

**TO: MEMBERS OF THE COMMUNITY DEVELOPMENT COMMITTEE,
BUFFALO COMMON COUNCIL**

FROM: REV. DR. G. STANFORD BRATTON
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Good morning. I'm G. Stanford Bratton, Executive Director of the Network of Religious Communities, an organization of denominations, congregations and religious organizations located in Western New York and with offices on Delaware Avenue in Buffalo. I am a resident of the city of Buffalo and an ordained clergy person with a doctorate in social ethics. My academic training indicates that I'm more concerned with the morals of human communities and the shaping of social policy than I am with the private behavior of individual citizens.

My research has led me to the conclusion that casino gambling is a failed economic development strategy which in its current form is constitutionally illegal in New York State. Others have addressed the failure of casinos to provide economic development; I would like to address the governmental and constitutional issues.

The New York State Constitution was written following a period when every state in the union had outlawed lotteries and gambling in reaction to the enormous political corruption gambling had fostered in every state in the Union. As a result the framers of the New York State Constitution made all forms of gambling illegal. The framers of the constitution did, however, provide a means to amend the constitution and in this regard, to legalize particular forms of gambling. The amendment process required that a constitutional amendment be approved by both houses in two successive legislatures, followed by a public referendum in which the majority of the citizens of the state must approve the amendment. Such amendments were approved: in 1937 through which para-mutual betting was legalized; in 1957 when charitable bingo was legalized; in 1966 when the state lottery was legalized; and in 1976 when off track betting was legalized.

In 1996 an effort was mustered to amend the New York State Constitution to legalize casino gambling in New York. That year I helped organize a broad-based coalition of religious and community groups, called the Western New York Coalition Against Casino Gambling. We, along with groups throughout New York State issued public statements, sponsored public forums and debates, contacted our legislators and mobilized a large number of citizens to oppose the legalization of casino gambling. In late January 1997 the effort to legalize casino gambling was overwhelmingly defeated in the New York State Senate and Majority Leader Joseph Bruno promised that the issue would not be brought up again in the session.

By the time of the defeat of the amendment to the New York State Constitution, I had come to understand that the spread of casino gambling is more than a failed community development strategy; it is bad public policy. I contend that Casino gambling is a cancer that is changing the very relationship between a government and its citizens.

Since at least the 1930's government has served as a protector of its citizens through a host of laws and regulations designed to protect workplace conditions, health and safety, environment, civil rights, and so forth. Beginning with the legalization of state lotteries there began a dangerous shift in the fundamental role of government from being a regulator of gambling to a promoter of gambling. In the quest for enormous gambling dollars states and local governments began

promoting, and joining in the promotion of gambling, particularly to our most vulnerable citizens; the elderly, the poor, the young and the addicted. With the spread of casino gambling, governments have completely abandoned their regulatory role and abdicated their responsibility for their citizens' welfare.

Even before the defeat of the casino gambling amendment in the New York State Senate, plans were being formulated to circumvent the constitution. Prophetically in an October 14, 1996 editorial the editor of the Buffalo News wrote, "Backers should be ashamed if the Indian deal is used to get around a gambling referendum." Likewise one of the potential developers of a Western New York Casino said to me following the defeat in the legislature. "Don't think that the constitution is going to stand in our way."

In 1999 I joined with several other New York citizens, including a member of the N.Y. Assembly and a member of the N.Y. State Senate in challenging, in the New York Supreme Court, the authority of the governor to negotiate a compact with an Indian nation. In his ruling Justice Teresi held that, according to the New York State Constitution the Governor does not have the authority to negotiate a treaty with an Indian Tribe. Judge Teresi's decision has been upheld in the New York State Court of Appeals. The United States Supreme Court refused to hear the appeal of NY Governor George Pataki.

On June 21, 2001 Governor George Pataki and President Cyrus Schindler of the Seneca Nation of Indians held a press conference at Niagara Falls to announce a deal to bring three casinos to Western New York, including one in Buffalo. Several days later, on June 29, 2001, a significant number of religious leaders, representing the vast majority of denominations in Western New York, as well as congregations on the Catarragus and Seneca Reservations, did announce their opposition to the proposed compact. They also called upon the Governor to release the full text of the proposed compact and called upon Erie County Executive Giambra and Mayor Masiello to present a comprehensive gambling impact statement prior to joining any effort to introduce casino gambling in Western NY. Over the next month many thousands of signatures opposing the compact were collected in area congregations and delivered to the offices of New York Assembly Majority Leader Paul Tokasz.

It appeared that significant opposition to the proposed compact was growing when the events of September 11, 2001 occurred. Late in the evening of Wednesday October 24, 2001 and in the early hours of October 25, 2001 the members of both houses of the New York State Legislature were presented with an 81 page bill which the governor said would stimulate the State's economy following September 11, 2001. The proposed legislation was not subject to committee study; no public hearings were held and no opportunity was provided for input by the public. The process failed to meet the constitutional requirement of printed copies of legislation being on legislators' desks three days prior to a vote being taken. The bill, approving the compact negotiated by the Governor with the President of the Seneca Nation, was approved, unread, without debate, by both houses of the legislature.

In early January 2002 several citizens from across New York State, including a member of the NY Assembly, a member of the NY Senate and myself filed suit in New York Supreme Court challenging the legality of the Compact negotiated by the governor and approved by both houses of the legislature. We had taken this action to obtain a judgment declaring the compact unconstitutional both in regard to the legislative process which violated the prescribed constitutional process for enacting legislation and because the legislation itself is illegal because the legislature and the governor cannot circumvent the prescribed process for amending the constitution.

It has been suggested that under the Federal Indian Gaming Regulatory Act of 1988 (IGRA) the Governor would be allowed to enter into so-called "tribal-state compacts" with Native American

tribes to permit the operation of commercial gambling by the tribe. However, according to IGRA before tribal-state compacts authorizing gambling on land not presently part of a reservation can be effective, the Governor must make a finding under IGRA that such gambling “would not be detrimental to the surrounding community. The Governor, cannot make such a finding given the provisions of Article 1 section 9 of the New York State Constitution prohibiting commercialized gambling and the State’s public policy that commercial gambling is detrimental to the welfare and morals of the citizenry.

The case is now before the U.S. Supreme Court. We are confident that the U.S. Supreme Court will find that the compact negotiated by Governor Pataki and President Schindler is unconstitutional..

To me, a citizen of New York State and the city of Buffalo, the attempt by the Governor and certain unelected power brokers and influence-peddlers to circumvent the constitution of New York State represents a fundamental breach of the basic relationship between a government and its people. It has long been held that we are a nation of laws not of men, but in this instance it appears that the law does not matter, only the interests of a well-connected, particular few. Further, Article One of the United States Constitution begins “All legislative powers here granted shall be vested in a Congress of the United States.” The same applies to New York State. In the instance of the Compact with the Seneca Nation of Indians there has been a fundamental breach in the separation of powers. In this instance a compact written by the Governor and certain special interest groups was approved unread, without debate by the NY State Legislature. In so doing the legislators have abdicated their constitutional responsibility and delegated their constitutional authority to the executive officer of the state. This I would suggest should be a matter of grave concern for every citizen of New York State.

I appeal to you, members of the Buffalo Common Council to inform yourselves as to the impact of Casino Gambling upon this community and to speak out about the violation of the New York State Constitution. Although you, like every other citizen of the State of New York, have been deprived of the constitutional guarantee of a right to be heard and to vote upon this matter, you must not remain silent. In addition to the above, there are other legitimate concerns which need to be raised about having another nation, with its own laws, policies and courts, located in the center of the city of Buffalo; about the city of Buffalo not having a voice regarding the operation of a casino within the city limits while still having significant financial liability for its presence; and about the right of the Seneca Nation to acquire adjacent land for housing, restaurants, hotels or even a shopping center all exempt from taxation by Buffalo, Erie County or New York State.

There are those who now suggest that Buffalo will be able to negotiate a better deal or other accommodations with the Seneca Nation once the casino is built. That, my distinguished Council members, is a fantasy. The deal is already spelled out in the compact and that my friends is, to use a familiar phrase, “all she wrote.”