

NEW JERSEY CHARTS A PATH TO SUCCESS FOR ONLINE GAMING

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New Jersey is reaping huge benefits from its gamble in 2013 to legalize Internet gaming (“I-gaming” or “online gaming”), and the economic boon has far exceeded what many thought possible. According to a report prepared for the iDevelopment and Economic Association (iDEA), upfront capital investments in, and the operation of, online gaming in New Jersey from 2013 through 2018 generated about \$2 billion in sales, the equivalent of 6,500 full-time jobs, \$400 million in wages, and \$260 million in state and local tax revenues. The report, titled *Economic Impact of New Jersey Online Gaming: Further Lessons Learned* (the “2019 Report”), was co-authored by Alan Meister, PhD, of Meister Economic Consulting and Gene Johnson of Victor Strategies. It supplements the authors’ first report on the subject, which iDEA published in June 2017 (the “2017 Report”). The 2019 report is available online as Supplementary Data.

The authors have less sanguine news for Delaware and Nevada. Data show mixed results for those states, which legalized online gaming around the same time New Jersey did. Meister and Johnson concede that disparities in market performance are due partly to differences in population size, but they credit New Jersey’s “open and robust business model” with fueling much of the state’s revenue growth. If one accepts the authors’ proposition, it follows that Delaware’s and Nevada’s business

models for the online market may be suppressing growth. As other states legalize I-gaming and become operational, their success may well depend on whether they follow New Jersey’s lead or, alternatively, whether they opt for more limited markets or controls that are either too stringent or too lax. Other states—roughly half as of the date of this article—disallow all forms of online gaming, to include online casino games, online poker, online lotteries, and online sports betting. In other words, it appears that half of the country is completely foregoing the economic benefits of online gaming. As evidence mounts showing that I-gaming can be both safe and lucrative, constituents in nongaming states may well rise up to demand that their representatives make way for online gaming.

LABORATORIES OF DEMOCRACY

Justice Brandeis famously wrote, “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country.”¹ Indeed, “[p]art of the genius of our federal system is that no state is required to enact the same laws as its sister states. Rather, learning from their examples, a state may calibrate its economic regulations to reflect the particular values of its citizens.”²

State laws on Internet gaming arguably serve as the best current example of how “one courageous state”—in this case, New Jersey—can experiment with novel approaches to a difficult issue like online gaming and emerge as a model for states that want to foster a robust, well-regulated I-gaming market. According to the 2019 Report, New Jersey’s success has been two-fold. First, the state employs the most successful business model as evidenced by the market performance of its online gaming sector, specifically, and gambling industry, in general. Second, New Jersey is a model of success because of its regulatory framework, which manages to prevent harms associated with gambling without squelching business.

Keywords: casino, gambling, Internet, New Jersey, online, sports betting

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¹New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

²Wolverine Fireworks Display v. Towne, No. 12-10426, 2012 WL 2063608, *21 (E.D. Mich. June 7, 2012).

MARKET PERFORMANCE

Meister and Johnson report that New Jersey has seen dramatic economic growth as a result of online gaming within its borders. Data included in the report show that, during the five-year period from 2014 through 2018, gross gaming revenue (GGR) and net revenue for online gaming more than doubled.³ Gross revenue for 2014, the first year for which complete data were available, was \$123.1 million.⁴ By the end of 2018, gross revenue for online gaming approached \$300 million and was projected to exceed that number by \$150 million in 2019.⁵ Net gaming revenue for online gaming grew from \$122 million in 2014 to \$280.2 million in 2018, and was projected to reach \$419.8 million by the end of 2019.⁶

To put these numbers in perspective, imagine having invested \$100 in the stock market in 2014. If dividends in your investment were reinvested and grew at the same rate as New Jersey's I-gaming GGR, your investment would yield \$21.04 in dividends in 2015, \$59.95 in dividends in 2016, \$99.84 in 2017, and \$142.97 in 2018, with projected dividends of \$267.18 in 2019. The average annualized return for the five-year term would be an eye-popping 30.17%. Running the numbers based on New Jersey's net gaming revenue for the same time period results in lower numbers that are still impressive. Under the net-revenue scenario, a \$100 investment would yield \$11.72 in 2015, \$54.18 in 2016, \$91.07 in 2017, and \$129.67 in 2018, with projected dividends of \$244.10 in 2019. The average annualized return over the five-year term would be 28.74%.

Meister and Johnson attribute New Jersey's extraordinary revenue growth to the state's "more open and robust business model."⁷ Unlike other states, New Jersey allows licensed casinos to offer any games

online that they offer at their brick-and-mortar locations. Moreover, under New Jersey law, each licensee is allowed "to host up to five website brands, each with multiple subsidiary URL's [sic] ('skins') offering interactive wagering."⁸ Meister and Johnson report that, "[a]s of June 2019, [New Jersey had] 7 operating licensees supported by 13 platform providers with 32 different skins offering a wider selection of online casino brands in a robust market."⁹ The robust competition is a benefit to New Jersey customers as well as the state economy. The authors also identify other factors that have contributed to I-gaming's success in New Jersey, such as the state's larger population, increasing acceptance of online gaming among those who gamble, better gaming products and operating platforms, and increasing acceptance of credit card transactions by reputable financial institutions.¹⁰

As noted in the 2019 Report, New Jersey's remarkable growth from the last half of 2018 through 2019 is due largely to the U.S. Supreme Court's decision overturning the Professional and Amateur Sports Protection Act (PASPA).¹¹ PASPA effectively prohibited state-sponsored sports betting everywhere in the U.S. except Nevada. *Murphy v. Nat'l Collegiate Athletic Ass'n* cleared the way for states to legalize sports betting, as New Jersey did in June 2018. As a result of legalization, New Jersey's GGR for online gaming almost doubled in one year.¹² Notably, these gains did not come at the expense of land-based casinos and sportsbooks: "This revenue [I-gaming net revenue from 2014 to 2019] has occurred without cannibalizing the revenue generated by brick and mortar casinos in Atlantic City. In fact, industry analysts generally agree that [I-g]aming has been complementary rather than cannibalistic to land-based casino business."¹³ The authors' conclusion is supported by data for 2018 and 2019

³ALAN MEISTER AND GENE JOHNSON, ECONOMIC IMPACT OF NEW JERSEY ONLINE GAMING: FURTHER LESSONS LEARNED (iDevelopment & Economic Association, Oct. 2019) [hereinafter 2019 Report], 7 & fig. 5 (gross gaming revenue), 9 & fig. 7 (net gaming revenue).

⁴*Id.*

⁵*Id.*

⁶*Id.* Actual net revenues for 2019 exceeded the authors' prediction by \$62.9 million. The authors predicted that net revenues for online gaming would increase by 49.82% in 2019; in fact, they increased by 61.6%. See Press Release, New Jersey Division of Gaming Enforcement (DGE), DGE Announces December 2019 Total Gaming Revenue Results, at 1, 4 (Jan. 14, 2020).

⁷2019 Report, *supra* note 3, at 9; see also *id.* at i.

⁸*Id.* at 4.

⁹*Id.*; see also *id.* at 5 fig. 3.

¹⁰*Id.* at 7, 9.

¹¹*Id.* at 2; *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).

¹²See 2019 Report, *supra* note 3, at 8 & fig. 6 (showing that GGR of \$20.9 million in 2019 had grown to \$36.3 million by June 2019 and \$39.5 million by September 30, 2019).

¹³*Id.* at ii.

showing that net revenue for land-based casino games and sports betting increased in tandem with net revenue for online gaming.¹⁴

Meister and Johnson found that New Jersey has benefited from the direct effect of (1) \$54.4 million in one-time investments in I-gaming, including expenditures for buildings, offices, furniture, fixtures, equipment and technology; and (2) \$1 billion in expenditures by online players.¹⁵ But these numbers tell only half of the story. The authors explain that the investment dollars and revenue from operation created ripple effects—specifically, indirect effects that resulted when gaming operators used revenue to pay downstream businesses for construction, office furniture, technology and labor, and induced effects that resulted when downstream businesses used the same dollars to pay other suppliers and employees and when downstream employees spent those dollars on household items.¹⁶

Meister and Johnson report that investment expenditures of \$54.4 million in New Jersey's online market constituted a direct effect that triggered indirect and induced effects, all of which produced \$89.2 million in total output, 407 full-time job equivalents (FTE), \$36.2 million in wages, and \$4.1 million in state and local tax revenue.¹⁷ Similarly, the authors report that \$1 billion in player expenditures from 2013 through 2018 caused extraordinary secondary effects, all of which generated \$1.9 billion in total output, 6,145 FTEs, \$364 million in wages, and \$255.1 million in state and local tax revenue.¹⁸ All told, New Jersey saw (1) \$2 billion in total output from investments in and operation of intrastate online gaming; (2) the equivalent of 6,552 new jobs; (3) \$401 million in wages; and (4) \$259.3 million in state and local tax revenue.¹⁹

Although Nevada and Delaware both legalized online gaming around the same time New Jersey did, neither state has approached New Jersey's success "in terms of registered player counts, gaming revenue, and tax revenue."²⁰ Nevada's and Delaware's lackluster performance is due largely to their limited gaming markets. Meister and Johnson note that, as of October 2019, Nevada allows only online poker,²¹ and Delaware runs "[I-g]aming operations for three casinos through a central provider administered by the Delaware Lottery."²²

EFFECTIVE REGULATION

While New Jersey has seen remarkable economic growth since legalizing online gaming, the state's regulatory achievements have been no less impressive. In the 2019 Report, Meister and Johnson evaluate New Jersey's regulatory approach to I-gaming by reference to nine concerns that figured prominently in the debates preceding legalization: (1) the effectiveness of state-level regulation of intrastate gaming; (2) the effectiveness of geolocation technologies; (3) prevention of underage gambling; (4) player protections; (5) problem gambling; (6) prevention of fraud and money laundering; (7) availability of payment processing services; (8) cannibalization of brick and mortar casinos; and (9) tax revenue.²³ Six years in, the authors report positive results for all but one.²⁴

The authors attribute New Jersey's regulatory success to the state's intrusive registration requirements, aggressive vetting and oversight of licensees, and efforts to minimize problem gambling and keep offshore operators out of New Jersey. The authors note that New Jersey residents who register for online play must give their first and last names, date of birth, gender, the last four digits of their social security

¹⁴See Press Release, *supra* note 6, at 4 (showing that casinos netted \$2.5 billion in 2018 and \$2.7 billion in 2019, sportsbooks netted \$94 million in 2018 and \$299 million in 2019, and I-gaming netted \$298.7 million in 2018 and \$482.7 million in 2019).

¹⁵2019 Report, *supra* note 3, at 22.

¹⁶*Id.* at 20.

¹⁷*Id.* at 23.

¹⁸*Id.* at 24.

¹⁹*Id.* at 25.

²⁰2019 Report, *supra* note 3, at 9.

²¹*Id.* at 10. Nevadans have had access to mobile sports betting for several years. Customers who wish to place bets from their phone must first go to a land-based

sportsbook, present identification and a casino player's card, fill out some paperwork, make a deposit, and download the app. See Case Keefer, *Your Many Mobile Options for Placing a Sports Bet in Nevada*, LAS VEGAS SUN (Nov. 21, 2019, 8:14 a.m.), available at <https://lasvegassun.com/news/2019/nov/21/your-many-mobile-options-placing-sports-bet-nevada/> (last visited Jan. 24, 2020).

²²2019 Report, *supra* note 3, at 10.

²³*Id.* at 11–19.

²⁴The authors are neutral as to whether legalization of online gambling caused or correlates with purported increases in problem gambling. *Id.* at 14. As noted in the 2019 Report, a Rutgers University study found no increases in problem gambling attributable to online gaming, but did find that problem gambling had increased. Study data were inconclusive. *Id.* Meister and Johnson acknowledge that the "findings raise questions and call for continued research to monitor problem gambling in New Jersey." *Id.*

number, a valid street address in New Jersey, a telephone number, the correct answer to a customer-specific security question, and a declaration that they are over 21 years old.²⁵ The customer's information is then cross-checked to ensure the player is not prohibited from playing (as a casino licensee would be) or enrolled on a self-exclusion list.²⁶

Meister and Johnson also report that New Jersey aggressively vets and monitors operators and other online gaming licensees. Licensees approved to operate in New Jersey must satisfy New Jersey's stringent "know your customer" (KYC) requirements, meet defined standards, including for the use of precise geofencing to prevent cross-border transactions, give fair odds to customers, remit payment promptly to players who cash out, and adequately protect customers' personal information.²⁷ As explained in the 2019 Report, New Jersey requires comprehensive monitoring of all player transactions—that is, continuous monitoring of Internet and mobile transactions within New Jersey and nears its borders—which helps to prevent illegal activity and facilitates dispute resolution.²⁸

In addition to the foregoing controls, New Jersey has taken steps to minimize problem gambling and dissuade offshore operators from doing business in the Garden State.²⁹ As reported by Meister and Johnson, New Jersey requires each gaming licensee to pay \$250,000 per year for state programs that address problem gambling.³⁰ Moreover, all I-gaming operators allow players to set deposit limits, loss limits, and time limits on their gambling sessions.³¹ Players have the option of setting a cooling-off period to prevent the chasing of losses, and they may place themselves on a self-exclusion list for up to five years.³² In addition, gaming data are collected and analyzed to screen for potential problem gamblers and identify

them to the relevant licensee(s).³³ Licensees must then maintain records of all actions they take with respect to the identified customers.³⁴ The authors admit that New Jersey residents can still access offshore operators, many of whom are not adequately regulated. But New Jersey discourages offshore operators from doing business there by making clear that unlicensed operators who accept bets from New Jersey residents will be forever barred from licensure.³⁵ Similarly, I-gaming affiliates who promote unauthorized gaming in New Jersey do so at risk of forfeiting their license.³⁶

The 2019 Report concludes that, as a result of its regulatory efforts, New Jersey has seen no spike in problem gambling caused by I-gaming, no major incidents involving cheating, player fraud, or money laundering, and no disclosures of I-gaming violations at the federal level.³⁷ As banks have warmed to online gaming, more payment processing options have become available.³⁸ Data show that fears of cannibalization were unfounded: revenues for land-based gaming were stable in 2018 and projected to increase in tandem with online gaming in 2019 and beyond.³⁹ As a result of New Jersey's economic and regulatory successes in the I-gaming space, tens of millions of dollars have been added to the public fisc.⁴⁰

REPLICATING NEW JERSEY'S SUCCESS

Given the economic and tax benefits at stake, it is surprising that more state legislatures have not legalized online gaming. When Meister and Johnson completed the 2017 Report, only three states permitted some type of online gaming: New Jersey, Nevada, and Delaware. As mentioned above, Nevada and Delaware have seen limited growth in I-gaming, partly because Nevada permits only online poker and Delaware runs I-gaming operations for three

²⁵*Id.* at 13.

²⁶*Id.*

²⁷*Id.*

²⁸*Id.* at 12.

²⁹*Id.* at 15.

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴*Id.*

³⁵*Id.* at 14.

³⁶*Id.*

³⁷*Id.*

³⁸*Id.* at 16–17.

³⁹*Id.* at 17–18.

⁴⁰*Id.* at 18 (reporting state and local I-gaming tax revenues of \$43 million in 2017, \$52.3 million in 2018). The authors predicted \$79.2 million in revenues for 2019. *Id.* Actual revenues were slightly less at \$72.4 million. See Press Release, *supra* note 6, at 5.

casinos through a central provider that answers to the Delaware Lottery.⁴¹ When the 2019 Report was published in October 2019, online gaming had expanded to Pennsylvania and West Virginia, and eight states were considering legalization.

As of the date of this article, nine more states and the District of Columbia have legalized some type of I-gaming, such as online casino games, poker, or sports betting. These nine states include Colorado, Iowa, Indiana, Illinois, Michigan, Montana, New Hampshire, Oregon, and Tennessee. Regulators in these jurisdictions should pay heed to the disparities in economic performance and regulatory success between New Jersey, on one hand, and Nevada and Delaware, on the other hand. To the extent permitted by the relevant enabling statute, regulators should consider adopting and, if necessary, adapting New Jersey's open business model and regulatory framework. Doing so could help those states realize the full benefits of legalization.

Legislative efforts to legalize online gaming are pending in a number of states, including Massachusetts, Nebraska, New York, and Virginia. Proponents of legalization in these jurisdictions should rely on the 2017 Report and 2019 Report to persuade opponents that the benefits of legalization far outweigh the usual parade of horrors. For the most part, fears of legalization have proved to be unfounded or overstated.

Finally, a significant number of states have tried and failed to legalize gambling or failed to take up the issue entirely—states like Alaska, Hawaii, Maine, and North and South Carolina. Proponents of online gaming in these jurisdictions should demand that their representatives consider the economic benefits to be gained from legalization subject to effective regulatory controls. The 2019 Report demonstrates that a vote against legalization is a vote against a stronger economy, more jobs, better wages, and fiscal health. New Jersey is realizing these benefits in spades; other states can too.

⁴¹2019 Report, *supra* note 3, at 10.