

## CONSTITUTION GIVES RI VOTERS TRUMP CARD ON SPORTS BETTING

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The prevailing wisdom within State government is that Rhode Island can lawfully move forward with a new type of gambling – state-operated sports betting – without the approval of the voters statewide or of Lincoln or Tiverton on the 2018 November election ballot. Our State Constitution says otherwise.

Article 6, Section 22 mandates that “no act expanding the *types* or locations of *gambling* permitted” anywhere in the State, or “expanding municipalities in which a *particular* form of gambling is authorized” can take effect unless a majority of voters both statewide and in the affected municipalities approve.

Voters added this restriction to the Constitution in 1994 after video lottery terminals – a new type of gambling – were placed in Newport and Lincoln by the State in the early 1990s without voter approval. The provision was strengthened in 2014.

Voters are constitutionally entitled to fair notice of what it is they are voting on. In this case, that means that the “new type” and “particular form” of gambling needs to be made known to the voters in the referendum question so that they can intelligently consider whether to approve or reject it.

The truth is that Rhode Islanders had more notice about the arrival of the Great Hurricane of 1938 than they did that they were somehow voting for state-operated “sports betting” in 2012 and 2016.

Those who claim otherwise point to the referenda questions authorizing “state-operated casino gaming, such as table games,” at facilities in Lincoln and Tiverton. Sports betting, of course, is not a table game. More importantly, it could not be considered “casino gambling.” That is because in 2012 and 2016 (and indeed until a U.S. Supreme Court decision last week) the institution of sports betting at any Rhode Island casino was *illegal under federal law*.

Indeed, federal law made has made it illegal for sports betting in *any* casino in 49 states (with Nevada the only exception) since 1992. As such, the notion that “casino gambling” included or was synonymous with sports betting is belied by the fact that outside of a single state, it was prohibited to be conducted in any casino.

Thus, Rhode Island voters most certainly did not approve this new type of gambling when they simply approved “casino gambling, such as table games” for Rhode Island. It is pure folly to conclude that voters were asked to vote for a new type of gambling that *could not be played in our state under federal law even if they approved it*.

Any reliance on the voter information handbook to support prior voter approval of sports betting is equally misguided. First, voters did not vote on the handbook. They voted on the question. Courts only look at accompanying literature when there is ambiguity in the question itself. There is no such ambiguity here. Second, like the question itself, the handbook does not mention the federally-prohibited new type of gaming called “sports betting.”

On the contrary, what the handbook does is specifically define the “table games” subject to approval in the question. It does so by describing “casino gaming” as “any and all table and casino style games played with cards, dice or equipment, for money, credit, or any representative of value; including, but not limited to roulette, blackjack, big six, craps, poker, baccarat, pai gow, any banking or percentage game . . . ”

There is one more clause in the handbook, however – and those who claim “sports betting” has already been approved by the voters go all in on it. Despite extreme legal gymnastics, they are chasing lost money.

The handbook’s definition of “casino gaming” adds in relevant part, “any other game or device included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code . . . ”

Again, there is no mention of “sports betting;” rather, there is a reference to yet another definition of a term called “Class III gaming” – which in turn is itself defined in a federal statute (that governs Indian law) nowhere to be seen in the handbook.

Even worse, if a voter dove further into the muck – and actually tried to research what “Class III gaming” was – the voter would again find no mention whatsoever of “sports betting” – even in the referenced federal code provision. Instead, the voter would find even more new terms, such as “Class I” and “Class II” gaming, and a definition of Class III gaming that says nothing more than that it is: “all forms of gaming that are not class I or class II gaming.” A dog would have an easier time chasing its tail.

To find any mention of “sports betting,” a voter would have needed to go to an entirely different source of law called the Code of Federal Regulations. In a regulation promulgated by the National Indian Gaming Commission – buried in a Section 502.5 of 25 CFR – is indeed a reference at long last to “sports betting” as included within “class III gaming.”

This labyrinthine legal framework is alleged to have provided the required “fair notice” to the average voter that a yes vote was approving the new type of gambling in the form of sports betting in Rhode Island. That could only be correct, however, if the average voter were an Indian gaming and legal research expert.

This is the background that likely prompted longtime Rhode Island Lottery Commission Director, Gerry Aubin, to opine that: “to make the statement that the citizens of Rhode Island approved sports betting might come as a shock to many and may not be well-received.”

Indeed, it should come as a shock, since the notion that knowing voter approval happened in 2012 and 2016 is popular mythology – worthy of bringing back the Journal Follies for a skit with average voters holding magnifying glasses and employing bloodhounds trying to find where “sports betting” was on the ballot and everywhere else it could be hiding.

The position that voters have already approved “sports betting” at Rhode Island casinos makes a mockery of required voter approval of all “new types” of gambling – and indeed, reads Article 6, Section 22 right out of the Constitution. Law and logic show that voters have never been asked to approve sports betting. Before this new type of gambling is instituted in Lincoln or Tiverton, the Constitution commands that voters in those communities and statewide approve.

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