

Judge considers casino challenge

Ballot language of state referendum at heart of dispute

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A state judge on Friday promised to expedite his decision on whether a lawsuit can go forward challenging the wording of a statewide casino referendum.

Judge [Richard Platkin](#) suggested the case involving Proposal One could throw the Nov. 5 election into chaos. The state [Supreme Court](#) justice said he'd rule as soon as possible on whether to dismiss the case on technicalities or allow it to be decided on the merits.

At issue is Brooklyn attorney [Eric Snyder](#)'s suit against the state [Board of Elections](#). He claims that the wording of the proposed amendment to the state constitution to allow for seven casinos is biased. Snyder alleges the board secretly adopted inappropriate ballot language that represented improper advocacy for the proposal.

Snyder filed suit last week, and amended his complaint a few days ago with an additional claim that the board voted July 29 to allow commissioners to make further tweaks to the ballot language in private, an arrangement that Snyder described as a clear violation of the state's Open Meetings Law.

After hearing an hour's worth of arguments from Snyder and board counsel [Paul Collins](#), Platkin said he would rule some time after Monday's Columbus Day holiday. He called the issue complex.

The ballot language has been criticized by good-government groups and numerous editorial boards for including a warm description of the amendment's legislative intent — "promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated." The other five amendments on the ballot contain no similar descriptions of hoped-for benefits.

The final ballot language came after consultation with Gov. [Andrew Cuomo](#)'s administration and representatives of the Legislature. Cuomo officials have emphasized that the Board of Elections had final say over the ballot wording.

Attorney General [Eric Schneiderman](#)'s office offered the board a more bare-bones version without the legislative intent, but that version was rejected.

[Blair Horner](#), legislative director of the [New York Public Interest Research Group](#), said state officials "added language to get people to vote yes. That's just wrong." (NYPIRG has taken no position on the proposed amendment itself.)

[Les Bernal](#), national director of Stop Predatory Gambling, said the state could have phrased the ballot question differently to drive a no vote by stating potential negative effects of casino expansion, "unlike the bogus claims written into the November ballot question."

Horner noted that the arguments in court made it clear that the process of changing the constitution needs changing to require a meaningful public comment period.

Snyder argued that he did not learn about the language until September, and that the board did not put it on its Internet page until Aug. 23.

Collins said the 14-day deadline to object passed in mid-August. "I don't dispute that it wasn't put on the state board website until Aug. 23, but it's irrelevant," he said.

He argued that Snyder misfiled his suit by not taking action against all the members of the board; didn't get approval to amend the suit to include the Open Meetings Law claim; and is out of luck because the statute of limitations has expired.

Snyder said the webcast of the board's meeting made it impossible to know what the referendum language consisted of because no one read it into the record. "They need to look in the mirror," Snyder told the court.

After the hearing, board spokesman [Tom Connolly](#) said it would be difficult but not impossible to revise the state ballot, although it would cost millions of dollars. Military ballots have already been mailed, and absentee ballots are going to voters now.

Connolly said the board had dealt with late changes in procedure as recently as last year, when Superstorm Sandy's arrival shortly before Election Day necessitated logistical adjustments to accommodate those displaced by the storm.

Connolly said the ballot language didn't get onto the board's website promptly because the employee in charge of such duties was out sick for a few days.