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Moral Markets and the Problematic Proprietor: How Neoliberal Values Shape Lottery Debates in Nevada

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ABSTRACT: All but seven states have legalized lotteries since New Hampshire ushered in the modern lottery era in 1964. Although casino gaming has been permitted since 1931, Nevada has rejected multiple legislative proposals amend the State Constitution and create a state-run lottery. This paper theorizes the lottery's absence in Nevada, focusing in particular on the role of the state. Lotteries are distinct from other forms of gaming because states act simultaneously as the operation's regulator and proprietor. In this case, Nevada's lottery legalization debates over the last half century reflect the profound moral valence of markets. The state as a potential gaming proprietor is framed as a problematic actor that will distort the gaming market, specifically by competing unfairly at the expense of casino operators.

Keywords: Nevada, legalization, state, casinos, neoliberalism

Introduction: March Madness¹

In late March of 2012, Americans became transfixed with the lottery. As the Mega Millions jackpot spiraled upwards, lines of hopeful dreamers formed outside of retail outlets in 42 states, the District of Columbia, and the US Virgin Islands. Without a jackpot winner since the January 24 drawing, people eagerly awaited the opportunity to wager \$1 in exchange for the chance to win more than \$500 million. With ticket sales of more than \$1 billion leading up to the March 31 drawing, the final prize soared to a new record of \$656 million (Mega Millions 2012).

Even in Nevada, one of the few states that does not participate in Mega Millions because lotteries are prohibited by the State Constitution, people were enchanted by the possibility of becoming an instant millionaire. This longing took place in the face of well-known long odds. As often happens in these

moments, reports contrasted the likelihood of winning the Mega Millions jackpot (176 million to one) with a range of other improbable outcomes such as the odds of being killed by a vending machine in any year (a much more plausible 112,000 to one) (Peterson 2012: 11). Still many Nevadans made their way across the border to outlets like the Primm Valley Lottery Store, where people waited in line and wondered. "The mood was festive as people excitedly discussed how they would spend their jackpot winnings ... Because Nevada does not participate in the multistate lottery, many Las Vegas residents ... lamented that they couldn't buy the tickets locally" (Shine 2012). Popular wondering in this moment was two-fold: first, wondering what they'd do with the money if they won; and second, wondering why Nevada still doesn't have a lottery.

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Indeed, March's lottery madness precipitated commentaries by legislators, media pundits, and the public, questioning why Nevada lacked a lottery (KOLO TV 2012; Schwarz 2012). A shared, if often implicit, understanding in this discussion was that the lottery's absence could not be attributed to a moral opposition to gaming. This idea was clearly conveyed in an on-line comment about a letter to the editor of the Las Vegas Sun. "This [legalizing a state lottery] is a discussion that has appeared several times. The good part is that since we already [offer] just about every form of gambling known there is *no need to argue over morality*" (Las Vegas Sun 2012, emphasis added). Drawing on the presence of legal casino gaming, the author concludes that moral distaste for gaming isn't an issue in Nevada. The commentary echoes a recurring theme in Nevada lottery debates: because the state has sanctioned casinos since 1931, opposition to lotteries is not a problem of morality.²

In this paper I contend that the on-going failure to legalize a lottery in Nevada reflects a deeply-held vision of markets as moral. State intervention into gaming markets in the form of a state-run and regulated lottery disrupts and unsettles the sanctity of neoliberal ideals. I describe the history of lottery legalization as a particular kind of social problem and the progression of failed efforts in Nevada. Then I analyze the specific contours of how the state as lottery proprietor has been framed in arguments for and against establishing a lottery.

The Politics of Lottery Legalization

In studying dynamics of gaming legalization, three issues consistently shape debates: patrons, proceeds, and proprietors.³ The issue of patrons raises questions of who will play a particular form of gaming. With research finding certain demographic groups such as men, middle-aged, people of color, and people with less education tend to be overrepresented among lottery players, some contend that the lottery is a regressive tax (Blalock, Just, and Simon 2007; Clotfelter and Cook 1989). The issue of proceeds raises

questions of what happens to the anticipated revenues from gaming. While revenues can be allocated in a number of ways (general fund, earmarked for specific purposes, one-time special causes), public support for legalizing lotteries has been highest when there is a clear, particular, and popular use for revenues such as education (Gidluck 2012; Sweeny 2009). The issue of proprietors, raising questions about who will operate the games, is particularly salient and fraught for the politics of lottery legalization. Unlike casino gaming and pari-mutuel wagering where corporations operate games and the state acts largely in a regulatory role, lotteries present a situation where the state is both gaming regulator and proprietor.

Concurrent with the expansion of state lotteries since 1964 has been the growth of neoliberalism. Broadly speaking, neoliberalism refers to the downsizing of governmental institutions and regulation in order to allow the "free market" to rule (Harvey 2007; Henisz, Zelner, and Guillén 2005). A politico-economic philosophy celebrating privatization and free markets offers numerous challenges for state action in markets beyond just gaming. For example, consider the state's gradual withdrawal from efforts to regulate labor markets by protecting workers' rights to collectively organize since World War II (Fantasia and Voss 2004). Similarly deep ambivalence about state intervention is evident in recent health-related debates, whether in the Affordable Care Act's individual mandate to purchase health insurance or New York City Mayor Michael Bloomberg's move to prohibit the sale of large sugary drinks (Grynbaum 2012; Stolberg and Pear 2010). The cases of labor and health illustrate neoliberal questions about an appropriate role for the state. Extending these ideas to the case of the Nevada lottery, neoliberal philosophy sees free markets – that is, markets without state intervention and action – as sacred. By celebrating the "invisible hand" of the market, the underlying idea seems to be that state intervention will make markets irrational or distorted.

Lotteries in the United States have a long, complex history. Until 1895, when the federal government abolished the scandal-plagued Louisiana lottery and made it illegal to use the US mail to transport lottery-related items, lotteries were relatively widespread and used to raise funds for myriad public projects (Clotfelter and Cook 1989; Sweeny 2009). From 1895 through 1963, state governments were reluctant to contest federal prohibitions on the lottery. A new era of state lotteries started when New Hampshire legalized the games in 1964. Over the next decade, eight more states established lotteries (Legislative Counsel Bureau of Nevada 1983). By 2011, only Alabama, Alaska, Hawaii, Mississippi, Nevada, Utah, and Wyoming didn't offer lotteries. Although Nevada remains without a state lottery, Figure 1 illustrates that the legislature has considered multiple lottery bills over the last fifty years. Probably the biggest change was the 1991 law that permitted lotteries run by, and for the benefit of, charitable organizations. But even here legislative proposals were narrowly tailored in terms of who can run the games (not the state, only certified charities) and the revenues generated (small prizes). Lottery legalization bills have been introduced in each session of the Nevada legislature since 2001. During these on-going debates, how is the state portrayed as a potential proprietor?

Debating Propriety—and Proprietor

Again when considering the dynamics of gaming legalizing, one must pay attention to the framing of patrons (who will play games), proceeds (how will revenues be allocated), and patrons (who will operate games). Nevada's lottery debates are always intertwined with acknowledgements of casino gaming's critical importance – even by state representatives. For example, at a joint meeting of the State's Gaming Commission, Gaming Control Board, and Gaming Policy Commission in July 1979, representatives confronted an unsettled gaming landscape. Threats loomed in the form of the numerous eastern states that had created lotteries over

the last decade as well as the federal government's recent filing of charges related to an investigation of major improprieties at the Aladdin Gaming Corporation. Harry Reid, Chairman of the State Gaming Commission, addressed collective concerns by invoking Nevada's status as a global beacon of entertainment: "Nevada is the greatest leisure-time activity center in the world, the world's ever known. And we've got to maintain that" (Minutes 1979: 23). He continued, describing the State's need to set and rigorously enforce gaming regulation policies: "We are obligated to preserve the atmosphere in this free enterprise system where those businessmen who themselves are fair in this privileged industry can continue to thrive in our healthy economic atmosphere. And we intend to do that as setting this policy for Nevada gaming" (Minutes 1979: 24). Although contending with lottery expansion and a major scandal emerging from proprietors of the "privileged industry" of casino gaming, Reid's gentle critique focused on maintaining the overall health of casinos and the "free enterprise system."

Similarly, the State Senate passed Concurrent Resolution 59 in 1991 which established a Subcommittee to Study Gaming chaired by Senator Diana Titus (a Democrat representing Nevada's District 7). State lotteries were finally on the agenda at subcommittee's third meeting, held on February 21, 1992 in Las Vegas.⁴ William Bible, Chairman of the State Gaming Control Board, described the proliferation of state lotteries in 33 states and the District of Columbia. He also presented projections of "possible revenues if Nevada instituted a lottery" (Minutes 1992: 16). However, Bible cautioned "that the issue of legalized lotteries must be given an intensive study because of its possible ramifications on the gaming industry" (Minutes 1992: 16). Much like Harry Reid more than a decade earlier, although Bible represented the State government his discussion of the lottery genuflected to the size, power, and influence of casino gaming.

Drawing on correspondence, oral histories, media reports, and minutes of legislative hearings, I analyze arguments for and against establishing a state-run lottery in Nevada in this section. My research illustrates how neoliberal values, particularly ideas about competition and free markets, are central to the way groups envision the state's role.

Lottery opponents: State as a threat, unfair competitor

Across time, opponents of a Nevada lottery have detailed a remarkably consistent preeminent concern: the State is a threat to the casino industry. For example, in the 1983 session, the State Legislature took up lottery bills which would allow charitable organizations to run lotteries as fundraisers (AJR 24) and repeal the State Constitution's ban on lotteries (SJR 1).⁵ In February 1983, Edward Nigro, President of the Silver Nugget Casino wrote to Senators James Bilbray and Wilbur Faiss who, along with Senator Joe Neal, were the sponsors of SJR 1. Nigro's (1983) letter described ambivalence about constitutional revision:

I must strongly state my belief that a state-wide lottery would dilute the income of an already weakened state-wide casino economy. We need not compete as a State government with the one sector of private enterprise that has provided broad based tax revenues from which our state has for such a long time benefitted. ... It seems almost ironic that during the only period that I can recall in which the casino industry has stumbled somewhat, the immediate reaction of our State government is to provide not assistance, but additional taxes which we must pay, and now potentially the ultimate blow of direct competition (Nigro 1983).

Although the casino industry faced substantial challenges during a recession (a "weakened state-wide casino economy," a "period ... in which the casino industry has stumbled"), Nigro notes the "tax revenues" and other benefits casinos afford the State. However, as a senior executive of a casino

corporation, Nigro's letter is far from altruistic. Twice he invokes the specter of "direct competition" between casinos and the State that would result from the establishment of a lottery. Even more than the challenges of a lingering recession, competition with the State would be the "ultimate blow" for casinos.

Casino operators have used virtually identical rhetoric about untenable state competition in more recent debates about the Nevada lottery. All but two Legislative sessions have considered lottery bills since 1991 (see Figure 1). This constant activity has been met with well-organized lobbying by casinos that continue to focus on the moral impropriety of the State acting as a gaming proprietor and distorting markets. For example, William Bible, now serving as President of the Nevada Resort Association, described his anxieties about establishing a lottery in 2007: "We are concerned about funding this measure that will create a competitive situation where the state becomes the competitor to the state's principal industry – gaming. ... There will be a drop-off in gambling and other revenues if you implement a lottery in Nevada" (Kanigher 2012). Bible focuses on the threat presented by the "state becom[ing] the competitor" to casinos, implicitly contrasting the state-operated lottery and corporate-run casinos. Lesley Pittman, a lobbyist for Station Casinos, weighed in against the permissibility of the State entering the gaming marketplace as a proprietor in 2009: "To begin, we believe that a lottery would put the state of Nevada in the gambling business, pitting the state against its largest private employer, largest property taxpayer and largest purchaser of goods and services. ... Now is not the time for the state Legislature to make a conscious choice to make it more difficult for our gaming industry to regain its financial health" (Kanigher 2012). Much like Nigro in 1983, Pittman acknowledges the economic challenges stemming from a recession but underscores how casinos are the "largest private employer, ... property tax payer, and ... purchaser of goods and services" in Nevada. From this

perspective, it seems unconscionable that legislators would amend the Constitution to allow for a lottery, thus “pitting the state” against casinos and violating the integrity of free markets.

Similar to state officials and casino representatives, some civic groups also invoked the competitive threat a state lottery would present as an argument against the lottery. In 2005, the Legislature considered SRJ 2, a bill that would create a state lottery and earmark the funds for educational purposes. At a Senate Judiciary Committee hearing in Carson City on March 24, representatives from interests groups testified on both sides of the bill. John L. Wagner, speaking for the Burke Consortium of Carson City, problematized the state as lottery proprietor. In responding to an earlier comment by a Senator, Wagner testified: “I will answer the question ... about the State operating a business. This is exactly what the lottery is, and it would be competing with our No. 1 business in this State, which is the gaming industry. I have a real problem with the State owning anything in the area of operating a business” (Minutes of Senate 2005: 41). By inserting itself into the gaming market through the lottery, the state is no longer just a regulator but will be “operating a business.” For Wagner, a state business is troubling on its own, but is made worse when that would challenge the dominance of casino gaming, “our No. 1 business.”

Arguments against a state lottery focus on the state’s role as a proprietor and, more specifically, the state as a competitor to casinos. While neoliberalism ostensibly celebrates competition between parties, allowing the market to determine winners and losers, the preceding examples make it clear that not all competition is equal, fair, or moral. Talk of the state lottery – and of the state pitting itself against casinos – occurs against an unstated suggestion that the state would be an unfair competitor. Regardless of the contention’s veracity, I argue that this is a moral argument about open markets, small governments, and the State’s viability as a gaming proprietor.

Lottery proponents: Advocating for the State’s needs

By contrast, those advocating for the creation of a state lottery highlight how casinos and lotteries successfully coexist in other states as well as emphasize the potential benefits to the state of standing up to casinos. These arguments, typically offered by legislators, labor unions, and education advocates, also accentuate the importance of markets and competition.

Lottery proponents reject the intimation that the state is an unfair gaming competitor, citing examples of locations where both types of gaming are co-located and thrive. When Assembly Education Committee held a hearing on SJR 2 in March 2005, Assemblyman Richard Perkins (Democrat, District 23) cited coexistence beyond Nevada:

Do I expect the largest industry in our state to embrace this and come forward to testify in favor? Certainly not. It is still, in some ways, another gaming product that could be in competition with them. I think the timing is right now for a couple of reasons. We do have this crisis in our classrooms. ... I think that helps this cause. Many of the gaming companies operating in Nevada operate in many of the other states in our country. The proliferation of gaming in the United States has been tremendous over the last decade. Most of the states in which they do business, outside of Nevada, have a lottery. I think they have learned how to market their products and deal with that as well (Minutes of Assembly 2005: 6).

Acknowledging the reality of some competition, Perkins doubts that casino operators would proactively support the bill creating a state lottery to benefit education. At the same time, the very same companies that hypocritically oppose the Nevada lottery “have learned how to market their products and deal with” state lotteries elsewhere around the United States. Given that casino proprietors already adapt to operate in other states, Perkins suggests the importance of

using a lottery to meet the state's economic needs.

Similarly, in the aftermath of the March 2012 Mega Millions lottery drawing described at the beginning of the paper, a number of Nevadans questioned why greedy casino operators blocked a state lottery. One person shared frustrations in an evocative letter to the editor of the Las Vegas Review-Journal (2012):

After returning home [from buying Mega Millions tickets in Primm], I watched a newscast in which they interviewed one of MGM's big wigs. He said casinos bring in billions of dollars a year – much more than a lottery. But we can have both. I gamble in the casinos, but I also take a flyer on lottery tickets, too. MGM's argument is shallow and lame. There are at least 40 states in our country that have lotteries, and many of those states also have casino gambling. Yet it doesn't deter people from gambling in their state's casinos and still coming to Las Vegas. It's clear the lawmakers in Nevada are in bed with the casino industry. But it's time for them to do what's right. Polls show that 98 percent of Nevadans want a lottery like Mega Millions and Powerball here.

Pointing out that “at least 40 other states” have lotteries, and that many also offer casinos, the author categorically rejects the MGM executive's conclusion that the two types of gaming can't coexist in Nevada as “shallow and lame.” The author also cites personal experience as a participant in both types of gaming to show that players can engage in all of these games.

The suspicion of legislators and citizens advocating for a state lottery that casinos and lotteries could successfully coexist is well founded. As a number of state governments considered legalizing casino gaming to address economic problems in the early 1990s, some were concerned that riverboats or land-based casinos would harm state-run lotteries (Schwartz 2007). In 1995, Harrah's Gaming prepared a report to assuage states' fears. The report opened by directly addressing the obvious question: “How will

legalization of riverboat or other casinos affect a state's lottery? Data from across the United States suggest that the operation of commercial casinos does not have a significant adverse effect on state lottery revenues. Much more often than not, lottery revenues grow following the introduction of casino gaming” (Harrah's 1995: 1). The report also explained how this concurrent growth occurs: “Casino revenue and lottery revenue can grow simultaneously because casinos and lotteries serve two different markets and provide two different entertainment experiences. Casino customers are, on average, wealthier, more likely to hold white collar jobs, and better educated than the general population. And people who go to casinos do so for social interaction and fun, not to get rich” (Harrah's 1995: 2). According to the Harrah's report, casinos and lotteries are not mutually exclusive and that revenues for both tend to grow when patrons are able to participate in both types of gaming. Here we begin to see how sequencing of gaming legalization struggles shapes debates. In states where lotteries came before casinos, casino proprietors seek to convince the state that the games benefit one another, while in Nevada where casinos came before lotteries, the same casino proprietors argue that a state-run lottery would be an unfair competitor. Nothing changes about the nature of games in these moments, only the context in which debates occur.

Beyond insisting that the state can reasonably compete as a proprietor without destroying the casino industry, advocates also conclude that the lottery could lead the state to greater efficacy and responsiveness. Recall the person who explained that legislators were preoccupied with looking out for casino interests (“It's clear the lawmakers in Nevada are in bed with the casino industry.”) and that a state lottery reflected the will of most Nevadans (“...it's time for them to do what's right. Polls show that 98 percent of Nevadans want a lottery...”). The desire to legalize a lottery is often linked with creating a state government that addresses the needs of

citizens and stands up for the people. Senator Joe Neal (Democrat, District 4) tried several times to create a state lottery but was routinely blocked by the close ties between casino operators and legislators. "Gaming did not want anyone to make any money in gaming but them ... These people have a powerful lobbying group and they're the ones who put the money in the legislator's pockets for them to run on" (Vegas Buzz 2010). In an oral history, Senator Neal elaborated on the need for the state legislature to stand up to casinos:

The question is: Can you? Yes. But will you? I don't think so because ... he [any state legislator] has to go to gaming to get that money in order to maintain that prestige ... the other statement you normally hear is, 'Why kill the goose that laid the golden egg?' And my position has been, since I hear that one most often, 'If the goose is crapping all over the place, then you have to get some of the gold to help clean up the mess' (Neal 2007, Chapter 3, page 5).

Neal's critique of a legislative culture that defers to casino operators does two important things. First, it disputes lottery opponents' argument that the state is an unfair competitor, rejecting the idea that the state wants to "kill the goose" that is casinos. Second, in creating a lottery and garnering critical resources, the state will better address public problems, some of which are actually caused by casinos ("...you have to get some of the gold to help clean up the mess").

Concerns about a political system that is, at best, imbalanced toward casino proprietors' interests, lead some to conclude that a lottery would provide economic resources and create a stronger, more fair bureaucracy. Speaking in support of a state lottery, Pilar Weiss, a member of the Culinary Workers Union Local 226, offered: "We could learn from other states that have made mistakes. We could come up with solutions and be able to establish lotteries that would be quite beneficial to the state" (Kanigher 2012). Weiss, like Neal and others, could imagine the state becoming a stronger, more effective

lottery proprietor by "learn[ing] from other states" and benefitting from their mistakes as well as by building on its own history regulating casinos.

Proponents of a state lottery highlight how casino operators have learned to compete effectively with lotteries in other states, and that protests in Nevada are motivated by greed and a fear of competition. Moreover, they suggest that legalizing a lottery could actually empower a stronger state bureaucracy that has resources which allow it to effectively meet peoples' needs.

Conclusion: Betting on an Uncertain Future

As people weigh the merits of creating state lottery, the state's role is central to debates. Unlike other forms of gaming, with lotteries the state is typically both the regulator and proprietor. While opponents assert that the state is an unfair competitor that threatens the viability of the state's most important economic engine, proponents posit that casinos have long since adapted to competing with lotteries elsewhere and that lottery legalization could actually strengthen the state. Establishing a state lottery is a double challenge. First, proponents confront a milieu where neoliberal values are pervasive. Popular discourses celebrate the merits of free markets, open competition, and limited government intervention. Second, proponents must also contend with a well-established, profitable, and strongly organized casino industry that mobilizes to address threats.

Running through Nevada lottery debates is a shared vision of markets as moral. While ostensibly denying the value of the competition they celebrate, lottery opponents imply that the state will unfairly distort the gaming market. Through its very intervention, the state will overwhelm non-state actors. Lottery proponents agree on the importance of competition, suggesting that casinos have long since figured out how to effectively compete with state lotteries outside of Nevada. Instead, they conclude that a lottery will help the state be better prepared to meet peoples' needs.

Like other states, Nevada is confronting economic headwinds due to a persistent recession. At the opening of the 2011 legislative session, the state faced more than a \$2 billion deficit – a number Assembly Speaker John Ocegura (Democrat, District 16) estimated was 54 percent the size of the total state budget (Dostal 2011). Like other states, Nevada’s elected officials seem disinclined to increase personal or corporate tax rates. In this moment, expanding legalized forms of gaming seems politically and economically plausible. According to the National Association of State and Provincial Lotteries (2012), US lotteries generated profits of \$17.88 billion for state governments in fiscal year 2010. At the same time, states such as Illinois, Pennsylvania, Texas, and Washington have explored privatizing their lotteries, emphasizing the immediate influx of cash as well as the corporate efficiency and innovation (Gram 2008; Murphy 2012; Patane 2011). Given the repeated introduction of legalization bills over the last half century and the potential profits in a moment of budget austerity, the future of the Nevada lottery seems open. While the prospects of legalization are difficult to determine, the debate is certain to continue.

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Notes

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² Compare the recent on-line commentary with the following passage from a 1983 state legislative report on lotteries: “One advantage that Nevada has over other states considering lotteries is its pro-gambling attitude. While other states debate the moral and social issues regarding the lottery as a form of legalized gambling, Nevada is free to concentrate on concerns pertinent to its economy” Legislative Counsel Bureau of Nevada 1983: 12). Even thirty years earlier there remains an unproblematic assertion that “moral ... issues” are not an obstacle to a state lottery.

³ Nevada has experienced waves of legalization with casino gaming being approved in 1931 and pari-mutuel wagering being approved in 1975.

⁴ The Subcommittee’s two earlier meetings, held on October 18 and December 6, 1991, were largely concerned with the expansion of tribal gaming and casinos operating in other states. This order again underscores the importance of Nevada’s casino gaming industry.

⁵ AJR 24 was passed by the State Legislature during the 1981 biennial session but returned in 1983 because state law requires the amendment to be passed by two consecutive legislative sessions. Both AJR 24 and SJR 1 failed in the 1983 session.

Figures

Figure 1: Lottery Proposals in the Nevada Legislature since 1964

Year	Bill Number(s) and brief description
1967	AJR 17 (amend Constitution to allow for state lottery)
1975	AJR 33 (repeal Constitutional prohibition), AJR 34 (charitable lottery)
1977	AJR 24 (property tax relief for seniors), AJR 33 (charitable lottery)
1981	AJR 24 (charitable lottery), SB 312 (repeal penalty for lottery activities), SJR 23 (lottery to benefit seniors and education)
1983	AJR 24 (charitable lottery, from 1981 session), SJR 1 (repeal Constitutional prohibition)
1991	AB 449 (charitable lottery), AB 532 (charitable lottery), SJR 10 (repeal Constitutional prohibition)
1993	SB 99 (annual lottery to benefit veterans' organizations), SJR 9 (repeal Constitutional prohibition)
1997	AB 364 (charitable lottery revision)
2001	AJR 11 (lottery to benefit education and senior citizens)
2003	AJR 1 (create a state lottery), AJR 2 (participate in interstate lotteries)
2005	AJR 2 (lottery to benefit education)
2007	AJR 5 (lottery to benefit education), SCR 15 (create a committee to study the lottery)
2009	AJR 7 (charitable lottery revision)
2011	SJR 1 (lottery to benefit education)

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