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STATE OF ALABAMA

February 9, 2009

VIA HAND DELIVERY

Dear Committee Member:

I write to ensure that you are fully aware of key provisions of HB507 and SB380 and their consequences for the State of Alabama. As you know, a proposed constitutional amendment approved by the Legislature completely bypasses the governor's desk and goes straight to the ballot for a vote of the people. It is beyond my power to veto or amend. Thus, with regard to constitutional amendments like this one, I stand in the same position as every other citizen of Alabama – I can offer my opinion and cast my vote.

In my opinion, this proposed amendment – the so-called Sweet Home Alabama plan – is the biggest fraud ever perpetrated on the people of Alabama. Whether you think gambling is good or bad for Alabama, this amendment is wrong on so many levels. If the Legislature approves it, I will vote against it. And I will do everything in my power to expose this fraud and encourage every Alabamian to vote with me.

First, claims that this bill is necessary to “resolve the ‘bingo’ debate” are bogus. That debate is over. The Alabama Supreme Court has ruled – several times – that the State Constitution's “bingo” amendments narrowly authorize only the traditional game of bingo. Adhering to conservative judicial principles, our Supreme Court has rejected the kind of liberal judicial activism it would take to find some hidden meaning in the word “bingo” that would legalize Las Vegas-style slot-machine gambling in Alabama by judicial decree. Only the Legislature and a vote of the people can change the law, and that is exactly what this amendment would do. So let us put aside the false pretense of “clarifying” the law; this amendment changes it. And to say that this legislation represents a major shift in policy for the State of Alabama would be a colossal understatement.

Moreover, this amendment has nothing to do with “bingo.” Nobody in this Legislature would claim that the way to “resolve the marijuana debate” is to legalize cocaine, yet that's exactly the logic being employed by the pro-gambling forces behind this bill. The only way to resolve violations of our criminal laws is to enforce them as they are written. The fact that a handful of people refuse to obey the law does not mean the law is unclear.

And putting a new law on the books does not mean that suddenly these individuals will obey it. Everyone must be held accountable to the rule of law without regard to wealth, status, or political connections. We must never reward lawbreakers by putting them above the law as this proposed amendment will do.

For starters, this amendment puts bogus language on the ballot. The ballot will refer to Las Vegas-style slot machines as, simply, “bingo.” The word for casinos is even more ridiculous: “destination points.” This phony language can have no other purpose than to deceive many voters into unwittingly voting in favor of something they would otherwise oppose. The matter of legalizing and expanding gambling is a serious issue. If the question of whether to legalize Las Vegas-style casino gambling in Alabama is to be put to a statewide referendum, we owe it to the voters to be honest with them about what they’re voting on. This bill is as dishonest as it gets.

My personal opinion on the legalization of gambling is widely known. I believe legalizing gambling is horrible public policy. As I said in my State of the State Address in January, the “increased crime, addictions, domestic violence, bankruptcies, suicides, family breakdown and much more are undeniable and well documented by the National Gambling Impact Study Commission. ...In states with casinos, for every one dollar casinos contribute in taxes, they cost taxpayers at least three dollars in additional government services to deal with the devastation the casinos leave behind.”

I understand, however, that not all of you are convinced by these documented facts. Nevertheless, even those who favor the legalization of gambling should be opposed to the pure garbage in this bill. In the interest of making sure everyone understands exactly what it does, I offer the following section-by-section analysis.

Section 1 is the Sirens’ call of the casino owners. It recites a list of all the standard promises of the pro-gambling interests in every campaign they have ever undertaken to legalize gambling anywhere. Gambling, they say, “enhances economic viability” and “raises additional revenue” for health care and schools. The evidence is in from other states that have gone down the path of legalizing casinos, and it contradicts these claims. Despite its casinos, Mississippi is facing its worst budget crisis in a century. Nevada is also facing a historic budget crisis, and it has the second highest unemployment rate in the nation. Nevada is number one in home foreclosures.

Section 2 contains definitions of terms used throughout the bill. I would like to highlight the two most significant:

“Federally Recognized Bingo” is the new term given to slot machines. Yesterday, it was “electronic bingo,” and before that it was “sweepstakes machines.” Today, it is “federally recognized bingo.” The term is designed to imply that the slot machines legalized by this amendment are recognized and approved as “bingo” under federal Indian gaming law. *That is simply not true.* The Indian Gaming Regulatory Act (IGRA) authorizes bingo with “technological aids” (such as touch-screen bingo cards) but expressly prohibits slot machines.

Although I expect you will hear “experts” in Indian gaming law claim these machines are Class II bingo under IGRA, that is simply their interpretation of IGRA and their opinion of how a federal judge might rule if presented with the question. That interpretation and opinion is not supported by the standing precedent at the National Indian Gaming Commission (NIGC), the regulatory agency responsible for interpreting IGRA. In 2004, the NIGC wrote Attorney General Troy King and informed him that machines in use at VictoryLand, Greenetrack, and White Hall—similar to the ones contemplated by this amendment—were not Class II bingo at all, but Class III slot machines under NIGC interpretations of IGRA, because the machines performed all the tasks that the game of bingo requires of human players.

“Point of Destination” is the term given to the Las Vegas-style casinos legalized by this amendment, so that nobody will have to actually say the word “casino.” To qualify as a legal “point of destination,” the casino must house no fewer than 1,000 “federally recognized bingo” slot machines and involve a capital investment of at least \$100 million, with exceptions for the existing casinos in White Hall and at Greenetrack.

Section 3(a) allows for every county in Alabama to have its own casino by referendum. Imagine that – 67 casinos across the State of Alabama! As with any local amendment, the decision whether to have a referendum would be made in Montgomery, but local communities would have to shoulder the consequences. Concerned citizens across Alabama should be asking: Can we raise the kind of money it would take to stop a proposed casino from invading our community?

Section 3(b) gives currently illegal casinos and their operators criminal immunity. Specifically, this section exempts today’s “electronic bingo” casinos from the Constitution’s prohibition on gambling and gambling devices; it effectively gives them immunity from prosecution for any violation of any of Alabama’s criminal gambling laws, both retroactively and prospectively; and it allows them to enforce gambling contracts (*i.e.* wagers), which are void and unenforceable under current law. This section also strips the courts of jurisdiction to review the legality of such operations.

Section 3(c) legalizes currently illegal “electronic bingo” machines by expressly exempting them from the statutory definitions of “gambling device” and “slot machine.”

Section 3(d) legalizes the currently illegal, for-profit business arrangements casino operators are using to evade “charity bingo” requirements. The vast majority of existing bingo amendments prohibit contracting out bingo operations and require that all net proceeds go to charity, but that hasn’t stopped casino operators from doing it. This provision expressly authorizes nonprofit entities to contract out the operation to a for-profit company (typically owned by the same person), thus allowing a single owner/operator to convert bingo profits into an “expense” by paying them from the nonprofit to the for-profit operating company or machine-supply company.

Section 3(f) legalizes gambling “cruises to nowhere.” These are floating casinos that leave port, cruise around for a while, and return to the same port. Under this bill, these new cruises may offer all forms of Las Vegas casino gambling, including all house-banked card and table games and slot machines. Currently, such cruises to nowhere would be illegal under Alabama’s gambling laws. International cruise lines, on the other hand, are already protected by federal law, as long as they make intervening stops at interstate or international destinations and shut down their casinos while in state waters. The international cruise ship operating out of Mobile is being set up by pro-gambling forces as a straw man. They know the ship is protected by federal law; what they really want to do is legalize cruises to nowhere, and that’s just what this bill would do.

Section 4(a) restates the exemption from all Alabama criminal gambling laws. This provision also extends criminal immunity to machine suppliers and transporters.

Section 4(b) provides that the State of Alabama opts out of the federal Johnson Act with respect to “bingo” slot machines and related equipment, as well as any gambling implements intended for use on cruises to nowhere. The Johnson Act would otherwise impose federal criminal penalties for transporting illegal gambling devices into the State of Alabama.

Section 5 automatically grants a license “without application” to the following casino venues upon payment of fees and posting of bond:

- (1) Country Crossing
- (2) White Hall (2 licensees?)
- (3) VictoryLand
- (4) Birmingham Race Course
- (5) Greenetrack
- (6) Mobile Greyhound Park

This section then expands slot-machine gambling by authorizing one new casino in each of the 4th, 5th and 6th congressional districts. Applicants for these licenses must first be approved by a “local screening committee” consisting of the DA, the chairman of the county commission, and the sheriff. The new State Gaming Commission will then select an operator for each casino. **There are no requirements for competitive selection.**

Nobody can say with a straight face that this bill *limits* casino gambling. Local district attorneys and the Task Force on Illegal Gambling have already closed nearly 100 illegal casinos all over this state by enforcing existing law. The Supreme Court has ruled several times that electronic bingo is not legal. Therefore, this bill changes the law to legalize and expand casinos where they are currently illegal.

Section 5(b) guarantees racetrack owners the right to conduct pari-mutuel wagering and slot-machine gambling 24-7 “on such days and during such times as such

operator determines to be necessary or beneficial for the profitability of such racetrack.” This provision nullifies any prior or future law or ordinance prohibiting operations on Sundays or restricting gambling to specific hours.

Section 5(c) retroactively legalizes currently illegal profit-sharing arrangements between casino owners/operators. Supposedly, this is intended to discourage “predatory competition.” In reality, this provision could facilitate the formation of a statewide syndicate or “machine” of casino bosses.

Section 6 establishes a 20% state (5% local) gross receipts tax on “bingo” slot machine gambling. But these taxes are actually lower than the “amusement tax” casinos currently must pay. Under the current tax, casinos owe 4% of every wager, so \$4 on every \$100 wagered. Under this bill, however, the tax rate is applied to the casino’s “hold” after payouts of winnings to players. In other words, if a machine’s payout ratio is a typical 90%, then the casino’s hold on \$100 of wagers is \$10, and the state tax would be just \$2 (20% of \$10)—*half* the tax the casino would owe under the current “amusement tax.”

Not only that, but according to the American Gaming Association, the effective tax rates on casinos in other states are much, much higher. (*e.g.* Rhode Island: 74.28%, Pennsylvania: 47.11%, Maine: 49.56%, New York: 47.11%, Florida: 50%).

Under this section, Country Crossing would receive a special low tax rate of 7.5% for the first five years.

The state tax revenue is earmarked 65% for the Education Trust Fund and 35% for Medicaid. The local tax revenue is apportioned and paid to counties that do not have local bingo constitutional amendments. This local tax distribution provision appears to be an attempt to “buy” the support of local governments that otherwise stood to gain nothing from this bill.

Section 7 establishes the authorized casinos as follows:

- (1) Congressional District 1 (CD1): Racetrack in Mobile County
- (2) CD2 Country Crossing
- (3) CD2 White Hall
- (4) CD2 White Hall
- (5) CD3 VictoryLand
- (6) CD4 (To be selected)
- (7) CD5 (To be selected)
- (8) CD6 (To be selected)
- (9) CD6 Birmingham Race Course
- (10) CD7 Greenetrack

Section 8 creates a 5-member State Gaming Commission, consisting of one appointee each of the governor, the lieutenant governor, the attorney general, the speaker of the

house, and the chief justice. The appointees must be confirmed by the Senate. This section covers the powers and duties of the commission and its executive director. Any change ever required to these provisions would, of course, require another constitutional amendment.

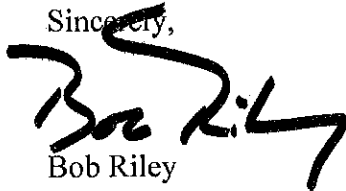
Section 8(b)(3) prohibits the Commission from seizing suspected illegal machines or other equipment until after a hearing. Under current law, of course, law enforcement may seize suspected illegal machines based on probable cause; the due process hearing (called a civil forfeiture proceeding) is held after the seizure for obvious reasons: Law enforcement must have possession of the evidence in order to make its case. This bill, however, could effectively allow casinos to “rig” their machines without fear of repercussions because the casinos get to force the Commission to prove its case without possession of the evidence.

Section 14 provides for the licensing of casinos. Licenses are issued for a period of 20 years, renewable for consecutive 5-year periods. The annual license fee is \$200,000. Nonexisting casinos must also pay a “non-refundable application fee” of \$250,000. License renewal fees are \$250,000. These fees are appropriated for the operation of the Commission.

Section 14(f) allows counties to impose an annual “bingo equipment license fee” of up to \$1.5 million on casinos in their county (except Greentrack, \$750,000 annually, and *no such fee may be imposed on White Hall and Country Crossing*).

This summary highlights what I believe are the most objectionable provisions of this proposed amendment. I strongly urge you to read this bill, line by line. Study it, discuss it *in detail* with your constituents, and please make sure you understand the long-term consequences of what this bill would do before you make a decision whether to support it. At the end of the day, whether you are for or against gambling, I hope you will agree with me that there is nothing in this proposed amendment that is good for Alabama. And I hope you will stand with me against it.

Sincerely,

A handwritten signature in black ink that reads "Bob Riley". The signature is stylized and written in a cursive-like font.

Bob Riley
Governor