
A STACKED DECK: THE ETHICS OF MAKING LAWS ABOUT GAMBLING

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Making laws about gambling brings into focus some of the most troubling flaws in our representative democracy. Those who have money and access will be heard, and those who stand to lose much may never be noticed. This essay begins with a look at two families. The first family lost a lifetime of retirement savings through gambling. The second family, through actions as a lawmaker and lawyer, made attempts to lessen the impact of gambling, but with little success. The essay then provides a close-up view of the lawmaking process and its flaws, particularly in relation to campaign finance. As money drives the continuous campaign season, lawmakers have a finely tuned ear for the concerns of the wealthy, and much less incentive to understand those with fewer resources. Finally, the essay examines representative democracy theory and how, even within the context of Citizens United v. FEC, we can take steps toward better representation of those who so often are ignored.

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I. INTRODUCTION

This is a story of two families. One family was made destitute by gambling. The other family tried to help, but in the end did not accomplish much. This story is personal. I belong to the family that tried, and failed, to help.

The first family was like families we all know. The father worked in the family business and in another job as well.¹ The second job provided a steady income which compensated for the unreliability of family business income. The second job also provided a way to save money for retirement, and the family did just that, sacrificing present income to provide for more security in retirement. The mother worked in the family business, raised the children, and later worked outside the home as well. The children grew up and moved out, not too far away, and started their own lives. This family made wise choices. They were not wealthy, but they provided for themselves well. And the money they had saved for retirement was invested in an annuity that would provide a stable income for the parents through the rest of their lives. But things did not go according to the smart plans the family made.

I met the father when I was working at the Southern Illinois University School of Law Elder Legal Clinic. Our clinic got a call from the local elder protective agency that a person needed an emergency order of protection to prevent abuse by a spouse. The abuse alleged was not the kind of abuse that is typical to younger couples, where one spouse had beaten the other.² The abuse in this family was one far more typical to older couples.³ In this family the father had fallen ill and been hospitalized for some time, and even after leaving the hospital, remained frail and dependent. The mother then engaged in set of behaviors including withdrawing principal from the retirement annuity and regular gambling at a local casino. It is not clear what happened in what order, except that over time, in increments, the entirety of the family's retirement fund was withdrawn, deposited in the couple's local bank account, and then almost immediately withdrawn at the cash machine at the casino. When the retirement account was completely depleted, the frail spouse was abandoned at the couple's rural home—a home that had no telephone line because the phone had been disconnected due to lack of payment.

1. This story is told with consent from two family members. I have not used any names or locations so the identity of the family members cannot be determined. As with any representation, I know one side of the story much better than I know the other side of the story.

2. JENNIFER L. TRUMAN & RACHEL E. MORGAN, U.S. DEP'T OF JUST., NONFATAL DOMESTIC VIOLENCE, 2003-2012 11 (2014). This Justice Department study, based on the National Crime Victimization Survey, found that domestic violence is highest in the 18–24 age group and lowest in the age group of 65 and older.

3. Although the statistics in this area are harder to pin down, partly because of differing definitions of types of abuse, most studies show that financial abuse of elders is more prevalent than physical abuse. *See, e.g.*, Edward O. Laumann, Sara A. Leitsch & Linda J. Waite, *Elder Mistreatment in the United States: Prevalence Estimates from a Nationally Representative Study*, 63 J. GERONTOLOGY: SERIES B S248 (2008).

I started this Article with a story about a real family because it illustrates exactly the kind of individuals and voices who are not heard from when lawmakers consider establishing and regulating gambling.⁴ Missing the voices of those who are heavily affected by legal gambling means our democratic system is functioning in a flawed way. That flawed process can lead to flawed legislation unless those who are making the laws can compensate in some way for the gaps in the process. In Part II and III, I will describe the efforts of two members of another family—my family. My father was an active opponent of gambling and used media and legislative efforts to try to slow or stop legalized gambling. In my role as a lawyer, I tried to help the frail elderly client in the family described above. I have also had a close enough contact with lawmaking to have a realistic view of how the process works. In Part IV, I will explain how our complex lawmaking system, constricted by the need for campaign fundraising, has serious shortcomings. Finally, Part V assesses standards for lawmaking ethics, and propose one way to improve the process. It is a safe bet that Illinois and our nation will be continuing to make laws about gambling, thanks in part to a recent U.S Supreme Court decision that opened the doors to sports gambling.⁵

II. PAUL SIMON: ONE MAN'S EFFORTS AGAINST GAMBLING

A. *Actions as an Editor and Lawmaker*

My father was well-known to an older generation of Illinoisans. He served the Illinois State House, State Senate, and as Lieutenant Governor of Illinois, then served in the U.S. House and Senate. Before he entered politics, he was an editor and publisher of our hometown newspaper, the *Troy Tribune*. While he was in politics for most of his working life, he was always a journalist at heart,

4. The words gaming and gambling are often used interchangeably. The dictionary definition of "gaming" is "the practice or activity of playing games for stakes." *Gaming*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/gaming> (last visited June 18, 2021) [<https://perma.cc/8KT4-AHEK>]. Despite the interchangeability of the terms, "gaming," the more playful sounding term, seems to be used consistently by the industry and its advocates, like the University of Nevada Las Vegas's International Gaming Institute. *UNLV International Gaming Institute*, INT'L GAMING INST., <https://www.unlv.edu/igi> (last visited June 18, 2021) [<https://perma.cc/77DJ-DR4G>]. To make things murky, in Illinois, the Illinois Gambling Act sets up the Illinois Gaming Board. 230 ILL. COMP. STAT. 10/5 (2018).

5. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018). Illinois just expanded gambling in 2019. *See Governor Signs \$45 Billion State Construction Bill with Expanded Gambling, Taxes*, DAILY HERALD (June 28, 2019, 4:46PM), <https://www.dailyherald.com/news/20190628/governor-signs-45-billion-state-construction-bill-with-expanded-gambling-taxes> [<https://perma.cc/52JE-EARX>]. As a part of that law, the Sport Wagering Act required in-person rather than online registration for sport betting initially, but online registration started earlier than expected through an executive order regarding the corona virus. *See* 230 ILL. COMP. STAT. 45/25–30(f); *id.* 25–35(f); *id.* 25–40(i). *But see* Illinois Executive Order 2020–41, <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-41.aspx> [<https://perma.cc/3P7Y-VPSS>]; Matthew Waters, *Did Illinois Sports Betting Just Go Mobile Months Early?*, LEGAL SPORTS REP., (June 5, 2020), <https://www.legalsportsreport.com/41642/mobile-illinois-sports-betting-order/> [<https://perma.cc/8WMA-MEB9>]. And U.S. Senator Tom Cotton introduced new federal legislation that would limit internet gambling aimed at children. S. 3322, 116th Cong. (2020).

always curious and asking questions, always believing that opening up information for all to see was the best way to make good decisions in a democracy.⁶

In the Illinois State House, my father met my mother. It predisposed my little brother and me to an active interest in politics. My mother was a great analyst and sounding board for all my dad's ideas. People often assumed my dad was a lawyer. When this happened my mother never corrected them, even though Dad never finished college, and it was my mother who was the lawyer in the family.

While my mother had a profound influence on my dad, she was not the first to help shape him. The strongest influence in my dad's early years was his father, Martin Simon. Grandpa Simon, which is how we referred to him back in the days when children were not allowed to call adults by their first names, was a Lutheran minister. He had a strong faith, and he and Grandma Simon hoped that both of their sons would become Lutheran ministers as well.⁷ My dad disappointed his parents, but his brother, Art Simon, saved the family reputation by joining the ministry.⁸

But Grandpa Simon had a long-lasting impact on my father, most particularly from one instance of faith in action. Grandpa Simon had a parish but regularly reached beyond the limits of his church. He had a publishing business which focused much effort on helping parents pass along their faith to their children.⁹ He also used a local radio station to preach occasionally.¹⁰ One such sermon came after the bombing of Pearl Harbor and U.S. entry into World War II and after President Roosevelt ordered internment of Japanese-American citizens on the west coast of the United States.¹¹ Grandpa Simon spoke out against the internment, and he was one of very few people who did. My dad would often tell my brother and me how he was embarrassed by what his father had said, and how he tried to get his father to change his position. Dad would explain to us that, while he was embarrassed at the time, in retrospect it was the thing that made him most proud of his father. Dad's summary of the story always ended with the lesson that we should do what is right, even if it is not popular. In my father's lengthy autobiography, the story takes up only a page.¹² Although the size of the story is small, its importance to my dad was great. My dad told us this story more often than any other story about his family of origin. As a teenager I

6. Dad sponsored the first open meetings act in Illinois, a law he called his "first significant piece of legislation." PAUL SIMON, P.S.: THE AUTOBIOGRAPHY OF PAUL SIMON 61 (1999). The law's current version can be found at 5 ILL. COMP. STAT. 120 (2018).

7. SIMON, *supra* note 6, at 14.

8. Art Simon is a Lutheran minister but most known for founding the group Bread for the World, an advocacy group focused on world hunger. *See Art Simon*, BREAD FOR THE WORLD, <https://www.bread.org/bio/art-simon> (last visited June 18, 2021) [<https://perma.cc/22AH-3Q87>]; ARTHUR SIMON, THE RISING OF BREAD FOR THE WORLD: AN OUTCRY OF CITIZENS AGAINST HUNGER (2009).

9. Grandpa Simon's most successful book was ALLAN HART JAHSMANN & MARTIN P. SIMON, LITTLE VISITS WITH GOD (1957).

10. SIMON, *supra* note 6, at 20.

11. *Id.*

12. *Id.*

could chant the ending of the story with him, and despite my eye-rolling complaints, I learned the lesson.

My dad's first full time job—the one he dropped out of college to take—was as editor and publisher of the *Troy Tribune*, a small-town weekly newspaper. He often claimed that, at nineteen years old, he was the youngest editor/publisher in the nation. (Having been to the popcorn capital of the world in both Illinois and Iowa, I am dubious of claims where nobody keeps track of the information.) In any event, he was young, and his editorials could be on the preachy side.¹³ Early on he was at a local restaurant and saw punchboards, a form of small-scale gambling with which he was not familiar.¹⁴ He investigated, found ties to the county sheriff's office, and wrote about it.¹⁵ This led to an investigation of prostitution, which he did himself, buying a soda at each establishment because he was not old enough to buy alcohol.¹⁶ His writing showed a passion to expose not just crime and corruption but immorality.¹⁷

The crime-fighting editorials and exposés led to a run for the Illinois State House, and from then on Dad combined elected office with continued writing, most often in the form of a weekly column that he distributed free to Illinois newspapers. His interests as a lawmaker were similar to his interests as a journalist: inclusive. Both journalism and lawmaking seemed to lend themselves well to my dad's not too-lengthy attention span. He liked to dive deep and quick into a topic, and then he liked to move on. There were several interests which he often came back to—education, poverty, and water were some of his favorites—but he also had a recurring interest in gambling.

Dad sharpened his advocacy against gambling when serving as Lieutenant Governor of Illinois. When he had been in office not yet three months, he wrote a column warning about the temptation to institute a state lottery as an easy answer to budget problems.¹⁸ He argued that, historically, state lotteries were prone to corruption and that the two states with lotteries found them financially disappointing.¹⁹

He stepped up his advocacy while serving at the federal level. The gambling which existed at the time my father served in federal office was almost exclusively at the state and Native American tribal levels.²⁰ There was little federal interest and an even smaller federal history of regulation.²¹ In a sign of different times, my dad, a Democrat, joined with Senator Dick Lugar, a Republican,

13. See, e.g., PAUL SIMON, *THE ESSENTIAL PAUL SIMON: TIMELESS LESSONS FOR TODAY'S POLITICS* 5–6 (John S. Jackson ed., 2012). This book is a collection of my dad's writings, selected with great care by John Jackson, one of Dad's long-time collaborators.

14. SIMON, *supra* note 6, at 35–36.

15. *Id.* at 36.

16. *Id.* at 37–38.

17. *Id.* at 38 (“I walked out of the place with five dollars still in my pocket—and undiseased. Which is probably more than many a fellow can say.”) (quoting *TROY TRIB.*, Dec. 28, 1950)).

18. SIMON, *supra* note 13, at 101. This quote was from a March 19, 1969 column.

19. *Id.*

20. NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 1-1 (1999), <https://govinfo.library.unt.edu/ngisc/reports/firprt.html> [<https://perma.cc/NWT3-4LPP>].

21. *Id.* at 1-4–1-6.

to sponsor a two year federal investigation of the impact of gambling in the U.S.²² Before the bill was passed, there was tussle over how much authority the commission should have.²³ Speaker of the House Newt Gingrich advocated for a commission without subpoena power when he was at—surprise—a Las Vegas fundraiser attended by casino operators.²⁴ In the end the commission did have subpoena powers, and its focus was to be a “comprehensive legal and factual study of the social and economic impacts of gambling in the United States.”²⁵ The Commission, with members from inside and outside of the gambling industry, generated a voluminous report including some commissioned original research.²⁶ The Commission had no law making authority, but it did help identify some benefits of gambling for communities and individuals,²⁷ and some of the many costs to individuals and their families.²⁸ The Commission recommended several practical measures to state and tribal governments, like not having ATMs in the immediate area where gambling takes place²⁹ and recognizing that non-casino gambling, labeled convenience gambling, generates neither good quality jobs nor economic development.³⁰ The Commission also had recommendations for specific study which should be undertaken to answer some of the many questions still left after their investigation.³¹

He continued to advocate against expansion of gambling in Illinois even after he left public office. In his regular commentary on WSIU public radio, he reiterated the connection between gambling and public corruption, citing numerous elected officials who had been charged or convicted of crimes related to gambling.³² In an ironic twist, the radio commentary focused on advice to Governor Rod Blagojevich, who was later convicted of corruption,³³ although his corruption was not related to gambling.

22. Michael Kilian, *Bill to Set Up Federal Gambling Probe Gains*, CHI. TRIB. (May 15, 1996), www.chicagotribune.com/news/ct-xpm-1996-05-15-9605150102-story.html [<https://perma.cc/9B5J-CDQJ>]; Keith Whyte, *Analysis of the National Gambling Impact Study Commission Act*, 14 J. GAMBLING STUD. 309, 310 (1998); National Gambling Impact Study Commission Act, Pub. L. No. 104-169, 110 Stat. 1482 (1996).

23. Killian, *supra* note 22. See generally John Warren Kindt, *Follow the Money: Gambling, Ethics and Subpoenas*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 85 (1998).

24. See Kindt, *supra* note 23, at 86. According to Kindt, the committee's subpoena power was limited.

25. Pub. L. No. 104-169, 110 Stat. 1482 (1996). Reprinted in NAT'L GAMBLING IMPACT STUDY COMM'N, *supra* note 20, app. IV.

26. NAT'L GAMBLING IMPACT STUDY COMM'N, *supra* note 20, at 4-1. The Commission worked with the National Opinion Research Center at the University of Chicago for a survey focused, among other things, on gambling impacts. The report also both acknowledged help from and listed references to the works of Professor John Kindt. See *id.* app. III, IV.

27. *Id.* at 7-6-7-8. The Commission identified increased job opportunities in casino areas, particularly for union workers.

28. *Id.* at 4-1-4-20, 7-18-7-31. Chapter 4 focuses on problem and pathological gambling and Chapter 7 focuses on gambling's impact on people and places, where subtopics include suicide, divorce, homelessness, abuse and neglect.

29. *Id.* at 7-30.

30. *Id.*

31. *Id.* at 8-2-8-5.

32. SIMON, *supra* note 13, at 102.

33. Jonathon Berlin & Kori Rumore, *Rod Blagojevich Saga Timeline: From Arrest to Trump's Commutation*, CHI. TRIB., (Feb. 19, 2020), <https://www.chicagotribune.com/politics/ct-viz-bлагоjevich-legal-timeline.htmlstory.html> [<https://perma.cc/L63W-54QD>].

Newspaper editorials, columns while serving in office, and a federal commission to study gambling add up to strong and consistent interest in and opposition to legalized gambling. But Dad also had a deep concern about a larger, systemic issue which has an impact on gambling law and so many other issues—campaign finance.³⁴

B. Concerns About the Impact of Money in Politics

Money and politics go together a little too well. Outright bribery certainly takes place.³⁵ Congressman William Jefferson was convicted of accepting bribes and famously had \$90,000 cash in his freezer.³⁶ And converting campaign contributions to personal use, only a sliver away from bribery, is a crime as well, one that now former Congressman Duncan Hunter plead guilty to in early 2020.³⁷ But money has a more subtle, and perfectly legal impact on electoral politics. It generates gratitude. Here's how my dad described it:

There may be members of Congress who vote for or against a bill specifically because of a campaign contribution, but the much commoner problem is that campaign contributors have greater access to policy makers, and access spells votes. It is natural for a candidate to feel a sense of gratitude toward those who contribute to a campaign. You listen carefully to people toward whom you feel a sense of gratitude. The inequity is that those with limited income do not have such access.³⁸

That assessment of gratitude and access was made in 1984, when Dad was a member of Congress. He seemed embarrassed to have to acknowledge that in the most recent re-election campaign he spent just over \$400,000.³⁹ His final campaign was for re-election to the U.S. Senate in 1990.⁴⁰ The comparison is not a perfect one because of the different offices sought, but in that campaign he raised \$8.4 million.⁴¹ For a more fair comparison, in the house district that most

34. See discussion *infra* Section II.B.

35. Bribery charges have to meet a higher standard after *McDonnell v. United States*, 136 S. Ct. 2355, 2375 (2016). See also George D. Brown, *McDonnell and the Criminalization of Politics*, 5 VA. J. CRIM. L. 1, 3 (2017); Christopher Murphy, *McDonnell v. United States: Defining "Official Action" in Public Corruption Law*, 12 DUKE J. CONST. L. & PUB. POL'Y 269, 269 (2017).

36. Rachel Weiner, *Judge Lets Former Louisiana Congressman out of Prison*, WASH. POST (Oct 5, 2017), https://www.washingtonpost.com/local/public-safety/judge-lets-former-louisiana-congressman-william-jefferson-out-of-prison/2017/10/05/8b53619e-aa0b-11e7-850e-2bdd1236be5d_story.html [https://perma.cc/ZPX5-ZGAT]. In Illinois we have been known to use shoe boxes. Ron Grossman, *From Hero to Bum in a Flash*, CHI. TRIB. (Feb. 24, 2013), <https://www.chicagotribune.com/news/ct-xpm-2013-02-24-ct-per-flash-paul-powell-0224-20130224-story.html> [https://perma.cc/FWM5-7TNV].

37. Ruth Marvin Webster & Patrick J. Lyons, *Duncan Hunter's Guilty Plea: Answers to 5 Crucial Questions*, N.Y. TIMES (Dec. 3, 2019), <https://www.nytimes.com/2019/12/03/us/duncan-hunter-guilty-plea.html> [https://perma.cc/BQ2L-ZUKG].

38. PAUL SIMON, *THE GLASS HOUSE: POLITICS AND MORALITY IN THE NATION'S CAPITOL* 35 (1984).

39. *Id.*

40. SIMON, *supra* note 6 at 206.

41. *Id.*

closely resembles the one my father represented, in the 2018 race the two candidates spent roughly \$3 and \$4 million each.⁴² And in the most recent US Senate race in Illinois the candidates spent roughly \$12 and \$16 million each.⁴³

Closely related to the impact of money is the question of how much time must be devoted to raising that money. In his 1984 book *The Glass House: Politics and Morality in the Nation's Capital*, Dad wrote a chapter on money followed by a chapter on time.⁴⁴ He discussed the many pulls on the time of a member of Congress, including a pull in every campaign to spend more time on the phone raising money.⁴⁵ With elections every two years, members of Congress are in a never-ending election campaign.

Raising campaign cash was one of the factors my parents considered when choosing not to run for re-election for a third term in the Senate.⁴⁶ Dad did not want to stay beyond his ability to serve well, and he and Mom had lost some of their eagerness to go to event after event.⁴⁷ But at home, the part of the decision which really made them happy was not having to engage in fundraising.

Overall, the impact my father had on gambling was as much a function of his journalistic background as it was his ability to make laws. He was consistent in relaying the bad news, whether it was that illegal gambling was going on in Madison County, that gambling has negative impacts not well studied, or that gambling revenues might not be the quick fix of elected officials' dreams.⁴⁸ I do not think I can say my dad changed the laws on gambling, but maybe, through exposing the side of gambling that we do not want to know about, he challenged some lawmakers to do their jobs better.

III. MY LOOK AT GAMBLING AND THE PROCESS OF MAKING LAWS

There are many ways in which I do not measure up to the standard my father set. I have served in elected office twice: four years on the Carbondale City Council⁴⁹ and four years as Lieutenant Governor of Illinois.⁵⁰ While I believe I have had some impact in each office,⁵¹ it does not come close to the impact my father had at the state level, and I have not served in national politics at all.

42. *Illinois District 12 2018 Race*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/races/summary?cycle=2018&id=IL12> (last visited June 18, 2021) [<https://perma.cc/3KNH-3X3Y>].

43. *Illinois Senate 2016 Race*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/races/summary?cycle=2016&id=ILS2> (last visited June 18, 2021) [<https://perma.cc/H4J5-F65Y>].

44. SIMON, *supra* note 38, at vii.

45. *Id.* at 51–52.

46. SIMON, *supra* note 6, at 206.

47. *Id.* at 205–206.

48. *See supra* Section II.A.

49. Linda Rush, *Simon, Haynes, Jack Join Wissman on Council*, THE S. ILLINOISAN (Apr. 2, 2003), https://thesouthern.com/news/opinion/voice-of-the-southern/simon-haynes-jack-join-wissman-on-council/article_0fb6956-19c8-5e10-83f6-b1dca58c3b8d.html [<https://perma.cc/U8FA-6QUA>].

50. Monique Garcia & Rick Pearson, *Lt. Gov. Sheila Simon Won't Serve Another Term*, CHI. TRIB. (Feb. 14, 2013), <https://www.chicagotribune.com/news/ct-xpm-2013-02-14-ct-met-sheila-simon-0214-20130214-story.html> [<https://perma.cc/N9Q7-TXRH>].

51. On the city council I was a strong advocate for transparency, which I think helped all of us make better decisions. At the state level I helped to pass more secure funding for sexual assault prevention and response, and

A. *Contact with Gambling as an Elected Official*

The area of gambling has not been a passion of mine. In fact, I only had a brief brush with gambling in the state of Illinois. When I was serving on the Carbondale City Council, Governor Rod Blagojevich sought to have me appointed to the Illinois Gaming Board,⁵² the five-member group that oversees regulation and taxing of gambling on riverboats and casinos, along with sports and video gambling.⁵³ David Stricklin, the governor's Washington D.C. office head and a grade school friend of mine from Carbondale, was the one who called me. I remember trying to wriggle out of the request by letting Dave know that I had never even been inside a casino. He laughed and said that was a perfect qualification. I thought about what I had learned from Dad about service and how we ought to accept responsibility when we have the ability to make a contribution. So, after hemming and hawing, I told Dave I would do it.

There was just one problem. The statute which set up the qualifications for service on the gaming board required that no board members hold another paid public office.⁵⁴ My salary for serving on the Carbondale City Council was a grand total of \$3,000 per year,⁵⁵ which made me ineligible. The Governor told me he would get the law changed. But of course, a governor alone cannot make that change, and the legislature wisely failed to make a change that would have opened the door for conflicts of interest on the part of gaming board members.⁵⁶ So I never did serve on the gaming board, and I have still never been inside a casino in Illinois.

My only other experience with the state and gambling was early in my service as Lieutenant Governor. When Governor Pat Quinn headed to Europe to support Illinois service members,⁵⁷ I offered to continue the dialogue which had

a law to help ease the transition of military families into Illinois schools. Susanna Kim, *Illinois Governor Approves Strip Club 'Skin Tax' to Fund Rape Crisis Centers*, ABC NEWS (Aug. 20, 2012, 3:15PM), <https://abcnews.go.com/Business/illinois-passes-skin-tax-strip-clubs-joking-matter/story?id=17044255> [https://perma.cc/2ATN-TPWT]; *Quinn Signs Legislation Helping Military Families*, ABC NEWS KHQA (June 29, 2014), <https://khqa.com/news/local/quinn-signs-legislation-helping-military-families> [https://perma.cc/T4L5-ZUZZ].

52. *Desperately Seeking Sheila*, CHI. TRIB. (Apr. 21, 2005), <https://www.chicagotribune.com/news/ct-xpm-2005-04-21-0504210021-story.html> [https://perma.cc/RCP8-H65S].

53. 230 ILL. COMP. STAT. 10/5(a)(1)-(2) (2019).

54. *Desperately Seeking Sheila*, *supra* note 52. The law now prohibits appointment to the board by anyone who holds any public office. 230 ILL. COMP. STAT. 10/5(a)(5) (2019).

55. Current Carbondale City Council members earn \$4,200 a year. City of Carbondale Budget, Fiscal Year 2021, Fund: General Department: (10) General Government Division: Mayor and Council Division No.: 40000, <https://www.explorecarbondale.com/DocumentCenter/View/5384/40000-Mayor-and-Council-PDF> (last visited June 18, 2021) [https://perma.cc/9SGD-TBR7].

56. *Desperately Seeking Sheila*, *supra* note 52.

57. Governor Quinn deserves great credit for his support of service members and those who died while serving our country. He attended the visitation or funeral of almost every service member who died while he was governor. Ally Mausch, *Former Illinois Gov. Pat Quinn, a Northwestern Alum, Donates to University Archives*, THE DAILY NW. (Nov. 10, 2017), <https://dailynorthwestern.com/2017/11/10/campus/former-illinois-gov-pat-quinn-northwestern-alum-donates-university-archives/> [https://perma.cc/UUB3-26D9]. I represented the Governor at visitations for two fallen service members when the Governor was out of the state. It was hard and made me appreciate the Governor even more.

started between Governor Quinn and then Chicago Mayor Rahm Emanuel. While I did keep the conversation going during the governor's brief absence, I was certainly not able to facilitate any agreement between the state and the city on the expansion of gambling. Among other issues which had to be resolved was what body would regulate a city casino and who would control appointments to that body. What I remember most from the exchange was how little each chief executive trusted the other.

B. Contact with Gambling as an Attorney

Certainly, I have had no large-scale impact on the world of gambling. But as a lawyer, have I been able to help any individuals? I think the answer is no. The story that I used to open this essay was a case I worked on in the Civil Practice/Elderly Clinic at the Southern Illinois University School of Law. Students in the clinic worked with me on getting an order of protection for the frail spouse and filing a petition for dissolution of marriage.

The case was a referral from the local senior advocacy office, the Adult Protective Services of the Shawnee Health Service. They do great work and connect individuals with the law school's elder clinic when the advocacy requires legal work. In this case, the client was frail but was able to come to the office in a wheelchair with the assistance of family members. He told me some of this in our initial interview, and then at times he appeared to fall asleep. I was given stacks of financial information about the retirement annuity and the jointly held bank account.

I grew to know this client and his family. It became easier to communicate as the client regained some of his lost weight and strength by living with family members who fed and cared for him. Clearly some part of his ailing was due to lack of nutrition. I grew to respect the client, a hard-working man who did all that had been asked of him over a lifetime. The family members who cared for him also impressed me.

The impact of gambling is what made this case different from any other I had worked on before. As I started to comb through the financial records, I could see a clear pattern. First there was a request for money from the principal of the annuity, then a record of a transfer into the joint bank account. Quickly after that the cash withdrawals at the casino's ATM began. The amounts of money taken from the retirement annuity kept growing, and the cash withdrawals grew as well. Thousands of dollars a month were being pulled from a place of security and lost. The electronic trail stopped when the annuity had no principal left. And when the money was gone, the gambler left, leaving a frail man alone, without food or a phone, and unsure of his ability to drive himself to safety.

As a lawyer I was able to get an order of protection to make sure that the frail spouse was secure while living with other family members. I was able to file for dissolution of the marriage, in which the client was most interested after being abandoned. And while the order of protection kept him safe, and the divorce ended the marriage, there was nothing that could be done to recoup the lost

annuity. The client was able to keep a few tangible assets, but there was no savings account to split and no order to divide pension proceeds because there was no money. The wife had no income and no prospects of employment. In the end the client was pleased to end his ties with his wife, but there was no other form of satisfaction.⁵⁸

I use this case not because it is typical of cases I have handled. It is the opposite. It is extraordinary as an example of how gambling can impoverish a family who had saved over a lifetime to care for themselves as they aged. Gambling took a man who had worked hard to care for himself and his family—who had made sure that he would not be a financial burden to anyone—and made him dependent on family members. The family who housed him, fed him, and took him to all his doctor appointments did not consider it a burden. But I have represented enough older people to know that this idea of not being a burden can be extremely important.

As a lawyer I was able to help my client get to safety and to undo his legal ties to someone who had harmed him. But there was no way to undo the financial loss from gambling. It was one of the many times that, as a lawyer, I knew I could not deliver what the client hoped for or deserved. As a lawyer and as someone who often feels a sense of control and ability, I felt that, for this client, I had no power to steer the outcome in a way which would be just.

So, both as an elected official and as a lawyer, I have had no impact on gambling policy, and no impact even on one person who was financially ruined because of gambling.

But as an elected official, I was able to get a close-up view of the two other systemic views impacting gambling law: money and time.

C. Campaign Cash, Time, and Their Impact on Lawmaking

I understood the role of money in politics as an observer of my dad's political career. In our small family we were all engaged in Dad's campaigns. My brother and I wore "Vote for my Daddy" shirts when we were young. And when Dad ran for Lieutenant Governor, in a different era, we spent much of the summer driving around the state in a station wagon. The two young men who alternated driving sat in front, Mom, Dad, and our babysitter, Jane Gebhart, in the back seat, and my brother and me in the way back, along with boxes of campaign literature. As we grew, we were able to help the campaign by passing out literature at parades and by stuffing, sealing, and stamping envelopes. When Dad first ran for the U.S. Senate, I took a semester off from law school to help in the campaign. I asked Dad what he needed, and he said, "an office manager." I told him I would be happy to do that and then asked what an office manager does. He told me the first thing to do was to find an office, preferably for free. Of course, I was not involved in policy-making decisions, but I had a pretty good view of the process.

58. Credit for completing the work on this case goes to Professor John Erbes, who took over the case when I returned to classroom teaching.

I had a good enough view of politics and money to see the problems and to know there were no easy solutions at the high level of politics where my dad was operating. But my entry in the political world was at a decidedly lower level. When teaming up with some Carbondale neighbors to look at a local property issue, one of my friends suggested I should run for city council. The council was expanding from five members to seven, so I would not be running against anyone, which made the prospect more appealing. And both the campaign and the service, if I won, would be in Carbondale.

Carbondale is a small town with a population of roughly 25,000.⁵⁹ The city has about seventeen square miles of territory,⁶⁰ no interstate highways, and a fairly flat landscape. To a veteran of door-to-door campaigning, this means it would be easy to campaign by walking and biking through the town. To me, all of this added up to easy access to voters at a low cost. I thought if ever there was a campaign where I could set a contribution limit, this would be it. So, I set my limit—I would take no more than \$25 from any individual. My friends loved it! I printed brochures and sent one letter to voters, so my expenses were minimal, and the costs were easily covered despite the \$25 cap on contributions. And it worked. In the city wide-race, I won the most votes in both the preliminary and runoff elections.⁶¹ I thought it was a success, but at that point it was only an electoral success.

The real success of the contribution limit was not apparent to me until a vote we had. It was on an issue that is the classic reason why people do not want to get involved in local government—it was a pretty small detail. The issue was how high the city codes would allow grass to grow in peoples' yards.⁶² Really. If people allow their grass to grow beyond that height, the city sticks a little sign in the yard telling the occupant to cut the grass. To my knowledge only one person cared about this ordinance. He was a local landlord and raising the height two inches would help him cut grass less, presumably increasing his profit margin. To the best of my knowledge, he contributed to many of the folks who were running for the council that year. When the ordinance came up for a vote at a council meeting, the landlord did not testify. He sat in the back of the room, and his presence was plenty to communicate to those he had financially supported. I looked across the council table and wondered about the impact of the landlord's contributions and his presence at the meeting. It was a truly insignificant issue, with almost no opposition.⁶³ But it was the time when I realized my \$25 campaign contribution cap meant that the landlord had just about no more sway with

59. *Quick Facts, Carbondale City, Illinois*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/carbondalecityillinois> (last visited June 18, 2021) [<https://perma.cc/DH7U-E897>].

60. *Id.*

61. Rush, *supra* note 49.

62. CARBONDALE, IL., CODE § 11-4-1(A) (2020) (“Controlled: Except as provided in subsection B of this section, no owner and no person in control of any lot, place or area within the city and no agent of such owner or person in control, shall permit on such lot, place or area or upon any abutting area between the right of way line/property line and street surface or pavement, any weeds or grass over eight inches (8”) in height, or deleterious, unhealthful growths or other noxious matter that may be growing, lying, or located thereon.”).

63. City Manager Jeff Doherty explained why the height was set at six inches, and his recommendation that it stay at six inches. Only two of us on the council were persuaded. Brian Peach, *Carbondale Council Amends*

me than anyone else in the room. It was my own personal realization that money can have an influence on representation, and a contribution limit could help make democracy work in the way we think it should.

My understanding was confirmed four years later when I ran for mayor. I boosted my contribution cap to fifty dollars. Again, I was able to raise all the money I needed for the race. Senator Dick Durbin helped raise some funds and enjoyed noting that this was the only race he and his wife Loretta “maxed out” their contributions to a candidate.

Fundraising for a statewide office was different from running for office in Carbondale. You cannot campaign across a state as big as Illinois on a bicycle, much as I would have loved to. The first statewide office I ran for was Lieutenant Governor, and there I had the great fortune of joining the ticket after the primary. In the confluence of politics and scandal that is Illinois, Scott Lee Cohen won the primary on a Tuesday and dropped out of the race that Sunday.⁶⁴ I was selected by the Democratic Party to run on a ticket with Governor Pat Quinn.⁶⁵ While I did my time on fundraising calls, Governor Quinn did the vast majority of fundraising for the campaign.⁶⁶

After serving as Lieutenant Governor for one term, I enjoyed what I could get done but felt I could have more of an impact by taking on the incumbent Comptroller of Illinois. The position of Comptroller is an obscure statewide office, but one which could have a large impact on budget accountability at both state and local levels of government.⁶⁷ As Lieutenant Governor, I had a statewide platform, and thus an ability to take on an incumbent. And by running on my own I got to experience a full dose of the realities of fundraising.

The money part of fundraising is easy to quantify. I raised and spent about \$1.3 million in my failed race for Comptroller.⁶⁸ Illinois has a limit for individual contributions,⁶⁹ part of an effort spearheaded by the Illinois Reform Commission,⁷⁰ of which I was a member. So, no individual could contribute more than

Grass Law, THE S. ILLINOISAN (Aug. 15, 2003), https://thesouthern.com/news/local/carbondale-council-amends-grass-law/article_e0f9a835-91c0-5326-b858-16ef84869da4.html [<https://perma.cc/AT8N-GU27>].

64. Alex Isenstadt, *Illinois Lt. Gov. Nominee Withdraws*, POLITICO (Feb 7, 2010, 8:40 PM), <https://www.politico.com/story/2010/02/illinois-lt-gov-nominee-withdraws-032655> [<https://perma.cc/K56L-Y8GQ>].

65. Monica Davey, *Illinois Democratic Party Chooses a Familiar Name as Lieutenant Governor Nominee*, N.Y. TIMES (Mar. 27, 2010), <https://www.nytimes.com/2010/03/28/us/politics/28illinois.html> [<https://perma.cc/64H3-GXQE>].

66. Rick Pearson, *Rauner, Quinn Shatter Illinois Fundraising Record, Funding Barrage of Attack Ads*, CHI. TRIB. (Oct. 30, 2014, 5:06 AM), <https://www.chicagotribune.com/nation-world/ct-illinois-governor-race-big-money-met-20141030-story.html> [<https://perma.cc/LPV3-2KFP>].

67. The Comptroller maintains the fiscal accounts for the state. ILL. CONST. art. V, § 17. The Comptroller's office also receives, and can make public, audits from local governments. *See, e.g.*, 65 ILL. COMP. STAT. 5/8-8-3 (2020). The office was established, at least in part, because of an Illinois Treasurer who wrote checks to himself. *See* GEORGE THIEM, *THE HODGE SCANDAL* 4 (1962).

68. *Comptroller*, ILL. ELECTION DATA, <https://illinoiselectiondata.com/elections/comptroller.php> (last visited June 18, 2021) [<https://perma.cc/NWE8-CQ8F>].

69. 10 ILL. COMP. STAT. 5/9-8.5(b) (2018).

70. Brad McMillan, *A Mixed Bag on Illinois Ethics Reform*, PEORIA MAGS. (July 2009), <https://www.peoriamagazines.com/ibi/2009/jul/mixed-bag-illinois-ethics-reform> [<https://perma.cc/S6AE-E33Q>]. At the time, Illinois was one of a very few states with no contribution limits at all. *Campaign Finance Requirements in Illinois*, BALLOTEDIA, https://ballotpedia.org/Campaign_finance_requirements_in_Illinois (last visited Feb. 10, 2021)

\$5,300 to my campaign.⁷¹ Maybe fundraising would be easier if I had a lot of friends who had \$5,300 to give away to campaigns, but I have a small supply of wealthy friends. Nonetheless, through lots of smaller donations, I was able to raise enough money to have a competitive race. This kind of large cash total is what we are used to reading about in regular reporting on campaign finances and what the receipts say about the relative strengths of the candidates.⁷²

The amount of money a campaign takes in can be widely reported, partly because the numbers make for easy comparisons. But from my perspective, we should also be asking about time spent in raising money.

Candidates spend enormous amounts of time raising money. In my race for comptroller I spent, on average, twenty-six hours a week in a windowless office calling people to ask for contributions. So, first let us consider the amount of time. Twenty-six hours is the majority of a standard work week. Of course, for those involved in governing and campaigns, there is no standard work week. Work goes beyond the office, and beyond the workday to evening meetings and weekends packed with ways to meet as many people as possible. It took my campaign advisors a long time to convince me of the need to spend that much time on fundraising, but eventually I could see that without the funds, we could not put together a competitive campaign, particularly purchasing television time in the very expensive Chicago media market.⁷³

And if your familiarity with campaign fundraising is only glancing, you might have a vision of big fancy galas, contributors circulating with cocktails in hand, and a speech by a glittering celebrity who everyone came to meet.⁷⁴ In my dreams! While these events do exist, they are not the staple of fundraising because there are costs and risks associated with a big event. Comparatively, the costs of a personal call by the candidate are small, so call time is a huge source

[<https://perma.cc/9ECE-72KB>]. As a member of the Reform Commission, I was thrilled by the enactment of our first ever contribution limits. The thrill lost its edge when the Supreme Court announced its decision in *Citizens United v. FEC*, which blew open a wide entry for unlimited corporate spending in elections. 558 U.S. 310, 319 (2010).

71. 10 ILL. COMP. STAT. 5/9-8.5(b), (g) (2018). This provision is the automatic adjustment to the contribution limits based on changes in the consumer price index.

72. See, e.g., Sean McMinn, Alyson Hurt & Ruth Talbot, *Money Tracker: How Much Trump and Biden Have Raised in the 2020 Election*, NAT'L PUB. RADIO (Dec. 4, 2020, 8:35AM), <https://www.npr.org/2020/05/20/858347477/money-tracker-how-much-trump-and-biden-have-raised-in-the-2020-election> [<https://perma.cc/S5BB-A5FQ>].

73. Chicago is the third largest media market in the country, behind New York and Los Angeles. *Nielsen DMA 2020 Rankings*, MEDIA TRACKS COMM'NS, <https://mediatracks.com/resources/nielsen-dma-rankings-2020/> (last visited June 18, 2021) [<https://perma.cc/D9FK-NVUB>].

74. See, e.g., Christi Parsons & John McCormick, *Winfrey Draws Rich and Famous to Obama Bash at California Estate*, CHI. TRIB. (Sept. 9, 2007, 2:00 AM), https://www.chicagotribune.com/chi-obama_bdsep09-archive-story.html [<https://perma.cc/MXW2-W7DL>].

of campaign cash.⁷⁵ On top of that I never had a list of celebrities.⁷⁶ Good government nerds are not always well equipped in this area.

So, what are these phone calls like? Mostly leaving messages, and when you get a live person answering, both you and that person know you are calling to ask for money.⁷⁷ You can update and motivate, you find out what is on the mind of the potential donor, what could the state be doing better, but at the end you have to ask, and ask for a specific amount. You target that amount based on what the donor has given to you and other candidates before. You hope to ask for something not so large they say no altogether, and not so small they contribute that amount even though they were able to give more.

And why are these calls made in a windowless room? Because you cannot use your government office.⁷⁸ Spending as little as you can on the space makes for more efficient fundraising. And who needs a great view? When I did my calls in the comptroller race, I rewarded myself with a Mountain Dew at three in the afternoon, just my kind of extravagance.⁷⁹

Both the amount of money and the time spent raising it are shocking. They are the ugly side of American politics. But it is money and time together that really poses a threat to our ideal of democracy. The money needed to run a campaign is a reality, as is the time it takes to raise that money. But the time which is sacrificed for this effort skews a candidate or office-holder's perception of public opinion.⁸⁰

Those twenty-six hours a week I spent calling for cash were targeted exclusively at people who had the ability to make a contribution. I did not make random calls. So, when I got to speak with people, they were most often wealthy. They were uniformly people with disposable cash. Their concerns about our government are valid, but they did not represent the state as a whole. And while I had an organized, effective method for getting in touch with these well-heeled people, I did not have a similar plan to spend another twenty-six hours of the week with those of limited means to balance my measure of what Illinoisans were thinking. For example, I cannot think of a time when a donor brought up the budget cut to dental care for poor people in Illinois. It was an issue at the time, and critical to the health and employability of many of the poorest residents

75. Andrew Blumenfield, *Political Fundraising Calls—Call Time 101*, NAT'L DEMOCRATIC TRAINING COMM. (Mar. 19, 2019), <https://traindemocrats.org/political-fundraising-calls/> [<https://perma.cc/F986-2CN2>].

76. In my campaign our most reliable events were held at Hangar 9 in Carbondale, where owner Sally Carter would open her bar for us on a Sunday afternoon. Our music was all local talent, like my next-door neighbor Michael Nolan paying his guitar and singing, the *a capella* group Free Range Chicks, and of course the band I play in, Loose Gravel.

77. The most humorous account of call time comes from former U.S. Senator Al Franken, in a chapter entitled "Cracks in My Soul." AL FRANKEN, *AL FRANKEN: GIANT OF THE SENATE*, 314–28 (2017).

78. 5 ILL. COMP. STAT. 430/5-15(a) (2018).

79. During call time the candidate is supplied with names, numbers, and relevant information about the person who is to be called. The person who does this also has the unenviable job of keeping the candidate in this task which seems to be the antithesis of democracy. I have worked with some folks who do this very well, including Irina Dashevsky, Jill Baldwin, and Andre Peloquin, none of whom are currently available to mind and motivate candidates.

80. See Mark C. Alexander, *Let Them Do Their Jobs: The Compelling Government Interest in Protecting the Time of Candidates and Elected Officials*, 37 LOY. U. CHI. L.J. 669, 669 (2006).

of the state.⁸¹ Any contact with folks who were impacted by the drop in coverage would surely have noted this as an important topic.

The bottom line is raising money has a cost to democracy. The process of fundraising focuses the time of the candidate or office holder on the financially elite. The end effect is the candidate or office holder, who is constantly assessing the constituency, is getting biased information.

D. Does Anything About This Lawmaking Process Work?

I am usually an optimistic person, but I can get very negative about the impacts of political fundraising. In many ways, on many issues, our complex system works well despite its flaws. The Illinois legislature considers thousands of bills every session,⁸² well more than any one lawmaker could manage. So, lawmakers find ways to stay informed about bills and priorities. Political parties help. If a bill is sponsored by the party you belong to, you might be a little more trusting of its content. Friends help too. I remember asking my mother, when I was very young, how she decided how to vote on bills when she was in the legislature. She explained one of the ways was to get to know other legislators she could trust and rely on them. She told me that was one of the ways she got to know Dad.

Some legislators are reliable sources of information because of their experience outside the legislature. Two who stand out in that department from my time in Springfield are Camille Lilly and Roger Eddy. Representative Lilly serves the Austin neighborhood on the west side of Chicago.⁸³ She is a hospital administrator by background and knows how health care legislation affects patients, providers, and the hospital's bottom line. Because she worked at Loretto Hospital, which serves many people in need,⁸⁴ she speaks for those who do not regularly have access to power.

Roger Eddy stood out as the voice for small rural schools. He knew this topic from his lived experience as the superintendent of schools in Hutsonville, Illinois.⁸⁵ You might not have heard of Hutsonville, which has a population of 503 people.⁸⁶ But Representative Eddy used the Hustonville experience to teach

81. Mike Moen, *Medicaid Cuts in Illinois will Include Dental Care*, N. PUB. RADIO (June 18, 2012), <https://www.northernpublicradio.org/post/medicaid-cuts-illinois-will-include-dental-care> [<https://perma.cc/4MJJ-HXFP>].

82. In the 101st General assembly there have been almost 4000 bills proposed in the senate, and almost 6000 bills proposed in the house. *101st General Assembly Legislation*, ILL. GEN. ASSEMBLY, <https://www.ilga.gov/legislation/> (last visited June 18, 2021) [<https://perma.cc/AF9Y-X38Y>].

83. *Representative Camille Y. Lilly (D)*, ILL. GEN. ASSEMBLY, <https://www.ilga.gov/house/rep.asp?MemberID=2584> (last visited June 18, 2021) [<https://perma.cc/KF6N-N8NB>].

84. *Id.*; *Biographies of New House Members*, LRU FIRST READING, Nov. 2010, at 2, 4, <https://www.ilga.gov/commission/lru/Nov2010FirstRdg.pdf> [<https://perma.cc/Q9VK-W4T9>].

85. *Eddy Named LTC Interim President*, ILL. E. CMTY. COLLS. (Sept. 11, 2020), <https://www.iecc.edu/lte/eddy-named-lte-interim-president> [<https://perma.cc/7Q7A-F9QD>].

86. *Hustonville, Illinois*, CENSUS REP., <https://censusreporter.org/profiles/16000US1736841-hustonville-il/> (last visited June 18, 2021) [<https://perma.cc/4UN8-PJ2L>].

leaders seeking standardized school consolidation.⁸⁷ Representative Eddy was quick to point out small does not by itself mean unsuccessful in the world of schools, and successful schools should be allowed to continue to flourish.

There is one other group of actors who are often criticized but who, in reality, deserve much credit for their work in the democratic process—lobbyists. Yes, lobbyists deserve credit.

A large quantity of proposed legislation and time limited by the pressure of fundraising could be a disaster for democracy. Into that pickle steps the lobbyists. They are focused on laws which have an impact on the folks for whom they work. They might have many clients or a few, but their job is to know about the bills and advocate for their clients. When they do their job well and honestly, they become known and relied upon by lawmakers. As Lieutenant Governor I cast no votes and had no veto power. But I had access to those who did. As a result, lobbyists often wrote or visited me to seek to persuade me about particular proposals.

So how can lobbyists help make a skewed system work when they are paid for by powerful and wealthy interests? It happens when the interests of the powerful or wealthy overlap with the interests of the poor.

I can think of two outstanding lobbyists who effectively worked for their clients, and because the interest of their clients overlapped with the interests of many poor people, the lobbyists were effective in presenting a voice that was not otherwise heard. Dave Marsh works for the Illinois State Dental Society,⁸⁸ and has for over 30 years.⁸⁹ For many years he advocated for inclusion of adult preventative dental care in Illinois.⁹⁰ This care had often been the subject of state budget cuts, because the services are not federally required.⁹¹ After years of advocacy for funding within the state budget, Dave was able to get a requirement of funding, parallel to the requirement of funding for children's preventative services,⁹² built into state statute.⁹³ The program is not a windfall for dentists, but it allows them to prevent decay and keeps more dentists able to serve low income patients, according to Marsh.⁹⁴

Clark Gyure⁹⁵ represented hospital interests when I was Lieutenant Governor, and as a part of this representation helped to maintain healthcare access for

87. *Quinn Proposes Off-Defeated School Consolidation (IL)*, ACCELIFY (Feb. 21, 2011), <https://www.accelify.com/industry-news/quinn-proposes-off-defeated-school-consolidation-il/> [<https://perma.cc/8PXX-ZE2A>].

88. *See Advocacy and Coalition Groups*, ILL. STATE DENTAL SOC'Y, <https://www.isds.org/advocacy> (last visited June 18, 2021) [<https://perma.cc/4Q2L-WD6H>].

89. Telephone Interview with Dave Marsh, Director of Advocacy, Illinois State Dental Society (Aug. 1, 2020).

90. *Id.*

91. *Id.*

92. *See Memisovski v. Maram*, No. 92 C 1982, 2004 U.S. Dist. LEXIS 16772, at *139 (N.D. Ill. Aug. 23, 2004).

93. *See* 305 ILL. COMP. STAT. 5/5-5 (2018); Dean Olsen, *Illinois to Fund Medicaid Preventative Dental Services for Adults*, STATE J.-REG. (June 17, 2018, 7:06 PM), <https://www.sj-r.com/news/20180617/illinois-to-fund-medicaid-preventive-dental-services-for-adults> [<https://perma.cc/9SX6-PNGQ>].

94. Telephone Interview with Dave Marsh, *supra* note 89.

95. *See Welcome to Gyure & Associates*, GYURE & ASSOCIATES, <http://www.gyureconsulting.com/> (last visited June 18, 2021) [<https://perma.cc/F5GD-TEFK>].

those without insurance. Neither Gyure nor Marsh was paid to represent people in poverty, but they did so very effectively. Because the dental and hospital communities' interests overlapped with those in poverty, both groups had an effective voice in Springfield.

From my perspective as a lawyer and as an elected official, I have seen failures and success on gambling issues. I have felt the powerlessness of having to tell a client the nest egg his spouse had gambled away was gone forever. And I have been a part of a campaign finance system that amplifies the voices of the wealthy and diminishes the voices of the poor. At the same time, I have seen how when the interests of the poor coincide with another group with money and access, both interests can be represented effectively. The question now is whether, on present and future gambling and similar issues, there is any voice for those who are ordinarily left out of the debate.

IV. THEORIES OF REPRESENTATIVE DEMOCRACY AND ETHICAL STANDARDS

How do lawmakers decide on gambling issues? How do they decide on any issues where the impact is distributed unevenly based on income, employment status, ethnicity or ability? Are there any standards for who lawmakers should talk with, hear from or read about in the process of their work? The field of political science has asked and at least partially answered these questions.

For centuries philosophers and political scientists have been expressing and refining an understanding of how laws are made in a representative democracy. They have worked to describe how lawmaking⁹⁶ works and suggest how it might work better. The assessments start with an easy, binary split, then move to more complex descriptions, and finally to a description of what is not in representation but should be.

A basic split in theories of representation is the choice between trustee and delegate.⁹⁷ The trustee theory, advanced by Edmund Burke, was one where districts elect members of Parliament, who are a “natural aristocracy”⁹⁸ representing the nation rather than the district from which they came.⁹⁹ Across the ocean, and across the theoretical divide of the trustee/delegate debate, James Madison, in

96. I have chosen the idea of lawmaking rather than legislating because it is inclusive of the executive branch, which can have a range of impacts on the process of making laws. Some chief executives put forward significant proposals, often after negotiation with members of the legislative body. For example, Illinois Governor J.B. Pritzker campaigned on a promise to legalize marijuana and signed the bill to do just that. *See* 410 ILL. COMP. STAT. 705/10-5 (2018); Amanda Vinicky, *Pritzker Signs Bill Legalizing Recreational Marijuana*, WTTW (June 25, 2019, 6:02 PM), <https://news.wttw.com/2019/06/25/pritzker-signs-bill-legalizing-recreational-marijuana> [<https://perma.cc/GUC9-4T4T>]. His predecessor in office, Governor Bruce Rauner, eventually played no role in the state budget, as it was enacted as an override of his veto. Julie Bosman & Monica Davey, *Illinois Lawmakers Override Budget Veto, Ending Two Years of Stalemate*, N.Y. TIMES (July 6, 2017), <https://www.nytimes.com/2017/07/06/us/illinois-budget-shutdown-states-rauner.html> [<https://perma.cc/VA4W-PWSC>].

97. Andrew Rehfield, *Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy*, 103 AM. POL. SCI. REV. 214, 214–15 (2009).

98. HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* 169 (1967) (citing PAUL LEVACK EDMUND BURKE & ROSS J.S. HOFFMAN, *BURKE'S POLITICS, SELECTED WRITING AND SPEECHES OF EDMUND BURKE ON REFORM* 398–99 (1949)).

99. *Id.* at 171.

Federalist Papers #10, saw representation as a way of guarding against both the confusion of direct democracy and the selfish interest of a very few.¹⁰⁰ Madison was looking for a sweet spot of representation, where there would be enough citizens and enough points of view a majority would agree to not harm the rights of others.¹⁰¹

Almost 200 years later, Hanna Fenichel Pitkin created an assessment of representation considered classic.¹⁰² In *The Concept of Representation*, Pitkin does not choose between the trustee and delegate theories but incorporates them into a more realistic set of four dimensions of representation.¹⁰³ Formal representation occurs because the representative has been elected to the position and empowered to take action.¹⁰⁴ Descriptive representation is when the representative is a part of or like the represented district, making the legislature “an exact portrait, in miniature, of the people at large.”¹⁰⁵ Symbolic representation occurs when a representative embodies the district in the minds of others.¹⁰⁶ Substantive representation focuses on action taken by a representative which are for the benefit of the district.¹⁰⁷ Pitkin’s four categories of representation seem to better express the complex and changing roles of representation than the simple trustee/delegate choice.

In 2003, Jane Mansbridge described a different set of four aspects of representation informed by empirical analysis.¹⁰⁸ Her categories are promissory representation, where promises are made before the election and carried out afterward;¹⁰⁹ anticipatory representation, where the elected official tries to act as voters in future election will want;¹¹⁰ gyroscopic representation, where the official acts consistently with her or his own standards as expressed before the election;¹¹¹ and surrogate representation, where the official speaks for those with a similar point of view even if they live beyond the boundaries of the district.¹¹² Like Pitkin, Mansbridge’s categories are not a binary choice, but an array of per-

100. “In the first place it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude.” THE FEDERALIST NO. 10 (James Madison).

101. “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.” *Id.*

102. *Political Representation*, STAN. ENCYCLOPEDIA OF PHIL. (Aug. 29, 2018), <https://plato.stanford.edu/entries/political-representation/> [<https://perma.cc/3848-X25R>] (describing Pitkin’s book as “one of the most comprehensive discussions of political representation,” “influential” and “oft-cited”).

103. PITKIN, *supra* note 98, at 11.

104. *Id.* at 39.

105. *Id.* at 60 (quoting Letter from John Adams to John Penn (Mar. 27, 1776)).

106. *See generally id.* at 92–111.

107. *Id.* at 114, 126.

108. Jane Mansbridge, *Rethinking Representation*, 97 AM. POL. SCI. REV. 515, 515 (2003).

109. *Id.* at 516.

110. *Id.* at 516–17.

111. *Id.* at 520.

112. *Id.* at 522.

spectives on representation that could all be working at the same time. Mansbridge's categories seem to fit the practice of representation with greater ease than the Pitkin categories.

Building on these descriptions of representation, more recent scholarship has moved from identifying representation as it is to assessing what is missing in representation: what people and what voices are not a regular part of the process. Lani Guinier focused on who is left out when the structure of voting eliminates the needs to consider some voices.¹¹³ Melissa Williams writes about representation as mediation, a back and forth between citizen and state.¹¹⁴ Williams asserts that this works best with trust, which is hard to build when historically disadvantaged groups have little in common with their representative.¹¹⁵ Nadia Urbinati adds the concept of advocacy, in that representatives are not passive recipients of information like judges but actively advocate for a position in a process of deliberation with both other representatives and citizens.¹¹⁶

Iris Marion Young explains that even inclusion of a previously underrepresented group can be based on assumptions all members of the group have the same priorities.¹¹⁷ And finally, in what seems to turn representation on its head in order to make it work better, Suzanne Dovi advocates for actively excluding some voices from representation.¹¹⁸ She argues that when some voices are overrepresented, or if they oppress other groups, those oppressive voices should be excluded or marginalized.¹¹⁹ Her argument for turning down the volume of some voices is her suggested method for getting to a more accurate representation of voices.

Boiling down a few centuries of thought into a sentence, the work of lawmakers can be directed internally or externally and can intentionally or unintentionally include and exclude many voices. The theory is useful, in particular, where it warns about who is left out and how. So, is there a practical handle on this theory, a way to acknowledge and address these flaws in a representative democracy?

I have seen some of the ideals of representation work at the local level. The idea a broad range of people could be elected and could represent some of that broad range of experience in the community worked well. When I served on the Carbondale City Council, the council had diversity in many ways, including a

113. LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS & REPRESENTATIVE DEMOCRACY* 5 (1994).

114. MELISSA WILLIAMS, *VOICE, TRUST AND MEMORY: MARGINALIZED GROUPS AND THE FAILINGS OF LIBERAL REPRESENTATION*, 23–27 (1998).

115. *Id.* at 149–75; see also Nadia Urbinati & Mark Warren, *The Concept of Representation in Contemporary Democratic Theory*, 11 ANN. REV. POL. SCI. 387, 394 (2008).

116. Nadia Urbinati, *Representation as Advocacy: A Study of Democratic Deliberation*, 28 POL. THEORY 758, 776 (2000).

117. IRIS MARION YOUNG, *INCLUSION AND DEMOCRACY* 87–92 (2000).

118. Suzanne Dovi, *In Praise of Exclusion*, 71 J. POL. 1172, 1172 (2009).

119. *Id.* at 1174.

range of folks from financially secure to less secure. At least one of my colleagues on the council had no health insurance and had a more sensitive ear to those who had to make difficult financial choices.

At the state level of lawmaking, I saw this less frequently. Members of the Illinois House and Senate earn \$65,836 a year, and more if they chair a committee.¹²⁰ Statewide elected officials earn even more, with the Governor earning \$177,412 a year.¹²¹ So any lawmaker in Illinois is separated from many people in the state by virtue of that lawmaker's income.

Certainly, a lawmaker's income alone does not bar that person from meeting with people who have any other income or no income at all. But hierarchies tend to build structures that keep themselves in place.¹²²

Beyond functional representation of a group of people or a point of view, there are a few legal standards, mostly on what a lawmaker cannot do. Bribery is the obvious example of prohibited conduct.¹²³ Accepting gifts from people with an interest in legislation or government contracts is also commonly prohibited.¹²⁴ And where there is a conflict of interest, voting should be prohibited too, right? Well, not so much. Some disclosure of income and assets is required at the federal level¹²⁵ and in Illinois,¹²⁶ but even where a conflict of interest is disclosed, neither divestment nor disqualification from voting on a matter is required.¹²⁷ In Illinois, a legislator should "consider" divesting or abstaining.¹²⁸

120. *Illinois Legislators Make Base Annual Salary of \$65,836*, THE CTR. SQUARE (Nov. 25, 2019), https://www.thecentersquare.com/illinois/illinois-legislators-make-base-annual-salary-of-65-836/article_c75018d2-0b1f-11ea-a9dd-b3bd6c0a0218.html [<https://perma.cc/6TAS-LG5Z>]. A statute sets the salary, which can then be adjusted by a compensation review board. 25 ILL. COMP. STAT. 115/1 (2018).

121. Lisa Donovan, *Pritzker Won't Take Annual Salary*, STATE J.-REG. (Nov. 15, 2018, 4:10 PM), <https://www.sj-r.com/news/20181115/pritzker-wont-take-annual-state-salary> [<https://perma.cc/M595-3CUV>].

122. Isabel Wilkerson, *America's Enduring Caste System*, N.Y. TIMES (July 1, 2020), <https://www.nytimes.com/2020/07/01/magazine/isabel-wilkerson-caste.html> [<https://perma.cc/XE2R-E4MD>]. This excellent article assesses race and racism in terms of caste, which can be self-perpetuating even without hatred. The article is adapted from her recently published book. ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* (2020).

123. 18 U.S.C. § 201(b)(2) (2018); 720 ILL. COMP. STAT. 5/33-1 (2014).

124. 5 U.S.C. § 7353 (2018); 5 ILL. COMP. STAT. 430/10-10 (2003).

125. 5 U.S.C. app. § 4.

126. 5 ILL. COMP. STAT. 420/4A-101 *et seq.* (2019). The author, while serving as Lieutenant Governor, made two unsuccessful attempts to bring the required "Statement of Economic Interests" into the modern age and provide some meaningful disclosure. *See Our Opinion: Time to Tighten Financial Disclosure Forms*, STATE J.-REG. (Dec. 20, 2012), <https://www.sj-r.com/article/20121220/NEWS/312209850> [<https://perma.cc/8EFD-3796>]. No change was made. The current ethical crisis in Illinois lawmaking may provide one more opportunity to improve disclosure.

127. *See Policies Underlying Disclosure*, U. S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, <https://ethics.house.gov/financial-disclosure/policies-underlying-disclosure> (last visited Feb. 14, 2021) [<https://perma.cc/8UNY-F523>] for a statement as to why neither divestment nor disqualification are required when there is a conflict of interest. The arguments are that people in the districts would be deprived of representation, and that good representatives will have many interests in common with their constituents. In the author's opinion, it would be better to create a bright line rule where some divestment or disqualification from voting would be required.

128. 5 ILL. COMP. STAT. 420/3-202 (2017).

Some states do a better job and do prevent voting where there is a conflict of interest.¹²⁹

There is also regular debate, with no particular clear lines drawn, about what limits there should be on religious convictions as a basis for lawmaking.¹³⁰

But all of these codes, when there are codes, are listings of what must not be done. They prohibit the most obviously unethical conduct. But is there anything positive, any codes of conduct or aspirational standards that a lawmaker should consider?

V. TOWARD MORE EFFECTIVE REPRESENTATION FOR ALL

We can set a higher standard for ethics in lawmaking. Electing leaders from diverse backgrounds can start that process, but, as Iris Young points out, people who share cultural identities do not come with identical opinions and goals.¹³¹ And lawmakers can limit or marginalize the voices of those groups who themselves purposefully exclude others, as suggested by Suzanne Dovi.¹³² Dovi's advice is to lessen the voice of oppressive groups, but we could get to the same balance of inputs by increasing the input of those who are currently not heard from. We can come even closer to the ideal of democratic representation if lawmakers assume an affirmative duty to seek out those who have not been heard.

At least one state has established an expectation of seeking out the underrepresented. California's State Senate "Standards of Conduct" requires each senator "should be accessible to all constituents, making a special effort to attend to the concerns of those who might not otherwise be heard."¹³³ The standards do not appear to be enforceable by any penalty, but they do require reporting of any violation to the Senate Committee on Legislative Ethics.¹³⁴

129. OHIO REV. CODE ANN. §102.031 (B) (LexisNexis 2019–2020) ("No member of the general assembly shall vote on any legislation that the member knows is then being actively advocated if the member is one of the following with respect to a legislative agent or employer that is then actively advocating on that legislation: (1) An employee; (2) A business associate; (3) A person, other than an employee, who is hired under contract to perform certain services, and that position involves a substantial and material exercise of administrative discretion in the formulation of public policy."); FLA. STAT. ANN. §112.3143(2)(A) (LexisNexis 2020) ("A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss . . .").

130. See Abner S. Greene, *Constitutional Reductionism, Rawls, and the Religion Clauses*, 72 *FORDHAM L. REV.* 2089, 2089 (2004). This article is part of a symposium edition on the work of John Rawls. See also Kent Greenawalt, *Religious Convictions and Lawmaking*, 84 *MICH. L. REV.* 352, 353 (1985); John H. Garvey, *A Comment on Religious Convictions and Lawmaking*, 84 *MICH. L. REV.* 1288, 1288 (1986). The Greenawalt article and the Garvey response focus more on lawmaking but are sadly dated in terms of the topics they use to illustrate their points.

131. YOUNG, *supra* note 117, at 121–24.

132. Dovi, *supra* note 118, at 1173.

133. CALIFORNIA STATE SENATE, CALIFORNIA LEGISLATURE 2017–18 196 (2017), https://www.senate.ca.gov/sites/senate.ca.gov/files/2017-18_joint_legislative_handbook_0.pdf [<https://perma.cc/4UEB-EVQK>]. The California Senate has had this standard since at least the 2011–2012 session, in which it was the second standard listed.

134. *Id.* at 197 ("Each Senator and each officer or employee of the Senate is expected to report to the proper authority any apparent and substantial violation of these standards or related statutes, regulations, or rules, and

Could such an aspirational goal have an impact? I think so. A public-facing standard could be used in several ways. It would be more likely to be a component of any training for new lawmakers.¹³⁵ Constituents and groups could use such a standard as a way to get in the door of a lawmaker. And, ideally, it could become part of the business of lawmaking, part of a mental checklist that a lawmaker uses in making decisions.

How would such a standard work in practice? There are many possibilities. Lawmakers could make it a practice to not meet with folks advocating for one side of an issue until they can schedule a meeting with someone representing the other side. Good advocates will know who their opponents are and would gladly provide this information as a ticket to get in to make their own pitch. But what about an issue with no organized or identified opponent? This may be where a standard could be most important because this is where lawmakers can most easily assume that there is no opposition. If a proposal would have a negative impact on single parents who are juggling two jobs, do those parents have a group that represents them or will any of them be calling to meet with their legislator? These are exactly the kinds of situations where lawmakers need to seek out those who do not have a voice in the process.

Hearing from opposing voices is the foundation of our legal system.¹³⁶ It is something that we, as lawyers, find comforting. We believe that a competition between at least two sides will allow us the best chance to get at the truth, and the best chance to apply the law correctly. Grafting this standard onto the lawmaking process would not be a panacea, but it could move us one step closer to our ideal of representation in a democracy.

Without such a standard, we can predict who will be heard from in the course of making laws about gambling. The advocates for expansion of gambling will be there. They have significant financial interests at stake¹³⁷ and they will be well represented.¹³⁸ And there may be competing interests within the category of those who make money from gambling.¹³⁹ But the family I described at the

to consult with the Senate ombudsperson, the Senate Committee on Legislative Ethics, or any other appropriate governmental agency regarding the propriety of any conduct that may violate these standards.”).

135. Harvard runs a training programs for new members of Congress. *Bipartisan Program for Newly Elected Members of Congress*, HARV. KENNEDY SCH.: INST. OF POL., <https://iop.harvard.edu/get-inspired/bipartisan-program-newly-elected-members-congress> (last visited Feb. 14, 2021) [<https://perma.cc/9PWZ-F4Z9>].

136. Although the adversarial standard is a given, it has been subject to fair criticism that it can be too simplistic. See, e.g., Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5, 5 (1996).

137. *Commercial Casino Gaming Revenue Reaches \$41.7 Billion in 2018, An All-Time High*, AM. GAMING ASS’N (June 11, 2019), <https://www.americangaming.org/new/commercial-casino-gaming-revenue-reaches-41-7-billion-in-2018-an-all-time-high/#:~:text=WASHINGTON%20%E2%80%93%20Gaming%20revenue%20for%20the,of%20the%20Commercial%20Casino%20Industry> [<https://perma.cc/W4Q5-7TCF>].

138. At least one source reports spending of \$35 million on lobbying by casinos and other gaming interests in 2019. *Casinos/Gambling: Lobbying, 2020*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/industries/lobbying.php?cycle=All&ind=N07> (last visited June 18, 2021) [<https://perma.cc/GBD7-GNEQ>].

139. In its most recent expansion of gambling, Illinois added casinos, “racinos” and more gambling availability at existing casinos. Jason Grotto & Dan Mihalopoulos, *Illinois is Poised to Become the Gambling Capital of the Midwest*, PROPUBLICA (June 4, 2019, 4:00 AM), <https://www.propublica.org/article/illinois-gambling-expansion-bill-sports-betting-video-gambling> [<https://perma.cc/HV4T-CFF7>].

start of this essay will not be a part of making the law. The wife with the overwhelming gambling problem will not testify at a committee hearing. The husband who lost his financial security will not be meeting with a state representative. The next generation, who provided care for their frail father, will not be meeting with the governor.

A standard of seeking out the unrepresented could work in several ways in the context of producing gambling legislation. It could start with who the advocates are and whether they might represent others beyond those who are paying their bills. Those advocates may know their opponents in general or in specific detail. Lawmakers could schedule meetings with advocates of a particular bill only after opponents have been identified. And if the other side is not known, the lawmakers can use their own networks to try to identify someone with that unspoken perspective. Would people with a gambling problem turn to a mental health agency, a faith leader, or a library? People in those fields may be able to help make representative democracy work by connecting lawmakers with real people experiencing real problems.

Would our laws be different if lawmakers more consistently heard from people who are not often heard now? Certainly, it is possible that there would be no change at all. It is possible that my father and I, seeing so many problems coming from legal gambling, are being paternalistic, and those unheard voices would endorse freedom for all of us to take risks with our money. But I also think it is possible we might use the experience of a family who has been devastated by gambling to build in some better protections. And maybe knowing that experience would make us more hesitant to expand gambling to new places, methods, and populations.

Building in a conscious, affirmative step of identifying and listening to all perspectives could make the process of lawmaking even more cumbersome. But our representative democracy has never prioritized speed. What we have long sought is representation. From the idea of no taxation without representation, we moved to representation, so long as you were a free male.¹⁴⁰ The nation ended slavery, granted voting rights to newly freed men and then to women.¹⁴¹ And while movement in a more inclusive direction could seem to be our path, we have taken a wrong turn. Current Supreme Court interpretations of the right to speech have moved us increasingly toward even greater representation of the wealthy.¹⁴² Absent functional limits on campaign contributions, and possibly even with

140. Grace Panetta, Olivia Reaney & Talia Lakritz, *The 19th Amendment Passed 100 Years Ago Today. The Evolution of American Voting Rights in 244 Years Shows How Far We've Come— and How Far We Still Have to Go*, BUS. INSIDER (Aug. 18, 2020, 2:50 PM), <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10> [https://perma.cc/J3ZV-BWSS].

141. *Id.*

142. See *Citizens United v. FEC*, 558 U.S. 310, 340–41 (2010). Even the Illinois limits have exceptions for millionaires, exceptions that have been artfully used by candidates and office-holders from both parties. See 10 ILL. COMP. STAT. 5/9-8.5 (2013); Nora Huppert, *The Illinois Millionaire's Exemption and the Utility of Campaign Contribution Limits*, 52 COLUM. J.L. & SOC. PROBS. 559, 560 (2019); Sandy Bergo, *Top Illinois Pols use 'Millionaire's' Loophole to Avoid Campaign Cash Limits, Raise Big Bucks*, CHI. SUN-TIMES (Aug. 9, 2020, 9:17 AM), <https://chicago.suntimes.com/2020/8/7/21358791/michael-madigan-don-harmon-jim-durkin-bill-brady-millionaires-exemption-campaign-finance-blagojevich> [https://perma.cc/5HN2-2958].

them, we need to construct our system so people who will be impacted by a law can be heard in the process of lawmaking. Then we are at least working toward that more perfect union.

