



**In re: Legalization of Mobile Sports Gambling
(S.1183-Addabbo/A.1257-Pretlow)**

Memorandum of Opposition

Bill S.1183-Addabbo/A.1257-Pretlow would purport to legalize mobile sports gambling in the state of New York. The bill authorizes the creation of a casino-centered, state-regulated mobile sports gambling system. Under the proposed legislation, each agent licensed to conduct mobile sports gambling operations would pay the New York State Gaming Commission a one-time licensing fee of \$12 million. The Commission would also collect royalties from casinos that offer mobile sports betting and would disburse those royalties to various sports governing bodies. A tax of 12% on the gross revenue derived from mobile sports gambling would be paid to the state. This legislation would allow adults located anywhere in New York to place bets on sporting events on mobile phones or other electronic devices.

This bill suffers from several fatal flaws. It should not be passed.

1. The proposed legislation violates the New York State Constitution.

Article I, Section Nine of the New York State Constitution provides, in pertinent part, as follows: “[Except] as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling...shall hereafter be authorized or allowed within this state...”¹ The Constitution includes various exceptions to this prohibition on gambling, but mobile sports gambling is not one of them. Article I, Section Nine does allow for “casino gambling at no more than seven facilities as authorized and prescribed by the legislature.” However, this bill would go far beyond the language of Article I, Section Nine; it would allow New Yorkers with smart phones to engage in sports gambling anywhere in New York, not just at state-authorized casinos. This bill attempts to get around

¹ See The Constitution of the State of New York. Full document available at https://www.dos.ny.gov/info/constitution/article_1_bill_of_rights.html, last accessed January 18, 2021.

the constitutional language by mandating that all mobile sports betting be conducted through a “licensed gaming facility” and adding that all mobile sports wagers will be “considered placed or otherwise made when received by the operator at the licensed gaming facility,” regardless of the location of the person placing the bet. This end run around does not pass Constitutional muster.

Over the years, constitutional concerns about mobile sports gambling have been raised at the very highest levels of New York government.² The state’s fiscal troubles do not justify violating the Constitution. If the sponsors of this bill desire to make it legal to bet on sports via electronic devices anywhere in New York, they must propose a constitutional amendment and secure the voters’ approval at two successive elections.

2. The legalization of mobile sports gambling could increase the incidence of gambling addiction.

Gambling addiction counselors and others have asserted that mobile sports gambling will likely lead to more gambling addiction. Legalization would remove both the stigma of illegality and the danger of punishment from the practice. Also, allowing sports betting on mobile phones and other electronic devices would make it easier and more convenient for New Yorkers to bet on sports than it is at present. If a person with a gambling problem cannot bet on sports without driving to a casino 100 miles from his home, time and cost concerns may deter that person from making the trip; also, that person will have time to reflect on his decision before placing any bets. If a person with a gambling problem can bet on sports via mobile phone while sitting in his house, however, he is likely to place bets more frequently than he otherwise would.³

New York State Comptroller Tom DiNapoli has also expressed concern about the impact of the state’s gambling policies upon gambling addiction. On November 12, 2020, Comptroller DiNapoli released a report entitled “A Question of Balance: Gaming Revenues and Problem Gambling in New York State.”⁴ Upon the release of the report, Comptroller DiNapoli noted that the state spent a paltry \$5.7 million to combat problem gambling during the 2019-2020 fiscal year. This amount is a fraction of the amount spent on the promotion of gambling. Comptroller DiNapoli also found that the state “has taken few, if any, steps” to find out

² See <https://www.democratandchronicle.com/story/news/politics/albany/2019/06/19/sports-betting-new-york-dont-expect-wagering-your-phone-anytime-soon/1498170001/>, last accessed January 18, 2021.

³ See <https://nypost.com/2018/05/14/addiction-experts-fear-epidemic-as-sports-gambling-legalized/>, last accessed January 18, 2021.

⁴ See <https://www.osc.state.ny.us/files/reports/special-topics/pdf/gaming-report.pdf>, last accessed January 18, 2021.

whether its promotion of gambling has harmed New Yorkers that have a tendency toward gambling addiction. The Comptroller concluded that “[before] expanding gambling, the state must take a closer look at the impacts of casinos and other gaming already in place, as well as the problem of compulsive gambling.”⁵

3. The legislation is problematic from a social justice perspective.

In a state that is concerned about issues of equality and social justice, passing a mobile sports gambling bill is simply unconscionable. The gambling industry enriches the privileged by enticing everyday New Yorkers to bet (and lose) the money that they earn. This is the antithesis of social justice. The State Legislature should refrain from giving the gambling industry yet another opportunity to lure the people of New York into making self-destructive choices.

4. Mobile sports gambling will not solve New York’s fiscal problems.

Advocates of mobile sports gambling contend that the revenue from this legislation will help to close the state’s yawning \$15 billion budget gap for the upcoming 2021-2022 fiscal year. However, a casino-based approach to mobile sports gambling is projected to yield only \$50 million per year in tax revenue.⁶ This amount represents one-third of one percent (0.33%) of the state’s existing budget gap. Elected officials seeking solutions to New York’s troubling fiscal situation should look elsewhere.

New Yorkers for Constitutional Freedoms urges members of the State Legislature to vote “no” on Bill S.1183-Addabbo/A.1257-Pretlow.

⁵ See <https://www.osc.state.ny.us/press/releases/2020/11/dinapoli-state-must-consider-pros-and-cons-gaming-revenues-problem-gambling>, last accessed January 18, 2021.

⁶ See https://auburnpub.com/news/local/govt-and-politics/cuomo-wants-mobile-sports-betting-in-new-york/article_037baf8c-d24d-556b-8fbb-b610b4d5738f.html, last accessed January 18, 2021.