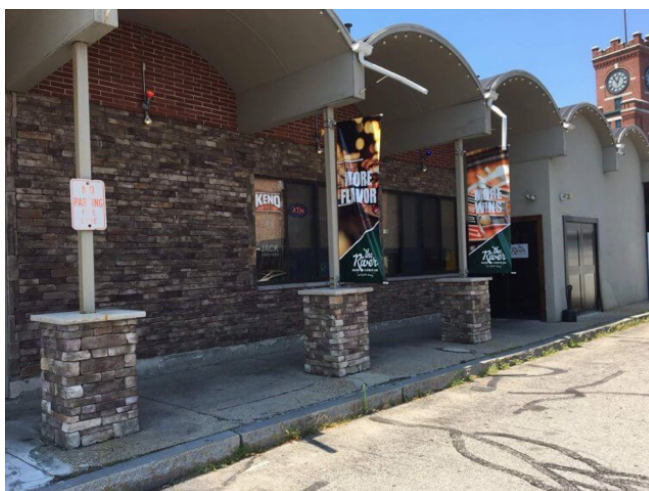
<sup>31</sup> <https://www.pehub.com/clairvest-and-ecl-acquire-new-hampshire-based-gaming-assets/>

<sup>32</sup> <https://www.nashuatelegraph.com/news/2023/09/12/planning-board-votes-4-1-to-approve-mall-casino/>

<sup>33</sup> <https://www.worldcasinodirectory.com/casino/plainridge-park-casino>



**OVERWHELMED, IRRESPONSIBLE AND RECKLESS**  
*THE URGENT NEED FOR REGULATORY REFORM IN NEW HAMPSHIRE'S GAMING INDUSTRY*



The Lucky Moose Casino & Tavern



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The Mint at Pheasant Lane Mall



The images presented by these developers are strikingly similar to large scale casinos in Las Vegas.



The Venetian Resort in Las Vegas, Nevada.

In yet another striking example, in 2019, Andre Carrier, a veteran Las Vegas executive, purchased the Seabrook Greyhound Park. Since the acquisition, Mr. Carrier has expanded it continuously.<sup>34</sup> The Brook now offers blackjack, roulette, craps, a DraftKings Sportsbook for sports wagering, and a showroom. In April 2022, The Brook added over 500 historical horse racing machines and Mr. Carrier has stated that he intends to expand the gaming floor of The Brook to 45,000 square feet.<sup>3536</sup>

The following quote from an article published by the New Hampshire Public Radio on February 12, 2023 regarding the newly expanded The Brook encapsulates the concern that New Hampshire has unwittingly approved Las Vegas style casinos<sup>37</sup>:

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<sup>34</sup> <https://www.seacoastonline.com/story/news/2022/04/29/seabrook-nh-brook-casino-rolling-out-new-games-ballroom-and-more/7449321001/>

<sup>35</sup> <https://www.seacoastonline.com/story/news/2022/04/29/seabrook-nh-brook-casino-rolling-out-new-games-ballroom-and-more/7449321001/>

<sup>36</sup> <https://www.seacoastonline.com/story/news/2022/04/29/seabrook-nh-brook-casino-rolling-out-new-games-ballroom-and-more/7449321001/>

<sup>37</sup> <https://www.nhpr.org/nh-news/2023-02-12/though-it-once-faced-long-odds-casino-style-gambling-is-now-firmly-entrenched-in-nh>



The Brook is a stark symbol of New Hampshire's embrace over the past decade of a wide range of gambling options - a suite of offerings that would have been all but unimaginable just a few years ago. Though a bill to legalize casinos never passed in the State House, so-called charitable gaming facilities have proliferated, and evolved into exact replicas of casinos — complete with craps games, complicated carpet patterns and rows of slot machines. The state has legalized other forms of gambling in recent years, both online and in-person.

But for those who watched the pitched fights over casinos that once dominated the New Hampshire Legislature, a facility like The Brook may seem a head-scratcher – a casino in all but name, and all perfectly legal.

"It looks like a casino. That's what we were aiming for, and that's what it looks like," said Rick Newman, a longtime gaming industry lobbyist in New Hampshire.

Following the legalization of historic horse racing machines, foreign operators have flooded the market supplanting New Hampshire-style charitable casinos in favor of Las Vegas style-casinos. Examining expansions such as the Gate City Casino and The Mint reveals a substantial increase in historic horse racing machines, soaring from 145 to 1,740 - a twelvefold surge. Notably, these expansions occurred without a recent market analysis (the last analysis was conducted in 2010) and without the formal legalization of casinos by the State.

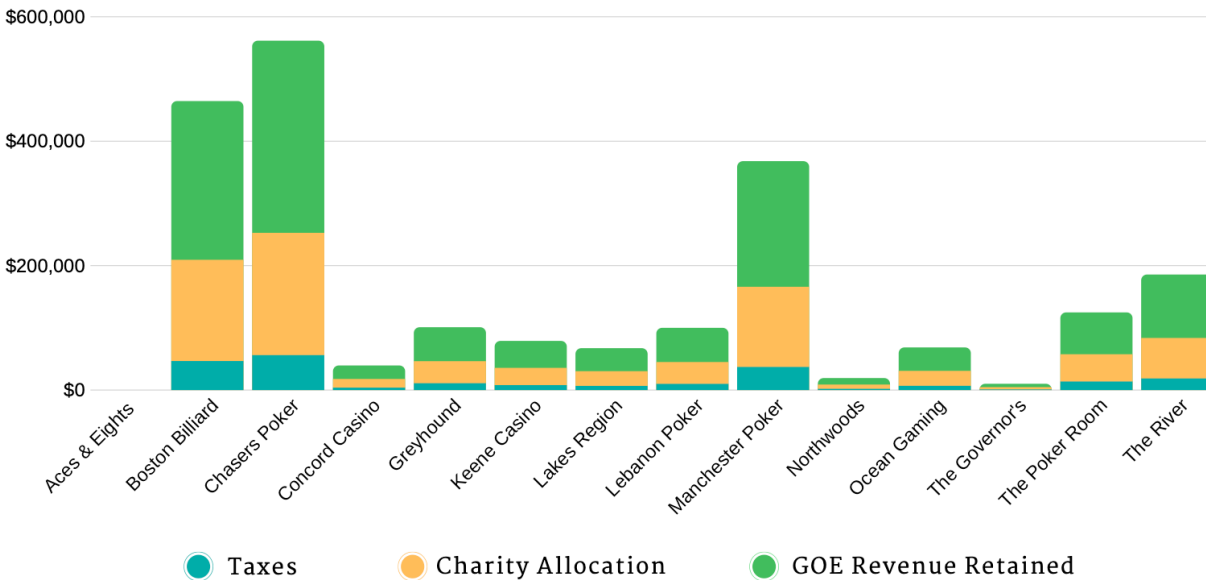
This narrative of unfettered, rapid, and unchecked growth echoes cautionary tales from the gaming industry's past. The 1970s and 1980s witnessed a casino boom in Las Vegas, nearly tripling the number of gaming establishments from approximately 20 in 1960 to approximately 60 in the mid-80s. However, this era also saw a dark side, with organized crime figures attracted to the growing and, at the time, lightly regulated industry. Such figures took ownership stakes in casinos that generated legitimate (i.e., declared and taxed profits) along with skimmed cash that was funneled back to mafia bosses nationwide. The presence of organized crime correlated with a surge in violent crime.

In response, in the late 1970s and early 1980s, Nevada implemented stricter regulatory measures and oversight for the gaming industry. This included background checks for casino operators and employees, financial scrutiny, and increased transparency aimed at identifying and excluding individuals with ties to organized crime. At the same time, both federal and state law enforcement agencies intensified their efforts to target and prosecute individuals with ties to organized crimes who were involved in Las Vegas casinos. These investigations, arrests, and convictions greatly weakened the grip of organized crime on the City, and paved the way for major corporations to assume ownership and control of casinos.



Much like Las Vegas in the 1970s and 1980s, New Hampshire is experiencing rapid growth. In December 2019, Boston Billiard Club & Casino was the second highest performing casino in New Hampshire with approximately \$464,000 in revenue and total gaming revenue for all New Hampshire Casinos in December 2019 was \$2,180,466. Of the 14 gaming facilities, only three facilities had revenue in excess of \$200,000 in December 2019.

### DECEMBER 2019 - GOC FACILITY BREAKDOWN



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In December 2022, Boston Billiard Club & Casino (owned by EESKAY NH, LLC) generated approximately \$827,000 in revenue from “Games of Chance” and an additional \$475,000 from historic horse racing machines for a total amount of \$1.3 million – almost triple its 2019 revenue.<sup>39</sup> Likewise, total gaming revenue for December 2022 jumped to approximately \$8.2 million, almost quadrupling the revenue from December 2019.

In October 2023, Gate City Casino (formerly Boston Billiard Club & Casino) generated over \$1 million in revenue from “Games of Chance” and an additional \$1.6 million from historic horse racing machines (for a total amount of \$2.6 million) – doubling its revenue in just ten months.<sup>40</sup> Likewise, total gaming revenue for October 2023 jumped to approximately \$11.2 million, an almost 36% increase in just ten months. The confluence of soaring gaming revenue with minimal regulatory creates the perfect environment for significant issues for the State of New Hampshire.

<sup>38</sup> <https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/newsletter-january-2020.pdf>

<sup>39</sup> <https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/market-trends-december-2022.pdf>

<sup>40</sup> <https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-oct-2023.pdf>

V. Impact of Unfettered Expansion in New Hampshire

This rapid change in the casino landscape in New Hampshire is not without undue burden. New Hampshire's model of generating funding for charities from gaming revenue has resulted in significant donations to charities across the state. According to the September 2023 Report, for Q3 2023, charities received \$2,588,576 from charitable gaming (Games of Chance and Historic Horse Racing).<sup>41</sup> This has led to the courting of charities by casino developers seeking to leverage the full support of these charities. These charities show up *en masse* to support further development. For example, in 2021, the Salem Planning Board straw vote of 4-3 in opposition to the expansion of the Chasers Poker Room and Casino became a 7-0 vote in approval at the next Planning Board meeting after the board admitted they were heavily lobbied by charities and their beneficiaries.<sup>42</sup>

Opponents have been vocal about the rapid growth of major casino developments with few restrictions, oversight, or regulatory controls. The following is a sample of some of the issues that they contend have been inadequately or completely unaddressed:

**Licensing**

- Assessing and qualifying potential license holders
- Conducting background checks and ensuring suitability
- Preventing criminal and organized crime involvement
- Limiting single entity market share
- Rules for license transfers and sales
- Licensing and registration of casino employees

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<sup>41</sup> [https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-sept-2023\\_0.pdf](https://www.compliance.lottery.nh.gov/sites/g/files/ehbemt686/files/inline-documents/gaming-revenue-report-sept-2023_0.pdf)

### **Site Selection**

- Preventing market oversaturation and cannibalization
- Distributing sites throughout the state
- Consideration of traffic and environmental impacts

### **Community Impacts**

- Limiting impacts on local and surrounding communities
- Ensuring mitigation for local impacts
- Facilitating consultation and input from municipalities on licensing and siting decisions

### **Regulatory Oversight**

- Compliance enforcement
- Responsible gaming measures
- Limits on advertising and marketing
- Accounting procedures and controls
- Revenue reporting, auditing and tracking

New Hampshire has already experienced the associated negative consequences. Currently, New Hampshire casinos are ostensibly regulated by the New Hampshire Lottery Commission, the same organization that manages bingo licenses, lottery cards, and scratch tickets. However, the Commission has not been given the authority or resources necessary to oversee the existing gaming activity and is completely ill-equipped to manage the expansion of sites and new industry participants.

For example, the licensing division for the New Hampshire Lottery consists of five individuals. These five individuals are responsible for ensuring that “those involved with the gaming industry in New Hampshire meet the statutory requirements of good character, honesty, and integrity.”<sup>43</sup> There are currently 14 operating charitable gaming halls in New Hampshire and over 400 charitable organizations in New Hampshire receiving donations from these facilities. By way of comparison, the “investigatory” division of the Investigations and Enforcement Bureau (IEB) of the Massachusetts Gaming Commission (MGC) is responsible for three casinos and, in 2022, was staffed with approximately ten individuals.<sup>44</sup> The IEB is comprised of members of the Massachusetts State Police Gaming Enforcement Unit and Financial Investigators, who complete background checks and ongoing suitability determinations on casinos, vendors and employees of the gaming establishments. The IEB is a law enforcement agency, with subpoena power and broad investigatory authority to make sure that the people and business entities involved with gaming meet established standards of integrity, honesty and good character.<sup>45</sup>

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<sup>43</sup> <https://www.compliance.lottery.nh.gov/about-us/licensing-unit>

<sup>44</sup> <https://massgaming.com/wp-content/uploads/MGC-Annual-Report-2022.pdf>

<sup>45</sup> <https://massgaming.com/the-commission/inside-mgc/investigations-and-enforcement-bureau/>

Likewise, the enforcement division of the New Hampshire Lottery consists of five individuals. These five individuals are responsible for “Preliminary Assessment and Advisement,” “Regulatory Review,” “Field Inspections,” and “Complaints and Investigations.”<sup>46</sup> Five people for 14 operating charitable halls, over 400 charitable organizations, and all their associated employees and vendors. Again, by way of comparison, the “enforcement” side of the IEB of the MGC, in 2022, was staffed with 39 Gaming Agents, who are responsible for ensuring that the *three* Massachusetts casinos are in compliance with all regulations promulgated by the Commission.<sup>47</sup> Gaming Agents have an on-site presence at the casinos to ensure that day-to-day operations are running fairly and correctly, and Agents also participate in routine audits of the casinos’ financial operations. The IEB coordinates with the Massachusetts State Police, local police, the Office of the Attorney General, and the Alcoholic Beverage Control Commission in order to perform its duties.”<sup>48</sup>

The results of New Hampshire’s failure to follow the recommendations of the 2010 report have created an environment rife with systematic abuse, lack of transparency, and, in some cases, criminal activity. Towns and cities across New Hampshire are ill equipped to deal with the rapid expansion and do not have the experience to handle the demands of well-funded and politically connected casino developers. As a result, the local Zoning and Planning Boards have been, at times, bullied into accepting proposals and have struggled to understand their role and authority.

The following are just a few examples of more recent issues:

1. Rochester, New Hampshire. In August 2023, the Rochester City Council moved ahead with plans to approve a retail sportsbook in the City, subject to a referendum that took place on November 7, 2023.<sup>49</sup> Less than one month later, Rochester’s Planning Board approved plans for a charitable casino in the City’s Lilac Mall.<sup>50</sup> While the retail sportsbook required a referendum for approval, notably, the proposed 22,000 square foot casino was not on the ballot.<sup>51</sup> Lilac Mall was purchased in May 2023 by GSG Rochester Propco LLC, a holding company listing G2 Gaming, LLC as its manager.<sup>52</sup> The CEO of G2 Gaming, LLC is Greg Carlin, the co-founder and former CEO of Rush Street Gaming, the developer, owner, and operator of five casinos in Illinois, Virginia, New York, and Pennsylvania.<sup>53</sup> Under the current plans, the casino would occupy approximately 22,000 square feet of the 200,000 square foot mall, which also contains a gymnastics studio and a dance studio.

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<sup>46</sup> <https://www.compliance.lottery.nh.gov/about-us/enforcement-unit>

<sup>47</sup> <https://massgaming.com/wp-content/uploads/MGC-Annual-Report-2022.pdf>

<sup>48</sup> <https://massgaming.com/the-commission/inside-mgc/investigations-and-enforcement-bureau/>

<sup>49</sup> <https://www.wmur.com/article/rochester-new-hampshire-election-results-2023/45759966#>

<sup>50</sup> <https://www.playusa.com/second-new-hampshire-charitable-casino-moves-forward/>

<sup>51</sup> <https://www.therochestervoice.com/casino-expected-to-bring-new-bloom-to-struggling-lilac-mall--cms-21214>

<sup>52</sup> <https://quickstart.sos.nh.gov/online/BusinessInquire/BusinessInformation?businessID=773459>

<sup>53</sup> <https://www.g2-gaming.com/about>; <https://www.rushstreetgaming.com/casinos>

On September 11, 2023, Rochester's Planning Board approved the proposed casino after hearing from the directors of 11 charitable organizations (an additional five charitable organizations sent in letters of support), all of which would benefit directly from the casino's revenue split.<sup>54</sup>

While the voters in local towns and cities in New Hampshire are afforded the opportunity to vote in a referendum for a retail sportsbook<sup>55</sup>, a referendum is not required for a casino by a major casino developer.

2. Concord, New Hampshire. Former State Senator Andrew "Andy" M. Sanborn, is the current owner of New Hampshire's casino, located in the Concord Draft Sports and Grill in Concord, New Hampshire.<sup>56</sup> On August 31, 2023, the New Hampshire Lottery Commission and the New Hampshire Office of the Attorney General determined that Mr. Sanborn was not "suitable to be associated with charitable gaming in New Hampshire."<sup>57</sup> The findings detailed the following:<sup>58</sup>

- Mr. Sanborn used false and fraudulent pretenses, representations, and promises to unlawfully apply for and obtain an Economic Injury Disaster Loan from the United States Small Business Administration (i.e., COVID-19 relief funds) in the amount of \$844,000. Specifically, Mr. Sanborn failed to disclose in the loan application that he owned a casino with knowledge that relief funds could not be used for a gaming property.
- There was credible evidence of Mr. Sanborn's use of such funds to purchase three race cars, including one for his wife, State Representative Laurie Sanborn (and recently selected Chair of the Special Commission charged with reviewing New Hampshire's rapidly growing charitable gaming industry).
- Mr. Sanborn made cash distributions in the amount of \$183,500, disguised as pre-paid rent payments, to two companies which were wholly owned and controlled by Mr. Sanborn. This amount was equated to 27 years of pre-paid rent.

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<sup>54</sup> [https://www.rochesternh.gov/sites/g/files/vyhli9211/f/minutes/23\\_09\\_11\\_pbminutes-draft.pdf](https://www.rochesternh.gov/sites/g/files/vyhli9211/f/minutes/23_09_11_pbminutes-draft.pdf)

<sup>55</sup>

[https://www.gencourt.state.nh.us/bill\\_status/legacy/bs2016/billText.aspx?sy=2021&id=510&txtFormat=pdf&v=current](https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/billText.aspx?sy=2021&id=510&txtFormat=pdf&v=current)

<sup>56</sup> <sup>56</sup> <https://www.doj.nh.gov/news/2023/documents/20230831-concord-casino-administrative-action.pdf>

<sup>57</sup> <https://www.doj.nh.gov/news/2023/documents/20230831-concord-casino-administrative-action.pdf>

<sup>58</sup> <https://www.doj.nh.gov/news/2023/documents/20230831-concord-casino-administrative-action.pdf>

- Mr. Sanborn utilized \$28,800 of the COVID-19 relief funds to purchase engineering and geotechnical services for his proposed new casino and entertainment complex in Concord.

Mr. Sanborn is also under investigation by New Hampshire Attorney General John M. Formella, who issued the following statement:

“The Attorney General has also made a criminal referral to the United States Attorney’s Office – District of New Hampshire. The Attorney General’s Criminal Justice Bureau has opened a criminal investigation, including a review by the Public Integrity Unit of the actions of all of the individuals and entities involved.”<sup>59</sup>

In addition to the loan controversy, in 2018, the New Hampshire Attorney General’s Office revealed that a grand jury had been convened to look into whether a former State Senate intern had received a cash payment and a job in exchange for silence regarding an inappropriate comment made by Mr. Sanborn (while he was a State Senator).<sup>60</sup> While the investigation found no criminal wrongdoing, it did confirm that Mr. Sanborn had made “crass comments about oral sex to an intern in 2013 and that Mr. Sanborn made ‘near-daily’ unwelcome comments about a female staffer’s appearance.”<sup>61</sup> The investigation also confirmed that the same intern later received a cash payment from the Senate Chief of Staff and a part-time, temporary job within the Senate Clerk’s Office several months after the incident involving Sanborn.<sup>62</sup>

Mr. Conforti admitted that these issues were not previously known because “pre-2019 licensees were not subject to full reviews.”<sup>63</sup> This lack of diligence in properly investigating individuals, companies, and the charities that receive a portion of the revenue from gaming operations erodes the public trust in the legitimacy of gaming operations and provides individuals, like Mr. Conforti and his wife, Representative Sanborn, with an opportunity to leverage their personal positions for personal gain.

3. Rent Allocation. The investigation into Mr. Sanborn also highlighted questions regarding the proper allocation of rent to charities. New Hampshire Public Radio (NHPR) conducted an investigation of Mr. Sanborn’s rent allocation and found that despite the requirement for charitable casino operators to forward 35% of their proceeds to approved New

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<sup>59</sup> <https://nhjournal.com/ag-formella-former-sen-sanborn-too-corrupt-to-remain-in-charitable-gaming-biz/>

<sup>60</sup> <https://www.nhpr.org/politics/2018-06-05/investigation-finds-no-criminal-wrongdoing-around-sanborns-comment-to-intern>

<sup>61</sup> <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2023-10/217-2023-cv-00565-3-affidavit.pdf>

<sup>62</sup> <https://www.nhpr.org/politics/2018-06-05/investigation-finds-no-criminal-wrongdoing-around-sanborns-comment-to-intern>

<sup>63</sup> <https://www.casino.org/news/new-hampshire-casino-owner-gets-more-prep-time-for-gaming-license-case/>

Hampshire charities, Concord Casino, owned by Mr. Sanborn, only contributes 17.5% of its proceeds.<sup>64</sup> However, the State's investigation into Mr. Sanborn has not focused on this issue because Mr. Sanborn's "rent" arrangement was *approved* by the New Hampshire Lottery Commission, despite it being higher than any other charitable casino in New Hampshire. Former State Representative Pat Abrami, the new Chair (who replaced Mr. Sanborn's wife) of the Special Commission charged with reviewing New Hampshire's rapidly growing charitable gaming industry, stated that these so-called rents "were a carryover from an earlier era of how gaming worked," and "[w]e've got real casinos here."<sup>65</sup>

In a statement, the New Hampshire Lottery Commission said that it was aware of the arrangement with Mr. Sanborn's casino and "raised the issue in recent audits."<sup>66</sup> However, regulators permitted Mr. Sanborn to continue adjusting rents based on gaming revenues because of a *quirk* in state law that allows casinos to set their rental rate at the "fair rental value of the property for any use."<sup>67</sup>

4. State Panel on Charitable Casinos. In July 2023, the New Hampshire legislature created a special Commission to Study the Effect of Recent Changes Made to Charitable Gaming Laws ("Special Commission"). The Special Commission is charged with reviewing New Hampshire's rapidly growing charitable gaming industry and has one year (i.e., November 2024) to craft recommendations for the State legislature on how best to regulate the booming gambling market. At its inaugural meeting, the Special Commission selected State Representative, Laurie Sanborn, as Chair of the Commission despite concerns among members about conflicts.<sup>68</sup> Representative Sanborn's husband, Mr. Sanborn, owns one casino in Concord, and had recently obtained approval from the City of Concord for new, large-scale, 43,000 square foot casino. At the time, Mr. Sanborn was under investigation by the New Hampshire Lottery Commission and the New Hampshire Office of the Attorney General. Former State Rep. Edward "Ned" Gordon, who stills chair the Legislative Ethics Committee, did not comment on Sanborn's chairmanship, stating that the "Ethics Committee is not a police force."<sup>69</sup>

In August 2023, after an eight-month investigation, the New Hampshire Lottery Commission and the New Hampshire Office of the Attorney General determined that Mr.

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<sup>64</sup> <https://www.nhpr.org/nh-news/2023-09-12/concord-casino-kept-higher-share-of-proceeds-meant-for-charity-than-any-other-facility-with-state-lotterys-permission>

<sup>65</sup> <https://www.nhpr.org/nh-news/2023-09-12/concord-casino-kept-higher-share-of-proceeds-meant-for-charity-than-any-other-facility-with-state-lotterys-permission>

<sup>66</sup> <https://www.nhpr.org/nh-news/2023-09-12/concord-casino-kept-higher-share-of-proceeds-meant-for-charity-than-any-other-facility-with-state-lotterys-permission>

<sup>67</sup> <https://www.nhpr.org/nh-news/2023-09-12/concord-casino-kept-higher-share-of-proceeds-meant-for-charity-than-any-other-facility-with-state-lotterys-permission>

<sup>68</sup> <https://nhjournal.com/fox-meet-hen-house-casino-owner-tapped-to-chair-charitable-gaming-commission/>

<sup>69</sup> <https://nhjournal.com/fox-meet-hen-house-casino-owner-tapped-to-chair-charitable-gaming-commission/>



Sanborn was not suitable to be associated with charitable gaming in New Hampshire. Following the issuance of that decision, State Representative Sanborn stepped down as Chair because of the controversy surrounding her husband. Upon becoming the new Chair, State Representative Pat Abrami, stated that charitable gaming started as “Mom and Pop (operations) and now the big gaming companies are coming in.”<sup>70</sup> He further observed that when the legislature was working on casino bills, “they proposed one or two, maybe three facilities and now there are 14.”<sup>71</sup>

The Special Commission has been instructed to deliver a report by November 2024. In the interim, gaming expansion in New Hampshire continues, unfettered.

5. Additional Concord Casino. Mr. Sanborn had plans to open a second 24,000+/- square foot charitable casino in Concord as part of the first phase of a 43,000 square foot project. The City’s Planning Board approved the development on June 21, 2023. At a meeting in May, a month before approving the project, the Planning Board determined that Mr. Sanborn had failed to produce an adequate emergency services assessment. As a result, at a meeting on May 17, 2023, the Planning Board vote to:

Direct Planning Staff to engage a qualified third-party consultant to review the application study as well as provide data and an analysis omitted from the Applicant study so as to comply with the Board’s original objectives of the public safety services impact assessment in accordance with the City’s development review regulations. The consultant would be engaged by the City at the Applicant’s expense.<sup>72</sup>

With the understanding that the City would not have a completed study, the Planning Board directed staff to provide an update at its next meeting in June 2023. The agenda for the June 21, 2023 meeting was updated to say “Continue [the Project] to the August 16, 2023 Planning Board meeting.”<sup>73</sup> By June 16, 2023, City staff had obtained three bids, including a bid from Fougere Planning & Development Inc. However, City staff discarded the Fougere Planning & Development Inc. bid on the basis that it did not sufficiently respond to the request for proposal.

Prior to the June 21, 2023 meeting, City staff confirmed to members of the public that the application would not be taken up at the June 21st meeting. However, at 4:30 p.m., Mr. Sanborn advised the City Planner that he wanted a public meeting. Notwithstanding the failure of the Planning Board to provide lawful notice for a public hearing, the Planning

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<sup>70</sup> [https://www.eagletribune.com/news/new\\_hampshire/gaming-commission-seeks-more-on-charities-rent-charges/article\\_a56d50e4-6dd7-11ee-a463-0353e0fc25b6.html](https://www.eagletribune.com/news/new_hampshire/gaming-commission-seeks-more-on-charities-rent-charges/article_a56d50e4-6dd7-11ee-a463-0353e0fc25b6.html)

<sup>71</sup> [https://www.eagletribune.com/news/new\\_hampshire/gaming-commission-seeks-more-on-charities-rent-charges/article\\_a56d50e4-6dd7-11ee-a463-0353e0fc25b6.html](https://www.eagletribune.com/news/new_hampshire/gaming-commission-seeks-more-on-charities-rent-charges/article_a56d50e4-6dd7-11ee-a463-0353e0fc25b6.html)

<sup>72</sup> <https://www.concordnh.gov/DocumentCenter/View/20496/0080-2023>

<sup>73</sup> <https://www.concordnh.gov/DocumentCenter/View/20496/0080-2023>



Board heard Mr. Sanborn's application. At the hearing, Mr. Sanborn handed the Planning Board members paper copies of the results of an emergency services report from a consultant that he had engaged, Fougere Planning & Development Inc. – coincidentally, the same consultant that City Staff had rejected. The Applicant then argued that he was entitled to approval under RSA 767:4 (a statute that establishes the "shot clock" within which the Planning Board must act or an Applicant can seek certain relief from the Selectboard, City Council, and/or Court), claiming that the Planning Board had failed to act within the required time.

The Planning Board approved Mr. Sanborn's application at the June 21, 2023 meeting.

Kassey Cameron, a resident of Concord, has appealed the Planning Board's decision in Merrimack County Superior Court arguing that she and other residents would have attended the June meeting had they been aware the application was to be heard by the Planning Board that night. The lawsuit states that the "appeal stems from a drastic deprivation of the public's right to due process to meaningfully participate in the process of determining the significance of the impacts a proposed, large-scale casino, microbrewery, and ultimately a hotel and from several legal errors." The lawsuit seeks to vacate the Planning Board's approval and send the application back to the Planning Board for more consideration. The appeal centers on the fact that the "Planning Board not only took up the application at its June meeting, it approved the application at that meeting." The suit further alleges that the "Planning Board knew full well that the plaintiff (and the public) had not attended in reliance on the city's representations."

The case is pending and provides a vivid example of the lack of transparency and failure to involve the public.

6. Conway, New Hampshire. In October 2023, the Conway Zoning Board of Adjustment voted that Dick Anagnost, the developer of a proposed charity gaming facility in the former Shurfine shopping plaza in Conway, New Hampshire, would not get a rehearing on his denied application to build a charitable gaming facility in a strip mall in Conway.<sup>74</sup> Mr. Anagnost's proposal for a bar, restaurant, and an amusement area were previously approved prior to the COVID-19 pandemic. After that approval lapsed, Mr. Anagnost filed another application in June 2023 which including a 4,000 square foot charitable gaming area within the space. The Town planner denied this application citing that charitable gaming is not an "amusement" or a permitted use under the Town of Conway's zoning regulations. Mr. Anagnost appealed the action to the Town's Zoning Board of Adjustment.

Following the denial and subsequent appeal, a planning board subcommittee was formed to the purpose of investigating the Town's ordinances on casinos. This "Appropriate Casino

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<sup>74</sup> [https://www.unionleader.com/news/business/conway-zba-will-not-reconsider-denial-of-permit-for-charitable-gaming-casino/article\\_85c2e291-2a33-51a9-9ed3-db748024379d.html](https://www.unionleader.com/news/business/conway-zba-will-not-reconsider-denial-of-permit-for-charitable-gaming-casino/article_85c2e291-2a33-51a9-9ed3-db748024379d.html)

Land Use Ad Hoc Study Committee” found that casinos are prohibited and that the Town Charter specifically calls gambling “evil.” The Town Charter states, in pertinent part:

“Under this Home Rule Charter the citizens of Conway shall forever retain sovereign control, and a responsibility subject only to the preemption of the Constitutions and Laws of the United States and New Hampshire over all areas of commerce and necessities of an ever modernizing society which without limitation of the foregoing includes the following ... Social evils including gambling, liquor, drugs and prostitution.”<sup>75</sup>

Mr. Anagnost then appealed the action to the Town’s Zoning Board of Appeals. The Zoning Board of Appeals declined any public comment and, after discussion amongst themselves, denied Mr. Anagnost’s request. Mr. Anagnost’s counsel argued that the “[r]egulation of charity games of chance are vested exclusively in the State of New Hampshire and no power has been delegated to the communities.”<sup>76</sup> He further stated that the “State of New Hampshire Lottery Commission issued a license to conduct charitable gaming on the property,”<sup>77</sup> highlighting the issue of authority and the lack of input by local communities on gaming expansion in New Hampshire.

7. Nashua, New Hampshire.

The Nashua Planning Board voted 4-1 on September 7, 2023 to approve a plan to turn an old Sears store at the Pheasant Lane Mall into a 169,000 square foot casino. The proposal for “The Mint” features 1,200 historic horse racing machines, three restaurants, 62 gaming tables, and parking for 1,375 vehicles in a parking lot located in neighboring Tyngsborough, Massachusetts.<sup>78</sup> The developer of the casino, ECL Entertainment, based in Las Vegas, Nevada, is run by Marc Falcone, a veteran Las Vegas casino operator. ECL Entertainment currently owns two of Nashua’s three charitable casinos, The River and the Lucky Moose.<sup>79</sup>

While the project has obtained the necessary approvals to move forward in Nashua, the project’s parking lot is located almost entirely in Tyngsborough, Massachusetts, where residents have had no opportunity to provide input. The location of the parking lot in Massachusetts also raises questions about jurisdiction. The Massachusetts Expanded Gaming Act allows for up to three destination resort casinos located in three geographically diverse regions across the state and a single slots facility for one location

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<sup>75</sup> <https://ecode360.com/29479574>

<sup>76</sup> [https://www.conwaydailysun.com/news/local/planners-panel-town-charter-calls-gambling-evil/article\\_62a1445a-2656-11ee-b802-1f80826baef9.html](https://www.conwaydailysun.com/news/local/planners-panel-town-charter-calls-gambling-evil/article_62a1445a-2656-11ee-b802-1f80826baef9.html)

<sup>77</sup> [https://www.conwaydailysun.com/news/local/planners-panel-town-charter-calls-gambling-evil/article\\_62a1445a-2656-11ee-b802-1f80826baef9.html](https://www.conwaydailysun.com/news/local/planners-panel-town-charter-calls-gambling-evil/article_62a1445a-2656-11ee-b802-1f80826baef9.html)

<sup>78</sup> <https://www.nashuatelegraph.com/news/2023/09/12/planning-board-votes-4-1-to-approve-mall-casino/>

<sup>79</sup> <https://www.nashuatelegraph.com/news/2023/09/12/planning-board-votes-4-1-to-approve-mall-casino/>

statewide.<sup>80</sup> The Massachusetts Gaming Commission (MGC) awarded the slots facility license to Plainridge Park Casino located in Plainville, Massachusetts, the Region A license to Encore Boston Harbor located in Everett, Massachusetts, and the Region B license to MGM Springfield located in Springfield, Massachusetts. In 2016, the MGC voted against awarding a license for the Region C area, in part, due to the lack of certainty surrounding a proposed development by the Mashpee Wampanoag tribe in Taunton and the significant impact that development would have on the Commonwealth's commercial casino industry. On October 31, 2023, the First Circuit panel upheld a federal judge's ruling allowing 300 acres of Massachusetts land to go into a trust for the Mashpee Wampanoag Tribe, thereby greenlighting their proposed development in Taunton.

The location of the casino's parking lot in Tyngsborough, Massachusetts (part of Region A) raises significant questions about whether the MGC has jurisdiction over the project and whether "The Mint" could even be permitted under Massachusetts law, which only allows for one casino in Region A. At a minimum, the jurisdictional concerns need to be addressed in terms of interstate law enforcement. As it stands now, the New Hampshire police department would have no jurisdiction over the parking lot and would only be able to cross state lines if a person is suspected of a felony. Instead, they would need to rely on law enforcement authorities in Massachusetts to assist them with any misdemeanors, including fights, alcohol related driving violations, etc. This poses an undue burden on law enforcement in the Commonwealth of Massachusetts, the town of Tyngsborough, and the residents of Tyngsborough.

The Massachusetts Expanded Gaming Act includes a number of key principles to ensure the successful implementation of expanded gaming including (a) a transparent and competitive bidding process, (b) maximum long-term value to the Commonwealth, (c) protection for host and surrounding communities, (d) mitigation for social impacts and costs, and (e) ensuring the nation's best and most rigorous public safety, regulatory and enforcement mechanisms.<sup>81</sup> The development of "The Mint" violates all of the foregoing principles.

8. Responsible Gaming. According to a 2021 Survey of Publicly Funded Problem Gambling Services in the United States prepared by the National Association of Administrators for Disordered Gambling Services<sup>82</sup>, despite being the first state to launch a modern lottery in 1964, it took over five decades for New Hampshire to dedicate funding toward problem gambling services. Under a 2017 bill allowing the Lottery to offer electronic Keno games, one percent (1%) of Keno revenue was set aside to address problem gambling. Beginning in 2017, \$100,000 had been allocated to the Department of Health and Human Services

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<sup>80</sup> <https://massgaming.com/about/expanded-gaming-act/>

<sup>81</sup> <https://massgaming.com/about/expanded-gaming-act/>

<sup>82</sup> <https://int.nyt.com/data/documenttools/naadgs-analysis-of-problem-gambling-funding-july-2022/521f7652c06a6d4d/full.pdf>

(DHHS) specifically for problem gambling services. However, DHHS did not utilize *any* of those funds and, in 2020, \$400,000 in unspent funds was reallocated to COVID-19 relief efforts.

The New Hampshire Council for Responsible Gambling is a volunteer-led state agency dedicated to reducing gambling-related harm in the New Hampshire through education, prevention, advocacy, training, and research.<sup>83</sup> The Council was established through the 2019 legislation legalizing sports betting and was originally provided a budget of \$250,000 per year that was later reduced by the Governor to \$100,000 per year due to a state budget shortfall. In 2020, the New Hampshire Council for Responsible Gambling granted a three-year contract, for its entire budget, to the New Hampshire Council on Problem Gambling. This contract helped to support two positions, one for 32 hours a week (the Executive Director) and one for eight hours a week. As of 2021, the NHCPG Executive Director was the sole person staffing the 24-hour helpline.

In stark contrast, the Massachusetts Expanded Gaming Act of 2011, set aside revenues generated by expanded gambling into a Public Health Trust Fund (PHTF). In 2021, the PHTF directed approximately \$10 million a year to gaming research, responsible gaming, problem gambling prevention, and treatment programs. In addition, five percent (5%) of all tax revenue collected from gaming is allocated to the PHTF (for 2022, over \$15.5 million was allocated to the PHTF)<sup>84</sup>. In addition, the Massachusetts Gaming Commission designed and implemented several innovative initiatives aimed at promoting responsible gaming and reducing gambling related harm, as codified in the Responsible Gaming Framework, Version 2.0.<sup>85</sup>

## VI. Conclusion

While New Hampshire's gaming industry offers exciting opportunities for economic growth and entertainment, the failure to adopt a robust regulatory framework poses a threat to its integrity and economic viability. By the time the Special Commission issues its report due in November 2024, the ability to responsibly expand gaming in New Hampshire may be beyond the legislature's control. Presumably, the Special Commission's report will be consistent with the findings of the 2010 report of the "New Hampshire Gaming Study Commission" urging, among other things, (1) market research to avoid market saturation and to maximize state revenue; (2) a data-driven, proactive analysis about the impact of expanded legalized gaming to better determine and manage potential risks and opportunities; (3) government support to address problem gambling; (4) procedures for measuring the social and economic impacts of expanded gaming; (5) the

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<https://nhcrg.org/#:~:text=The%20New%20Hampshire%20Council%20for,advocacy%2C%20training%2C%20and%20research.>

<sup>84</sup> <https://massgaming.com/wp-content/uploads/MGC-Annual-Report-2022.pdf>

<sup>85</sup> <https://massgaming.com/wp-content/uploads/MGC-Responsible-Gaming-Framework-2.0.pdf>

development of a robust regulatory framework; and (6) the establishment of government oversight structures to regulate expanded gaming.

Until the legislature can address the foregoing issues, all pending expansion should be halted immediately so that New Hampshire can ensure that its gaming industry grows appropriately, with the trust and confidence of all stakeholders. Continued growth under the current model will ensure that New Hampshire misses an opportunity for meaningful investment by reputable casino operators who can invest large amounts in the development of gaming facilities offering more than just casinos, increase tourism, and have a positive economic and societal impact on communities in New Hampshire.