

**TO: MEMBERS OF THE COMMUNITY DEVELOPMENT COMMITTEE,
BUFFALO COMMON COUNCIL**
FROM: REV. DR. G. STANFORD BRATTON (716) 882-4793
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Good morning. I'm G. Stanford Bratton, Co-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 clergyman with a doctorate in social ethics. In other words I'm more concerned with the morals of human communities and the shaping of social policy than I am with the personal behavior of individual citizens.

In the fall of 1994 I received a call from a friend at the New York State Council of Churches and another in the office of the New York State Catholic Bishop's Conference informing me that there was an effort to legalize casino gambling in New York State and they hoped that I would organize an effort to oppose legalization. At the time I saw gambling as a matter of personal choice and couldn't imagine myself devoting time and energy opposing casino gambling. Yes, some persons do become addicted to gambling as others become addicted to alcohol. What is needed, I thought, are treatment programs, not prohibition.

Respecting the intelligence and integrity of my friends I began to look more closely at Casino Gambling and its impact upon communities. I read the Harvard University study which indicated that the poor, the elderly and young are more seriously impacted by gambling than any other group. Some years later this information was confirmed by a study of the impact Detroit casinos are having on the at-risk groups in that city. I learned that 28% of those receiving public assistance, 27% of the widowed and 38% of single mothers patronize casinos at least once a month. Further persons on public assistance lose five times larger portion of their income than any other group.

My research also revealed that Casino Gambling is a failed strategy for the economic development. Casino gambling certainly did not help Atlantic City whose businesses fell from 2100 before the introduction of casinos to 210 nine years later. The same applies to city after city where money spent at a casino is money diverted from other products, services and forms of entertainment. As found in a definitive University of Illinois study "for every job created by the gambling industry, 2.75 jobs are lost in the rest of the economy."

My study convinced me that casino gambling was not simply an issue of personal choice, rather it is an issue which will have a profound negative impact upon the communities of Western New York. This revelation led me to another conclusion; that casino gambling is constitutionally illegal in New York State.

The New York State Constitution was written following a period when every state in the union had outlawed lotteries and gambling as a reaction to the enormous political corruption gambling had fostered in every state. As a result the framers of the New York State Constitution made all forms of gambling illegal. They did, however, provide a means to amend the constitution and in this regard, to legalize particular forms of gambling. The amendment process required the passage of an amendment by both houses in two successive legislatures followed by a public referendum in which the majority of the citizens of the state approve the amendment. This occurred in 1937 where para-mutual betting was legalized, in 1957 when charitable bingo was legalized, in 1966 which 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 and legalize casino gambling in New York. 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. On January 29, 1997 we were pleased to announce that the effort had been overwhelmingly defeated in the New York State Senate and that Majority Leader Joseph Bruno had promised that the issue would not be brought up again in the session.

By this time of the defeat of the amendment to the New York State Constitution I had come to conclude that the spread legalized gambling and casino gambling in particular was more than a failed community development strategy and bad public policy. I had come to see it as cancer that was changing the very relationship between a government and its citizens. Since at least the 1930's the role of government was as protector of the 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 occurred a dangerous shift in the fundamental role of government—from the regulator of gambling to promoter of gambling. In the quest for enormous gambling dollars states and local governments began promoting, or joining in the promotion of gambling, particularly to their most vulnerable citizens; the elderly, the poor, the young and the addicted. With casino gambling governments are now abandoning their regulatory role and abdicating their responsibility to require the social and economic impact statements of this expanding industry that they would of any other expanding industry or the construction of a new highway. Lotteries and particularly casino gambling is changing the role of government from that of protector of its citizens to that of predator.

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 a October 14, 1996 editorial the editor of the Buffalo News wrote, “Backers should be ashamed if 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 NY 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.

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. Then late in the evening of Wednesday October 24, 2001 and in the early hours of the following morning members of both houses of the New York State Legislature were presented by their respective leaders with an 81 page bill which they said would stimulate the State’s economy. The proposed legislation was not subject to committee study; there were no public hearings and no opportunity whatsoever for input by the public. The bill was not on the legislators desks in printed form for the 3 days required by the New York State Constitution before a vote can be taken on any bill. The bill, authorizing the compact negotiated by the Governor with

the President of the Seneca Nation was passed by both houses of the legislature and within a week signed into law.

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 have taken this action to obtain a judgement 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 a 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 Governor and the Attorney General asked that the suit be dismissed. Judge Teresi has denied that request and will rule on the merits of the challenge. In the mean time the Seneca Nation and its developers have been put on notice that they are at risk in proceeding with the renovation on the Niagara Falls Casino before the court has ruled in this matter.

To me, a citizen of New York State and the City of Buffalo, the attempt by the Governors 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 stated that we live in a nation of laws and not of men, but in this instance it appears that the laws do not matter, only the interests of a 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 case a law has been exclusively written by the Governors and certain special interest groups and the legislator have completely abdicated their constitutional responsibility by delegating their responsibility 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 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 significant changes in the nature of the relationship of the government and its people already outlined there are other legitimate concerns which need to be raised: about having another nation located in the center of our city; about the city of Buffalo not having say in regard to the operation of a Casino, but significant financial liability for its presence in downtown Buffalo. Finally, it is essential that you understand that significant other portions of downtown Buffalo could be acquired by the Seneca Nation for housing, and that acquired property could be used to operate other businesses detrimental to the well being of the City of Buffalo.

This is not in any way to cast dispersions upon members of the Seneca Nation of Indians. Rather the same concerns might legitimately be raised should any nation come to own and operate a Casino in downtown Buffalo be that nation Canada, Germany, Japan or Afganastan.

