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IOWA RACING & GAMING
COMMISSION

PETITION BY RIVERSIDE CASINO AND)	
GOLF RESORT, LLC, AND)	
WASHINGTON COUNTY RIVERBOAT)	
FOUNDATION, INC.)	
FOR A DECLARATORY ORDER)	REPLY BRIEF IN SUPPORT OF
THAT THE IOWA RACING AND)	PETITION FOR DECLARATORY
GAMING COMMISSION LACKS)	ORDER BY RIVERSIDE CASINO AND
AUTHORITY TO ISSUE A GAMBLING)	GOLF RESORT, LLC, AND
GAMES LICENSE IN LINN COUNTY)	WASHINGTON COUNTY
UNDER IOWA CODE § 99F.7(11))	RIVERBOAT FOUNDATION, INC.

“A license to conduct gambling games in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection.”

- Iowa Code § 99F.7(11) (emphasis added)

This statute, part of Iowa’s code regulating gambling games, is the Commission’s measuring stick for deciding if it has the authority to issue a gambling games license in Linn County. The Commission can issue a license “only if” the “county electorate approv[al]” measures up to subsection 11. Subsection 11 explicitly constrains the Commission’s authority to issue a license. There is no ambiguity or wiggle room.

We call so much attention to the statute at the outset to emphasize that this case is not about election law; it is about gaming law. The Petitioners, Riverside Casino and Golf Resort, LLC (“Riverside”) and Washington County Riverboat Foundation, Inc. (“WCRF”) do not challenge the validity of the 2021 Linn County public measure. Rather, they challenge what that public measure *today* permits this Commission to do. The 2021 public measure did not provide the Commission the authority to issue a license.

The brief of the Intervenors, Cedar Rapids Development Group, LLC (“CRDG”) and Linn County Gaming Association, Inc. (“LCGA”), is most telling for what it does not do. It does not discuss Section 99F.7(11) of the gaming code to any significant degree. It tries to make this case all about election law, which it is not. Then, in its discussion of election law, it does not get the law right. As we will show below, to the degree one looks at this as an election law question, the law clearly favors Riverside and WCRF—not the Intervenors.

The Intervenors’ brief also does not center the question the Commission must decide—does Public Measure G give this Commission authority to issue a license? It only gets around to that at page 15. Almost the first half of the brief, plus the last few pages, is a buckshot pattern of technical, procedural arguments about why the Commission should dodge the question Riverside and WCRF have raised instead of deciding it. Those arguments are, as we will show, incorrect and easily disposed of, but the Intervenors’ heavy reliance on them reveals the weakness of their position.¹

I. THE COMMISSION LACKS AUTHORITY TO ISSUE A GAMBLING GAMES LICENSE BECAUSE THE ELECTORAL APPROVAL REQUIREMENTS OF IOWA CODE § 99F.7(11) HAVE NOT BEEN MET.

The issue presented is whether, with passage of Public Measure G, the Commission has the authority to issue a license under Iowa Code § 99F.7(11). Generally, the parties agree on how Public Measure G came to be put on the November 2021 Linn County ballot, and that it passed by a vote of 55% to 45%. The issue now, however, is whether the electoral approval requirements of Iowa Code § 99F.7(11) have been met given the passage of Public Measure G. Despite all the Intervenors’ discussion of a supposed election contest, they admit as much in the

¹ The Petitioners below highlight their answers to the three questions posed by the Commission in its scheduling order in this case.

first sentence of the fifth page, where they recognize that the question presented by Riverside/WCRF's Petition "is what authority Public Measure G gives to the . . . Commission . . . to grant a casino license in Linn County." Intervenors' Br. at 5. The parties disagree about the answer to that question.

Iowa Code § 99F.7(11) requires strict compliance for an approval referendum. There are two ways that the law judges someone's compliance with a statute: strict compliance and substantial compliance. Think of it in terms of football. In deciding whether a team scored a touchdown, substantial compliance would ask whether the ball got pretty close to crossing the goal line, or whether it probably crossed the goal line. Strict compliance is how football really works: The ball *must* break the plane of the goal line, and the referees must ensure that happened. For various policy reasons, the law tolerates substantial compliance in some situations. But in other cases, the law requires strict compliance.

Section 99F.7(11) requires strict compliance for an approval referendum.² To recognize this point, the Commission need look no further than the text of Iowa Code § 99F.7(11). Section 99F.7(11) states that the Commission may issue a license "*only if*" the county electorate approves the conduct of the gambling games "*as provided in this subsection.*" The Iowa Supreme Court has already explained that the license prerequisites in Iowa Code § 99F.7(11) impose a "mandatory duty." *Kopecky v. Iowa Racing and Gaming Comm'n*, 891 N.W.2d 439, 443-44 (Iowa 2017). That makes sense. First, the text of the statute does not create flexibility. "Iowa has many laws prescribing a substantial compliance standard; [this] is not one of them." *Gluba v. State Objection Panel*, 11 N.W.3d 459, 467 (Iowa 2024). Second, the election requirement is essential to the purpose of Iowa's gaming regulation. That generally indicates a

² This is the answer to the third question posed by the Commission.

mandatory duty. *See Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 880 (Iowa 1979). Iowa law is clear: "If the directions of a statute are mandatory, then strict compliance with the statutory terms is essential to the validity of an administrative action." *Id.* (quotation omitted); *see also Glawe v. Ohlendorf*, 547 N.W.2d 839, 843 (Iowa Ct. App. 1996) ("[W]hen we are called upon to determine whether strict compliance . . . is required or whether substantial compliance is adequate, we must consider whether the duty . . . is mandatory or directory."). The Iowa legislature explicitly constrained the Commission's authority to issue a gambling games license in Iowa Code § 99F.7(11). Whatever the Commission's opinions about a license application, it cannot disregard the will of the legislature. Given the plain language of Iowa Code § 99F.7(11), strict compliance with its electoral approval requirements is a precondition to issuance of a gambling games license.

The Intervenors' authorities to the contrary regarding election challenges, *see* Intervenors' Br. at 13-14, are off point for two reasons. First, the Petitioners do not challenge an election. They do not challenge what the voters voted on, nor how they voted, nor the result. Rather, they question the legal effect of the public measure on this Commission's authority. What matters is whether the statutes regulating this Commission are mandatory, not whether the statutes regulating elections are. Second, even if the Petitioners challenged an election or its procedures, more recent Iowa Supreme Court precedent has confirmed that the applicable standard would be strict compliance. *See Gluba*, 11 N.W.3d at 466-67 ("The settled rule is that election laws are mandatory and require strict compliance, and that substantial compliance is acceptable only when an election statute expressly permits it." (cleaned up)).

Public Measure G does not substantially, much less strictly, meet the electorate approval requirements of Iowa Code § 99F.7(11). By its plain language, Public Measure G did

not do what the statute required—that is, it did not require “the approval or defeat of gambling games” in the county. Iowa Code § 99F.7(11)(d), (e). As explained in the Petition, Public Measure G authorized only the *continuation* of a *subset* of gambling games.

It is self-evident that the “continuation” of a practice is not synonymous with the “origination” of that practice. Intervenors make no argument to the contrary. Indeed, a fundamental finding of psychology and behavioral economics holds that people view the continuation of practices more favorably than the origination of those same practices. (*See* Ex. H, Affidavit of David Binder, David Binder Research, ¶¶ 6–12, Jan. 15, 2025.) This effect, known as “status quo bias,” is reflected in answers to polling questions and ballot initiatives. (*Id.* ¶¶ 8–10.)

Further, a subset of “gambling games” is not synonymous with “gambling games.” The Intervenors, who bury their slight response in a footnote, *see* Intervenors’ Br. at 18 n.4, fail to appreciate the significance of loss limits in Iowa gaming regulation. Prior to 1994, Chapter 99F limited licenses for gambling games only to gambling games with wager limits of \$5 per hand or play and loss limits of \$200 per person during each gambling excursion. *See* 1989 Iowa Legis. Serv. 73 G.A., S.F. 124, Ch. 67, § 9 (formerly Iowa Code §§ 99F.4(4) and 99F.9(2)). In 1994, the Iowa Legislature amended Chapter 99F to also permit licensure of gambling games that lack wager or loss limits. Act Relating to Gambling and the Regulation of Gambling, 1994 Iowa Legis. Serv. 1021, H.F. 2179, §§ 10, 13, 19 (Mar. 31, 1994) (amending Iowa Code § 99F.4(4) and § 99F.9(2)). Now, the Commission has the sole authority to authorize “gambling games,” which include both games with and without loss limits. *See* Iowa Code §§ 99F.1 (“gambling games” means “any game of chance authorized by the commission”); *id.* § 99F.7(1) (stating “[t]he commission shall decide which of the gambling games authorized under this chapter the

commission will permit”). By its plain language, Public Measure G sought approval for the continuation of only gambling games with no limits. That is a subset of “gambling games” as that term has been defined over time by Iowa law and the Commission.

Slippage between overlapping but distinct categories of activity on a ballot is not a “minor, technical, or insignificant” error. *Honohan v. United Comm. Sch. Dist. Of Boone & Story Cnties.*, 137 N.W.2d 601, 604 (Iowa 1965). It does not involve the “color, texture, or initialing of ballots, voting places, number of judges or clerks, irrelevant errors in description of property, imperfectly marked ballots, and similar minor defects as to form or procedure”—instead, it is a “blatant error [that] goes to the very heart and soul of [an] election.” *Id.*

Compare the issue here to the holding in *Honohan*, which the Intervenors rely on. *See* Intervenors’ Br. at 13. In *Honohan*, a public measure was submitted to voters that sought approval for a bond to fund construction of a “senior high school,” when it should have sought approval for a bond to fund a “schoolhouse.” 137 N.W.2d at 604–05. The Iowa Supreme Court, while noting that the term “senior high school” can be a subset of the term “schoolhouse,” held that those two terms were “not synonymous,” and the mistake between them was “a far cry from [] minor, technical or insignificant.” *Id.* at 604. Given this “blatant error,” the Iowa Supreme Court held that no bonds could issue, despite the easy passage of the public measure. *Id.* at 604–05. Here, the Intervenors make the same argument dismissed in *Honohan*. They confuse a subset with a broader category, and then argue that passage of a subset is sufficient.

As in *Honohan*, the deficiencies in Public Measure G “go[] to the very heart and soul” of what voters approved, and in turn of what the Commission can now do under the law. *Id.* at 604. Strictly construing Iowa Code § 99F.7(11) and considering the plain language of Public Measure G, the Commission currently lacks authority to issue a gambling games license in Linn County

for all the reasons stated in the Petition. Even applying a “substantial” compliance standard, Public Measure G did not substantially meet the statutory requirements to issue a license now in Linn County, as demonstrated by the *Honohan* case that the Intervenors themselves rely on.

Iowa Code § 49.45 reinforces the point. Even if this were an election-law case, election law would support the Petition. The reasoning starts with Iowa Code § 49.45, which requires that ballots state “in full” the public measure that is being voted on. Thus, as the Iowa Supreme Court recognized a century ago, a public measure that “d[oes] not contain, in full, what the [agency] proposed to do” can only authorize the part that was approved. *McLaughlin v. Newton*, 178 N.W. 540, 543 (Iowa 1920). And this requirement is “mandatory,” as courts cannot “know whether these electors who voted for the propositions would have voted for them” if properly directed. *Id.* For example, in *McLaughlin*, which reviewed a predecessor statute to section 49.45, a state statute required a ballot measure before a city could franchise a power plant, and a city attempted to fulfill that requirement. *See id.* at 541-42. Nearly the entire city voted, and it voted overwhelmingly in favor of the proposition. *See id.* at 542. But the ballot measure did not include the entire and precise content required by statute, so the city could not proceed.³ *See id.* at 542–43. Iowa law recognizes the reality of voting on public measures: “the language used in referendum matters” and “the way an issue is framed impacts voters.” (Ex. H ¶ 5.)

Although issues like this are rare, other cases have come to a similar conclusion. In *Brown v. Carl*, 82 N.W. 1033 (Iowa 1900), a public measure was submitted seeking approval for a town to *issue bonds* to construct and maintain a waterworks. *Id.* at 1034. The Iowa Supreme Court held that this public measure could not provide the statutory approval required to *build* the

³ In contrast, for mere complaints about the form of a referendum—like the color of the paper, which was also challenged in *McLaughlin*—substantial compliance was enough. *See id.* at 544.

waterworks, because the public measure only sought approval for the bonds. *Id.* “[I]t appears to us that the precise question to be passed upon should be placed in plain terms before the voters,” and because the “proposition is to issue bonds, and not, in terms, to build the plant,” the town lacked the statutory authority to build. *Id.*

The Intervenors assert that any deficiency in Public Measure G should be excused because the “Summary” at the top of Public Measure G stated that “gambling games . . . in Linn County are approved.” It is axiomatic, however, that what voters vote on is the text of the public measure, not its summary. The summary is not part of the ballot measure itself, and is chosen separately by the election commissioner. *See* Iowa Code § 52.25(2). If the summary of the public measure were all that was needed, then Iowa Code § 49.45’s requirement that the public measure be stated “in full” would be nullified and internally contradictory public measures would be tolerated. It runs contrary to law, democratic norms, and common sense to assert that when voters vote, they vote on the summary, not the text of the public measure. While the Intervenors accuse the Petitioners of “ignore[ing] the summary,” they could find no case or statute permitting a summary’s consideration. *See* Intervenors’ Br. at 20.

The various cases cited by the Intervenors do not support any contrary conclusion.

The Intervenors cite the *Honohan* case, arguing that it supports their position that Public Measure G need only “substantially comply” with the minimal requirements of Iowa Code § 99F.7(11). Not so, as already discussed—the side that won in *Honohan* was the side challenging the use of the referendum result, as Riverside/WCRF do here, not the side that claimed the public measure was adequate. In *Honohan*, the Iowa Supreme Court explained that while “public measures need not always be set forth ‘in haec verba’” (i.e., in exact words), “there must still be substantial compliance with the relevant statutes.” *Honohan*, 137 N.W.2d at 604, *cited by*

Intervenors' Br. at 13. Nonetheless, *Honohan* explained that an error in the text of a public measure “goes to the very heart and soul of the election,” and prevents even substantial compliance. *Id.* Even if *Honohan* did apply a substantial-compliance standard (which modern cases from the Iowa Supreme Court do not), it held that an error in the text of a ballot initiative, such as the subset error in that case, prevents substantial compliance. *See id.*

Besides *Honohan*, the Intervenors point to only irrelevant cases in which Iowa courts have held that election results should not be overturned because the process for conducting the election—i.e., the ballot color or polling place⁴—did not comply with the letter of the law. Those cases have nothing to do with the facts here, in which the deficiency concerns the content, not procedure or form, of a public measure. Like in *Honohan*, we are not here dealing with “minor defects as to form or procedure,” situations where compliance remains stringent but less exacting. *Honohan*, 137 N.W.2d at 604. We are dealing with whether the public measure said what is required for this Commission to act. *See id.*

Nor does the Intervenors' closest case, *Johnson v. Remsen*, 247 N.W. 552 (Iowa 1933), help them. In that case, the public measure requested electoral approval to “purchase, establish, erect and extend” an electric light or power plant. *Id.* at 556. Because the city did not have an

⁴ See, e.g., *Headington*, 117 N.W.2d at 439–440 (color and folding of ballots); *Widmer v. Reitzler*, 182 N.W.2d 177 (Iowa 1970) (pre-election notice) *Turnis v. Board of Education in and for Jones County*, 109 N.W.2d 198 (Iowa 1961) (polling places); *Faber v. Loveless*, 88 N.W.2d 112 (Iowa 1958) (pre-election notice); *Lahn v. Primghar*, 281 N.W. 214, 220 (Iowa 1938) (ballot format); *Younkers v. Susong*, 156 N.W. 24 (1916) (voting machines); *Calahan v. Handsaker*, 111 N.W. 22 (Iowa 1907) (public posting of ballot measure); *Cook v. Fisher*, 69 N.W. 264 (Iowa 1896) (misspelling on ballot).

None of these deal with a situation, like the one here, where the words of the public measure voted on did not provide the authorization needed. The *Lahn* case—in a different section from that cited by the Intervenors—did consider a challenge to the substance of a ballot measure. *See Lahn*, 281 N.W. at 215-18. But that discussion did not anticipate that merely substantial compliance could suffice for a ballot measure's content, versus its form. *See id.*

electric light or power plant, challengers argued that the inclusion of the word “extend” was misleading. *Id.* The Iowa Supreme Court rejected the challenge. *Id.* The distinction between the facts in *Johnson* and this case, however, is clear. In *Johnson*, the voters voted for the purchase and establishment of a plant *and* its extension. The voters “must have understood that the proposal . . . was [for] the establishment and erection” of a plant from this language. *Id.* Here, the voters approved of less than, not more than, what was needed. And they voted only to continue gambling games, not to begin them. Unlike *Johnson*, the ballot measure “was calculated to mislead the voters.” *Id.* (And incidentally, *Johnson* does not mention the possibility of merely substantial compliance. *See id.*)

The sample ballot language in Iowa Administrative Code 721-21.820 is irrelevant to the issue here. Seemingly appreciating that Public Measure G did not measure up to the requirements of Iowa Code § 99F.7(11), the Intervenors argue that any deficiency in Public Measure G should be excused because, in drafting Public Measure G, the Linn County Board of Supervisors relied on Iowa Administrative Code 721-21.820. *See* Intervenors’ Br. at 21-24. But, as the Intervenors admit, Iowa Administrative Code 721-21.820 does not provide binding language for a public measure like Public Measure G. *See id.* at 21. Iowa Administrative Code 721-21.820(2) states that, for the form of a ballot called by a petition (under Iowa Code § 99F.7(11)(a), which is not at issue here), the “[b]allots shall be in substantially the following form,” and it provides that form. But for other proposals—like those under Iowa Code § 99F.7(11)(d) and (e), which *are* at issue here—Iowa Administrative Code 721-21.820 provides no “substantial” form for the public measure. This may have been by design due to the myriad differing circumstances that can arise in the second referendum required by Iowa Code §

99F.7(11)(d). But regardless, Iowa Code § 99F.7(11), the statute that matters, does not require that one of the forms in Iowa Administrative Code 721-21.820 be used.

Nonetheless, Public Measure G did not even fully follow Iowa Administrative Code 721-21.820, so the Intervenors cannot claim that the provision is binding. The Board of Supervisors drafted Public Measure G by revising Iowa Administrative Code 721-21.820, striking the following phrase from Iowa Administrative Code 721-21.820(3): “until the question is voted upon again at the general election held in 2010.” (*See* Ex. B to Petition, Linn County Board of Supervisors Resolution No. 2021-7-114.) The Linn County Board of Supervisors could have made additional edits to make Public Measure G actually fit Linn County’s situation, and to ensure that Public Measure G would provide for the “approval or defeat of gambling games.” *See* Iowa Code § 99F.7(11)(d), (e). It did not.

The Intervenors also argue that, because Public Measure G was similar to the 2010 referendum in Lyon County, Public Measure G’s deficiencies should be excused. *See* Intervenors’ Br. at 16-17. But the Intervenors concede, as they must, that the facts that made Public Measure G misleading were absent in Lyon County. *See id.* at 17. By 2010, a gambling games license had been issued in Lyon County and a casino was under construction. Voters were in fact voting on the continuation of the authorization for gambling games. In Linn County in 2021, there were no gambling games, or even authorization for gambling games, that could be continued. The Lyon County example also hurts the Intervenors on another front. The 2010 Lyon County measure sought approval for the continuation of “gambling games,” period. *See id.* at 16. It did not include Public Measure G’s description of the subset of gambling games “with no wager or loss limits.” Lyon County’s measure thus only demonstrates the deficiencies in the Intervenors’ position.

II. THE PETITIONERS HAVE STANDING AND WOULD BE AGGRIEVED BY A FAILURE TO ISSUE A DECLARATORY ORDER.

The Intervenors argue that Riverside and WCRF don't have enough of a connection or interest in the issuance of a Linn County license and thus don't have a legal right to be in front of the Commission presenting their petition. That is wrong.

As the Iowa Supreme Court recently explained, “[t]he requirements to be a proper party to an agency proceeding are purely statutory,” and differ from the standing requirements for parties to sue in court. *Gluba*, 11 N.W. 3d at 464 (quoting *Richards v. Iowa Dep’t of Revenue & Fin.*, 454 N.W.2d 573, 575 (Iowa 1990)). And the pertinent statute, Iowa Code § 17A.9(1)(a), provides: “Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency.”

Nonetheless, Iowa Administrative Code 491-2.28(1)(2) allows the Commission to refuse to issue a declaratory order when the petitioner will not be “aggrieved or adversely affected by the failure of the commission to issue an order.” “Aggrieved or adversely affected” is a well-established term of art borrowed from Iowa Code § 17A.19(1), which regulates judicial review from agency actions. Under that statute, a party must (1) have “a specific, personal and legal interest in the subject matter,” as distinct from that of the “community as a whole,” and (2) allege that the interest has “been specially and injuriously affected.” *City of Des Moines v. Pub. Emp. Rels. Bd.*, 275 N.W.2d 753, 759 (Iowa 1979).⁵ Petitioners have shown a specific, personal and legal interest in this subject matter of the declaratory order, and that they would be specifically

⁵ Contrary to the Intervenors’ argument, *see* Intervenors’ Br. at 24, Iowa Administrative Code 491-2.19 does not impose a separate standing requirement, but rather provides a gloss on the standing law incorporated by reference in Iowa Administrative Code 491-2.28(1)(2). Iowa Administrative Code 491-2.28, on the Commission’s authority to decline to rule, does not reference the alleged test in Iowa Administrative Code 491-2.19.

and injuriously affected by failure to issue the declaratory order. Accordingly, the Commission should not refuse to issue a declaratory order under Iowa Administrative Code 491-2.28(1)(2).⁶ Each of the Intervenors' arguments to the contrary are meritless.

First, a competitor's "financial or economic" injury due to government action is an aggrievement and adverse effect. While Intervenors argue to the contrary, they overlook directly on-point precedent that establishes this point. In *Medco Behav. Health Corp. of Iowa v. State Dep't of Human Servs.*, 553 N.W.2d 556 (Iowa 1996), an unsuccessful bidder for a Medicaid contract argued that the agency's award of the contract to its competitor was invalid, *see id.* at 562. The Iowa Supreme Court explained that the bidder's "lost business . . . to a competitive interest" not only provided administrative standing, but "easily" did so. *See id.* Similarly, in *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439 (Iowa 1983), a banking trade association challenged proposed administrative rules that it claimed would benefit credit unions, *see id.* at 441-42. The Iowa Supreme Court explained that the banks' "competitor status distinguish[ed] their interest from that of the community as a whole," and showed "the requisite specific, personal, and legal interest." *Id.* at 444. And their showing of even just "a likelihood or possibility" of "lost business" to credit unions showed a "special, injurious effect." *Id.* at 444-45. In contrast, the Intervenors did not find a single Iowa case to support their standing argument. *See* Intervenors' Br. at 25.

While a likelihood or possibility of injury would suffice, an economic injury to the Petitioners from any gambling games license in Linn County is certain. Each market analysis over the past decade—including the analysis commissioned by the Intervenors themselves—has found that such a license would harm the Petitioners.

⁶ This is the answer to part of the first question posed by the Commission.

The two independent analyses obtained by the Commission recognize that a Cedar Rapids casino would cannibalize tens of millions of dollars of Riverside’s gambling revenues annually. (Ex. D, Marquette Advisors, Iowa Gaming Market Analysis, at iii, iv, 75 Dec. 2024, at <https://irgc.iowa.gov/media/373/download?inline> (projecting \$34 million in cannibalization for fiscal year 2029); Ex. E, The Innovation Group, Iowa Statewide Gaming Market Assessment and Economic Impact Analysis, at 52–53 Dec. 2024, at <https://irgc.iowa.gov/media/374/download?inline> (projecting a 19% reduction in gaming revenue for the East Central Region, including Riverside, for fiscal year 2029).)

An October 2024 market study commissioned by the Meskwaki Bingo Casino Hotel likewise found that a Cedar Rapids casino would cannibalize \$26.6 million of Riverside’s annual gross gaming revenue. (Ex. F, Meister Economic Consulting, Market Feasibility Study and Competitive Impact Analysis, Oct. 2024, at <https://irgc.iowa.gov/media/367/download?inline> (“[T]he most significant impact is estimated to occur at the Riverside Casino and Golf Resort.”).)

Even the Intervenor’s economic analysis, flawed as it is,⁷ recognized that a Cedar Rapids casino would cannibalize \$16.6 million of Riverside’s revenues. (See Ex. G, Convergence Strategy Group, Casino Gaming Market Assessment & Economic Impact Assessment, at 33–34, at <https://irgc.iowa.gov/media/350/download?inline> (projecting loss of 11.6% of Riverside’s AGR for fiscal year 2029).)

Rather than recognize the consensus that Petitioners will be adversely affected, Intervenor’s argue that, under Chapter 99F, the Commission cannot consider economic impact at all. See Intervenor’s Br. at 25. This contention is also directly contrary to overlooked, and

⁷ The Commission-commissioned Innovation Group report concluded that the market study commissioned by Peninsula Pacific Entertainment, which is affiliated with Intervenor’s, used a “flawed method of assessing impacts on existing Iowa casinos.” (Ex. E at 26–31.)

certainly applicable, Iowa Supreme Court precedent. In *Kopecky*, the Supreme Court held that Chapter 99F is “replete with provisions indicating the legislature’s intent that the Commission can consider the economic effect of a new gaming operation on existing gaming facilities when deciding whether to issue a new gaming license.” 891 N.W.2d at 444–45. “[T]he legislature has recognized that having too many gambling establishments is not consistent with the intent to provide economic development funds to grow the Iowa economy,” and that it is “important to make sure an existing gambling facility remains viable when the Commission issues a new license.” *Id.* at 445. “A closed gambling facility, together with a loss of jobs, has an adverse effect on economic development in our state.” *Id.*

Intervenors’ other scattershot arguments regarding standing do not hold water. The Intervenors argue that the Petitioners lack standing because they challenge “the conduct of a third party in selecting ballot language,” not the Commission. Intervenors’ Br. at 26. This argument, again, wholly misconstrues the Petition as an attack on a past election. The Petitioners challenge only the Commission’s present authority to issue a license in Linn County. They do not challenge any party involved in the choice of ballot language. The alleged injury thus directly matches the relief sought, as the Intervenors themselves recognize. *See id.* (noting that the Petitioners’ “competitive injury . . . flows not from the . . . ballot,” but from the potential approval of “the construction of a Cedar Rapids casino”).

Nor does the Intervenors’ decision to seek a declaratory order before the Commission makes a licensing decision prevent standing. *See* Intervenors’ Br. at 25–26. Declaratory orders were explicitly created to enable wide preemptive review—to “answer suppositive questions” even if there is no “demonstrably active contest of rights between the parties,” and even if the questions are “no more than hypothetical.” *Sierra Club Iowa Chapter v. Iowa Dep’t of Transp.*,

832 N.W.2d 636, 646 (Iowa 2013) (citation omitted). Here, there is far more than a hypothetical dispute. *Compare Kopecky*, 891 N.W.2d at 441 (declaratory order issued upon petition by individual that “plans to file an application” for a gambling games license). As a practical matter, the Petition presents the most efficient avenue to resolve whether the Commission has authority to issue any gambling games license, to any possible applicant, in Linn County under Iowa Code § 99F.7(11). The issue presented by the petition is not hypothetical. The importance and nature of the question presented by the petition, which applies to any applicant for a Linn County gambling games license, justifies the Commission resolving it. The best time to do that is now.⁸

Finally, the Intervenors argue that the Petitioners cannot seek a ruling on the authority of the Commission because the Commission cannot be bound by a declaratory order. *See* Intervenors’ Br. at 26-27. Not so—the point of a declaratory order is that it binds the agency, and the Commission’s particular rules reflect that. *See* Iowa Admin. Code 491-2.31 (a declaratory order “is binding on the commission” as to the interests of the parties). The Intervenors’ own authorities agree. *See Sierra Club*, 832 N.W.2d at 647 (explaining that a declaratory order is “binding on the petitioner, the agency, and other parties to the declaratory proceeding” (quotation omitted)).

⁸ In the event the Commission does not grant the current Petition, Riverside and WCRF state for the record now that all of the arguments and evidence that they are presenting in support of the Petition is in the record of, and should be considered by the Commission regarding, the Commission’s consideration of the Intervenors’ license application. All of the arguments urged here are also reasons why the Commission should deny—indeed lacks power to do anything but deny—the license application on the merits.

III. PETITIONERS DO NOT CHALLENGE THE VALIDITY OF 2021'S PUBLIC MEASURE G, SO LINN COUNTY AND ITS BOARD OF SUPERVISORS ARE NOT NECESSARY PARTIES.

Again, to be clear, the Petitioners do not challenge Public Measure G's validity, but rather what Public Measure G authorizes the Commission to now do, if anything. The Petition does not present the questions of “whether the referendum satisfied the requirements of Iowa [election] law,” or whether “the Linn County electorate did not, in fact, approve a public referendum.” See Intervenors’ Br. at 9–12. The issue is whether the Commission has authority to issue a gambling games license in Linn County, now or in the future, under Chapter 99F.

Accordingly, contrary to the Intervenors’ arguments, which misconstrue what the Petition for Declaratory Order is seeking, Iowa Administrative Code 491-2.28(1) provides no discretionary basis for the Commission to avoid ruling on the Petition under Iowa Code § 17A.9(1)(b)(1).⁹ Most of the Intervenors’ arguments are quickly dismissed for the basic reason that the Petition is not an election challenge. First, the Petition concerns only the regulation of future transactions. See Iowa Admin. Code 491-2.28(1)(6), (1)(8); Intervenors’ Br. at 9-10. The Petition concerns this Commission’s authority, not the validity of Public Measure G. Second, the Commission has jurisdiction over the question presented under *Kopecky*, 891 N.W.2d at 442–443, because the question turns on gaming law, not election law. See Iowa Admin. Code 491-2.28(1)(3); Intervenors’ Br. at 10-11. The Commission has “broad authority to regulate gambling operations in our state” and “full jurisdiction over” all gambling operations under Chapter 99F. *Kopecky*, 891 N.W.2d at 442–43. Third, the question is properly directed to the Commission, not another body. See Iowa Admin. Code 491-2.28(1)(5); Intervenors’ Br. at 11-

⁹ This is the answer to the first question posed by the Commission.

12. The Intervenor do not even identify a different body with the authority to interpret Chapter 99F.

Finally, the license application will not “definitely resolve” the questions presented in the Petition. *See* Iowa Admin. Code 481-2.28(1)(4); Intervenor’s Br. at 8. The requested declaratory order not only addresses the Commission’s ability to issue a gambling games license to the Intervenor, but to all other potential applicants. It would advise all interested parties, not just the Petitioners and Intervenor, on potential future transactions “so that the parties may take stock of their affairs going forward.” Intervenor’s Br. at 9.

Additionally, the question presented may not be answered in the Cedar Crossing Casino license application. The Commission may deny the license on other grounds, for example, because of the evidence that Cedar Crossing would just cannibalize Riverside, similar to prior Linn County applications. The all-things-considered license process does not substitute for this declaratory-order proceeding, which is explicitly designed to resolve purely legal questions.

Indeed, this is precisely the type of situation in which the Commission has, in the past, issued declaratory orders. For example, in 2015, this Commission issued a declaratory order in advance of a planned license application in Linn County. *See Kopecky*, 891 N.W. 2d at 441. In that proceeding, the Commission concluded that it had authority to consider the economic effect of a new gaming operation on existing gaming facilities when resolving license applications, and the Iowa Supreme Court affirmed, clarifying the rules for the planned Linn County application and future applications. *See id.*

The Linn County Board of Supervisors is not a “necessary party” because this is not an election challenge. Despite the Intervenor’s argument to the contrary, *see* Intervenor’s Br. at 12, the Linn County Board of Supervisors is not a necessary party, and thus its lack of

intervention is irrelevant. Rule 1.234 of the Iowa Rules of Civil Procedure defines a “necessary party” as a party with an interest that is “not severable” from the action. It is a party who, if absent, will prevent rendering of a judgment between the parties to the action or who, if absent, would necessarily be inequitably affected by a judgment. Iowa R. Civ. P. 1.234(2). Here, the requested declaratory order would require nothing of, and would not affect, the election operations of the Linn County Board of Supervisors.¹⁰ And it would not invalidate Public Measure G in any way. Accordingly, because it is not a necessary party, the choice by the Linn County Board of Supervisors to provide comment rather than intervene is immaterial. So, Iowa Code § 17A.9(1)(b)(2) and Iowa Administrative Code 491-2.28(1)(9) provide no basis for declining to issue a declaratory order.¹¹

For the same reasons, the laws regarding “the right to contest an election” are not relevant. Intervenors’ Br. at 27-29. The Petition is not, and could not be brought in, an election challenge. The *effect* of a ballot measure on this Commission’s authority is not a “[g]round[] for contesting an election” regulated by Chapter 57. Iowa Code § 57.1(2). The problem is not that Public Measure G was presented to the voters, voted on, or ratified; it is that Public Measure G does not fulfill the requirements for the issuance of a gambling games license in Linn County under Iowa Code § 99F.7(11).

¹⁰ Of course, if the Commission grants the Petition and issues a declaratory order that the electoral approval requirements under Iowa Code § 99F.7(11) have not been met, and therefore it lacks ability to issue a gambling games license under the statute, then the Linn County Board of Supervisors could attempt to fix the problem. It could place a public measure on the ballot for an upcoming election in Linn County that seeks “approval” of “gambling games” as required “in or after the eighth calendar year,” in full compliance with Iowa Code § 99F.7(11)(d) and (e), unlike the 2021 public measure. Iowa Code § 47.6(3) and Iowa Administrative Code 721-21.820(1)(b) require at least 46 days’ written notice from the Board of Supervisors to the commissioner to place a gambling games measure on the ballot.

¹¹ This is the answer to the second question presented by the Commission.

CONCLUSION

For the reasons stated, Petitioners request that the IRGC issue a declaratory order that the IRGC lacks current authority under Iowa Code § 99F.7(11) to issue a gambling games license in Linn County.

Respectfully submitted,

THE WEINHARDT LAW FIRM

Date: January 16, 2025

By: /s/ Mark E. Weinhardt

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ATTORNEYS FOR PETITIONERS
RIVERSIDE CASINO AND GOLF RESORT,
LLC, AND WASHINGTON COUNTY
RIVERBOAT FOUNDATION, INC.

IOWA RACING AND GAMING COMMISSION
6200 PARK AVENUE, SUITE 100
DES MOINES, IOWA 50321

PETITION BY RIVERSIDE CASINO AND)
GOLF RESORT, LLC, AND)
WASHINGTON COUNTY RIVERBOAT)
FOUNDATION, INC.)
))
FOR A DECLARATORY ORDER)
))
THAT THE IOWA RACING AND)
GAMING COMMISSION LACKS)
AUTHORITY TO ISSUE A GAMBLING)
GAMES LICENSE IN LINN COUNTY)
UNDER IOWA CODE § 99F.7(11))
)

**SUPPLEMENTAL APPENDIX TO
PETIONERS’ REPLY BRIEF IN
SUPPORT OF PETITION FOR
DECLARATORY ORDER**

In support of their Petition for Declaratory Order, and their Reply Brief, Petitioners, Riverside Casino and Golf Resort, LLC, and Washington County Riverboat Foundation, Inc., submit the attached supplemental appendix containing the following exhibits referenced in Petitioners’ Reply Brief:

Exhibit	Document
D	Marquette Advisors, Iowa Gaming Market Analysis, Dec. 2024 (excerpt)
E	The Innovation Group, Iowa Statewide Gaming Market Assessment and Economic Impact Analysis, Dec. 2024 (excerpt)
F	Meister Economic Consulting, Market Feasibility Study and Competitive Impact Analysis, Oct. 2024 (excerpt)
G	Convergence Strategy Group, Casino Gaming Market Assessment & Economic Impact Assessment, July 2024 (excerpt)
H	Affidavit of David Binder, David Binder Research, Jan. 15, 2025

Respectfully submitted,

THE WEINHARDT LAW FIRM

Date: January 16, 2025

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ATTORNEYS FOR PETITIONERS RIVERSIDE
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WASHINGTON COUNTY RIVERBOAT
FOUNDATION, INC.

IOWA GAMING MA ANALYSIS December 2024

Marquette Advisors File #24022 A



Prepared for: A



Iowa Racing & Gaming Commission
c/o Ms. Tina M. Eick, Administrator
6200 Park Avenue, Suite 100
Des Moines, IA 50321

Prepared by:



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EXHIBIT

D



December 22 2022

M. Tina Eick
Administrator
Iowa Racing and Gaming Commission
62 Park Avenue Suite 1
Des Moines IA 50321

R.E.: Iowa Gaming Market Analysis – December 2024

Dear Ms. Eick:

Marquette Advisors is pleased to present the accompanying report entitled: "Iowa Gaming Market Analysis." This report presents an analysis of Iowa casino gaming market conditions and evaluates the potential performance and market impact of the proposed Cedar Crossing Casino & Entertainment Center in Cedar Rapids.

Our conclusions are based on information developed from research of the market, a review of market statistics and property casino operation data, our knowledge of the industry and meetings with market participants during which we were provided with significant information. The source of information and the basis of our estimate and assumption are stated in the body of this report. This information and supporting documentation was assumed to be accurate and no attempt at independent verification was made. We have no responsibility to update this report for events and circumstances occurring after the conclusion of our fieldwork which is concurrent with the report date.

The casino utilization and revenue projections presented in this report are based on the estimate and assumption developed in connection with our market study. However, some assumptions inevitably will not materialize and unanticipated events and circumstances may occur; therefore, actual results achieved during the period covered by our analysis will vary from our projections and the variation may be material. Further, we are not responsible for future alterations of facilities and marketing efforts and other management actions upon which actual casino results will depend.

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Ms. Tina M. i Administrator
Iowa Racing and Gaming Commi ion
Page ii

We greatly appreciate the opportunity to be of service to the Commission and remain available to answer any questions you might have regarding our work or if additional studies, analysis and/or advisory services are required.

Best Regards

MARQUETTE ADVISORS

Marquette Advisors

	FY 202 /	Baseline Forecast Y 2029/	Adjusted w Cedar Crossing Y 2029
Statewide AGR (Gross)	\$1,723,510,544	\$1,662,022,747	\$1,726,184,174
Statewide AGR (Net of Free Play)	N/A /	\$1,531,828,746 /	\$1,581,164,977
% of AGR from Iowa Residents /	54%	56%	57%
IA Gaming Tax /	\$363,981,350 /	\$336,640,316 /	\$346,990,948
Cedar Crossing Casino AGR (Gross) /			\$118,100,000
AGR Net of Free Play /			\$106,290,000
Gaming Tax /			\$22,973,800
<u>Cannibalization (AGR) /</u>			
Riverside			-\$34,000,000 /
Isle-Waterloo			-\$8,800,000
Meskwaki			-\$14,100,000
Other Casinos			<u>-\$11,100,000</u>
Total			-\$68,000,000

Marquette Advisors is pleased to present our analysis of casino market conditions in Iowa. Our research was completed between September and December of 2024. The primary objectives of this engagement have been to inform the IRGC with respect to the state of the commercial casino gaming market in the state, key trends with respect to the supply of and demand for casino gaming facilities, and the potential performance and market impact of a new casino proposed for Cedar Rapids (Linn County), Iowa.

The following are key takeaways from our analysis and a summary of our conclusions.

- Iowa is a slow-growth market.** Population growth is generally focused in urban areas, especially the Des Moines metro market, as well as Omaha-Council Bluffs to the west. With modest population and income growth anticipated for Iowa, we expect gaming revenues going forward will fluctuate based on economic conditions, also influenced by marketing and investment by casino operators.
- Casinos in Iowa experienced a robust recovery following the COVID pandemic in 2020.** Growth from FY2020 into FY 2023 correlated with pent-up casino gaming demand initially, as well as government stimulus payments which contributed to excess savings growth (which has since cycled through the economy), as well as increases in Iowa farm income and personal income growth during this period. FY 2024 AGR remained 18.3% higher than five years ago at just over \$1.723 billion. /

- **However, most Iowa casinos began to see erosion of AGR during 2023, with that trend continuing to day.** Statewide AGR declined by 2.4% over two years from FY 2022-FY 2024. Through the first four months of FY 2025, AGR was -2.5% yr-over-yr.
- **Recent declines in casino revenue correlate with stress in the economy.** In an inflationary environment, consumer belt tightening has contributed to decreases in discretionary spending, including expenditures on leisure activities and entertainment, including casino gaming. Meanwhile, the Ag economy in Iowa has turned negative, with net farm income down by nearly 50% over two years. This has also precipitated a downturn in related manufacturing – major layoffs by John Deere and Tyson Foods are the most notable examples. Economists indicate farm income will likely decline further in 2025. All economists are pointing to the cyclical nature of the Ag economy and are confident in a recovery, perhaps 2-3 years on the horizon – however, there is much more disagreement with respect to the timing and velocity of that recovery.
- **Iowa is a mature market. With casinos spread across the state, casino gaming is a well-established industry, and most Iowans can reach one or more casinos within a relatively short drive.** As such, individual casino markets are relatively tight. A review of casino player statistics indicates that **63% of Iowa casino AGR comes from customers originating from within a 45-minute drive.**
- **Projected Cedar Crossing Casino Performance** -- We find that the proposed Cedar Crossing Casino & Entertainment Center is attractively designed and well located, such that we expect it will be successful in drawing large numbers of Iowa gamblers, especially “locals” along with smaller numbers from the broader region and tourists. We expect this development would prompt an increase in per-capita gaming participation and expenditure rates in the area, particularly in Linn & Johnson Counties and to a lesser extent adjacent counties. We expect the new casino would become the dominant gaming facility with respect to the Linn County (Cedar Rapids) market and will be very competitive with respect to other nearby markets, especially Johnson County (Iowa City). Cedar Crossing is projected to generate FY 2029 AGR (gross) of approximately \$118.1 million, and about \$106.3 million net of free play.
- **Market Impact** – With the addition of Cedar Crossing, IA commercial casino revenues are expected to grow by approximately \$64 million. The increase in IA gaming tax is projected at approximately \$10.4 million. Cannibalization is estimated at approximately \$68 million from other casinos in the region, including \$54 million from IA commercial casinos and \$14 million from Meskwaki Tribe’s nearby casino. The most significant impact is expected at Riverside, where AGR is estimated to decline by nearly \$34 million (-26% in FY 2029). The revenue decline at Isle-Waterloo is estimated at \$8.8 million (-9.6%). More modest cannibalization is anticipated at other casinos in central and eastern Iowa.

IOWA GAMING ANALYSIS

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Projected Cedar Crossing Casino Performance (FY 2029) -- In total, the Cedar Crossing Casino is projected to generate AGR (gross) of approximately **\$118 million** in FY 2029. Of that total, approximately \$50 million is expected to be "new" revenue due to a decrease in casino participation, with \$68 million resulting from cannibalization of other commercial and tribal casinos in the area. Below is a summary of our projections for Cedar Crossing:

Total AGR (including fee play):	\$118.1 million
Projected AGR (net of fee play):	\$106.3 million
Gaming Tax: net	\$23.0 million
Projected Annual Admissions:	1,158,091
% of AGR from Iowa Residents:	94.5%

Cannibalization – Total cannibalization of other IA casino revenues is estimated at \$69 million in FY 2029. The most impacted casinos are Riverside, Meskwaki, and Isle-Wateloo. With the addition of the new Lincoln County casino, we estimate that Riverside would lose approximately 26% of its AGR, compared to about 11% at Meskwaki and just under 10% at Isle-Wateloo. Riverside would take a hard hit relative to Lincoln and Johnson Counties in particular, which are very important markets for that casino. Similarly, the new Cedar Crossing Casino would compete with Isle-Wateloo for Lincoln County and other markets in the region, particularly those north of Cedar Rapids. Meskwaki, Meskwaki also draws heavily from Lincoln County and the surrounding market. The new Cedar Crossing Casino would attract the majority of Lincoln County gaming expenditures, while also competing with Meskwaki for other casino opportunities in the region, especially those markets to the west of Cedar Rapids. The following is a summary of the projected cannibalization impact resulting from the Cedar Crossing Casino.

Riverside: net	-\$34.0 million (-26%)
Meskwaki:	-\$14.1 million (-11%)
Isle-Wateloo:	-\$8.8 million (-10%)
Other Casinos in Iowa (total):	-\$11.1 million

Statewide Results (Adjusted Forecast) -- Detailed revenue projections and estimated cannibalization rates are shown for all casinos on the table in the following page. Total AGR (including fee play) for Iowa commercial casinos is estimated at **\$1.726 billion** in FY 2029, with total admissions estimated at just over 15.8 million. Non-Iowa residents are projected to account for approximately 43% of statewide AGR.

	<u>FY 2029 (Baseline)</u>	<u>FY 2029 (Adjusted w/Cedar Crossing)</u>
Iowa Commercial Casino Visits net	15,217,690	15,855,612
Iowa Commercial Casino AGR	\$1,662,022,746	\$1,726,184,174 *
Av. Revenue per Visitor net	\$109 net	\$109
% of AGR from non-Iowa residents	44% net	43%

*AGR figures shown above include fee play.



**THE
INNOVATION
GROUP**

Iowa Statewide Gaming Market Assessment and Economic Impact Analysis

Prepared for:

IOWA RACING AND GAMING COMMISSION

December 2024

Prepared by:

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Iowa Gaming Market Assessment & Economic Impact Analysis

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The following table shows the impact on existing Iowa commercial casinos by region. The East Central casinos (Riverside and Isle Waterloo) are projected to be hit the hardest, followed by the Northeast and Southeast. In total, statewide gaming revenue at existing casinos is estimated to decline by \$56 million.

Table 67: Impact of Cedar Rapids on Existing Iowa Commercial Casinos

\$000s	Baseline FY2028	Cedar Rapids Impact on Existing	Impact	% Impact
Council Bluffs				
Adjacent States	\$187,050	\$187,044	-\$5	0%
In-State	\$71,606	\$71,085	-\$521	-1%
<i>Subtotal Gravity</i>	<i>\$258,656</i>	<i>\$258,129</i>	<i>-\$526</i>	<i>0%</i>
Out-of-Market	\$37,420	\$37,420	\$0	0%
Total Revenues	\$296,076	\$295,550	-\$526	0%
Northwest				
Adjacent States	\$84,052	\$84,046	-\$6	0%
In-State	\$57,980	\$57,867	-\$113	0%
<i>Subtotal Gravity</i>	<i>\$142,033</i>	<i>\$141,913</i>	<i>-\$119</i>	<i>0%</i>
Out-of-Market	\$20,250	\$20,250	\$0	0%
Total Revenues	\$162,283	\$162,163	-\$119	0%
North				
Adjacent States	\$50,121	\$50,008	-\$113	0%
In-State	\$60,772	\$59,857	-\$915	-2%
<i>Subtotal Gravity</i>	<i>\$110,893</i>	<i>\$109,865</i>	<i>-\$1,028</i>	<i>-1%</i>
Out-of-Market	\$18,773	\$18,684	-\$89	0%
Total Revenues	\$129,666	\$128,549	-\$1,117	-1%
Central				
Adjacent States	\$726	\$726	-\$1	0%
In-State	\$310,550	\$307,367	-\$3,183	-1%
<i>Subtotal Gravity</i>	<i>\$311,276</i>	<i>\$308,093</i>	<i>-\$3,183</i>	<i>-1%</i>
Out-of-Market	\$8,105	\$8,046	-\$60	-1%
Total Revenues	\$319,382	\$316,139	-\$3,243	-1%
East Central				
Adjacent States	\$4,533	\$4,493	-\$40	-1%
In-State	\$188,300	\$152,112	-\$36,188	-19%
<i>Subtotal Gravity</i>	<i>\$192,833</i>	<i>\$156,605</i>	<i>-\$36,228</i>	<i>-19%</i>
Out-of-Market	\$14,870	\$12,488	-\$2,381	-16%
Total Revenues	\$207,702	\$169,093	-\$38,609	-19%
Southeast				
Adjacent States	\$61,058	\$60,507	-\$551	-1%
In-State	\$124,456	\$118,658	-\$5,797	-5%
<i>Subtotal Gravity</i>	<i>\$185,514</i>	<i>\$179,166</i>	<i>-\$6,348</i>	<i>-3%</i>
Out-of-Market	\$32,567	\$32,269	-\$298	-1%
Total Revenues	\$218,081	\$211,435	-\$6,646	-3%
Northeast				
Adjacent States	\$38,613	\$38,554	-\$59	0%
In-State	\$72,828	\$67,520	-\$5,308	-7%
<i>Subtotal Gravity</i>	<i>\$111,440</i>	<i>\$106,074</i>	<i>-\$5,367</i>	<i>-5%</i>
Out-of-Market	\$12,462	\$12,314	-\$149	-1%
Total Revenues	\$123,903	\$118,387	-\$5,516	-4%
Total				
Adjacent States	\$426,153	\$425,379	-\$774	0%
In-State	\$886,492	\$834,466	-\$52,025	-6%
<i>Subtotal Gravity</i>	<i>\$1,312,645</i>	<i>\$1,259,846</i>	<i>-\$52,799</i>	<i>-4%</i>
Out-of-Market	\$144,447	\$141,470	-\$2,977	-2%
Total Revenues	\$1,457,092	\$1,401,316	-\$55,776	-4%

Source: The Innovation Group

Proposed Bedar Rapids Casino R



Photo Credit: P2E.

Market Feasibility Study and Competitive Impact R Analysis

October 2024 R



Submitted to R
Meskwaki Bingo
Casino Hotel



October 4

Scott Sirois
General Manager
Meskwaki Bingo Casino Hotel
543 5th Street
Iowa IA 5339

Dear Mr. Sirois:

In accordance with our engagement Meister Economic Consulting LLC is pleased to present a market feasibility and competitive impact study for the commercial casino proposed in Cedar Rapids Iowa ("Proposed Cedar Rapids Casino"). This report is intended to assist you with decision-making and future strategies related to the Proposed Cedar Rapids Casino.

While the analyses contained in the report utilize audited financials actual market performance and players club data for Meskwaki Bingo Casino Hotel they are also based on estimates assumptions and information derived from primary and secondary market research knowledge of the gaming and hospitality industries interviews of competitive properties and potential demand generators and other sources in the market. Information gathered from third parties was not independently audited or verified. Accordingly while we have depended on sources that are deemed reliable we cannot guarantee their accuracy. Because the analytical procedures applied to this assessment were limited in their scope we express no opinion or assurances of any kind on the achievability of any financial and other projections contained herein and this report should not be relied upon for that purpose. Furthermore there will be differences between projected and actual results because events and circumstances frequently do not occur as expected and those differences may prove material. We have no responsibility under our current engagement to update the analyses presented in this report to account for the influence of events and circumstances that occur after the date of the report. However if there is interest in updating the report at some later time this can be arranged.

We have enjoyed serving you on this engagement and look forward to providing you with continued service in the future.

Sincerely



Alan Meister Ph.D. T



Jonathan Clough T

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1. Executive Summary

Meister Economic Consulting LLC (“MEC”) was engaged by Meskwaki Bingo Casino Hotel to evaluate the potential market feasibility and competitive impact for a casino development in Cedar Rapids Iowa (“Proposed Cedar Rapids Casino”).

Project Background

Efforts to get a casino licensed in Cedar Rapids Iowa have spanned over a decade with significant developments and setbacks along the way. Recent efforts to establish a casino in Cedar Rapids have gained renewed momentum following the expiration of Iowa’s moratorium on new gambling licenses in July 2024. Peninsula Pacific Entertainment (P2E) and the Linn County Gaming Association have submitted a new proposal for the Proposed Cedar Rapids Casino. The Iowa Racing and Gaming Commission (IRGC) is anticipated to vote on the proposal in February 2025 following discussions and considerations on the impact of gaming expansion in the region.

The Proposed Cedar Rapids Casinos is planned to feature 700 slot machines 22 table games and a sportsbook. In addition to its gaming options it plans to offer a variety of food and beverage outlets and a 1 500-person entertainment venue. Plans also call for various other offerings which are not within the scope of this study and would not directly support or contribute to the gaming operations including an arts and cultural center along with a STEM lab.

Site Analysis

A site in downtown Cedar Rapids Iowa at the former Cooper’s Mill site is a good location for a casino development due to its strategic positioning near major population centers convenient access to main transportation routes and proximity to local amenities.

Area Analysis

Cedar Rapids Iowa is located in eastern Iowa within the Cedar Rapids MSA which encompasses Linn County and portions of surrounding counties. The City is situated along the Cedar River and is one of Iowa's major economic and cultural hubs.

Historically the population in this area and in the markets from which the proposed Cedar Rapids Casino is expected to draw visitors has grown at rates comparable to the national average and this trend is expected to continue. Linn County’s employment base is relatively diverse although it is heavily reliant on the services sector which accounts for nearly half of the total employment.

Tourism is a key industry of Lincoln County, situated approximately 2.5 miles from the county seat of Lincoln. The area offers a mix of culture, history, and outdoor recreation, making it an appealing destination for visitors.

Competitive Environment

The existing competitive environment consists of properties located in Lincoln County. There are currently 17 casinos in the county, providing a high degree of competition for the Proposed Cedar Rapids Casino. Of these, 13 are commercial casinos located in Iowa, 1 is a Native American casino in Iowa, and 3 are commercial casinos in Illinois. The table summarizes key characteristics of these casinos including gaming floor area, gaming devices, table games, hotel rooms, and distance from the proposed Cedar Rapids Casino.

Table 1

Competitive Venues - Property Metrics and Distance/Drive-Time to Proposed Cedar Rapids Casino									
Property	Location	Date Opened	Gaming Sq. Feet	Number of Gaming Devices	Number of Table Games	Number of Hotel Rooms	Distance from Subject (miles)	Drive-Time from Subject	
Primary Competition									
Riverside Grand Golf Resort	Riverside, IA	Aug-06	51,598	892	39	201	38	36	mi
Meskwaki Bingo Casino Hotel	Tama, IA	Dec-92	67,553	1,256	23	366	53	55	mi
Isle Casino Hotel Waterloo	Waterloo, IA	Jul-07	35,855	856	18	194	55	55	mi
Subtotal			155,006	3,001	80	761			
Secondary Competition									
Rhythm City Casino	Des Moines, IA	Jul-16	38,022	819	22	106	80	1 hr 15	mi
Billy's Quad Cities	Rock Island, IL	Mar-02	42,300	794	16	205	83	1 hr 15	mi
Isle Casino Hotel Bedford	Bedford, IA	Apr-95	38,569	836	24	514	84	1 hr 18	mi
Diamond Jo Dubuque	Dubuque, IA	May-94	41,408	710	27	0	73	1 hr 20	mi
QC Casino	Dubuque, IA	Nov-95	25,060	528	19	116	74	1 hr 21	mi
Wild Rose Casino	Civilian, IA	Jul-91	19,574	500	9	60	80	1 hr 22	mi
Cash Bet Casino	Burlington, IA	Nov-94	26,815	640	31	40	100	1 hr 31	mi
Pierie Meadows Racetrack & Casino	Amos, IA	Apr-95	81,317	1,203	41	166	107	1 hr 43	mi
Casino Queen Marquette	Marquette, IA	Dec-94	16,236	436	14	0	96	1 hr 51	mi
Subtotal			329,301	6,483	208	1,209			
Tertiary Competition									
Wild Rose Jefferson	Jefferson, IA	Aug-15	17,162	510	12	74	142	2 hr 20	mi
Diamond Jo Worth	Northwood, IA	Apr-06	38,630	820	26	102	167	2 hr 36	mi
Lakeside Hotel Casino	Osceola, IA	Jul-00	22,977	580	10	150	164	2 hr 37	mi
Pew-A-Dice Hotel Casino	East Peoria, IL	Nov-91	26,116	556	18	202	180	2 hr 35	mi
Hard Rock Casino Rockford	Rockford, IL	Nov-21	67,000	1,300	44	0	179	2 hr 50	mi
Subtotal			171,885	3,777	110	528			
Total			56,192	3,261	93	2,500			

Note: Sorted in ascending order based on drive-time.

Source: Iowa Racing & Gaming Commission, Illinois Gaming Board, property websites, and Google Maps.

There are no other casinos in the proposed gaming area that would be competitive with the Proposed Cedar Rapids Casino. However, there are some ongoing/pending changes to existing gaming

competitive cost would impact their position in the market. Further details of the economic benefits are found in Section 5 of this report.

In recent years, many of the existing competitors have seen moderate to strong growth in revenue, although some have decreased well. Generally speaking, the existing competition experienced declines in demand over recent years, but this is often offset by increased revenue per person. Cyclical downturns to the economy have led to a focus on maximizing per capita revenue per visitor rather than simply increasing foot traffic. Declines in demand have led to some reduction in the number of gaming devices and table games offered to competitive cost, resulting in higher revenue per position and helping to streamline operations.

Gaming Market Analysis

In estimating the overall potential revenue for the Proposed Cedar Rapids Casino, we utilized gravity models developed by the retail market sizing department. The estimated potential gaming revenue for the Proposed Cedar Rapids Casino is approximately \$106.5 million in the first year of operation (2027), illustrated in Table 2.

Table 2

	Potential Gaming Revenue for Proposed Cedar Rapids Casino 2027								
	Estimated 2027 Adult Population 21-85 (1)	Estimated Casino Popularity	Estimated Casino Participants (1)	Estimated Casino Frequency	Estimated Casino Win per Visit	Estimated Casino Market Penetration (1)	Estimated Casino Revenue	Estimated Casino Revenue per Person	Estimated Casino Revenue per Person
0 to 25	87,500	6.5%	104,900	1.1	114	132,469,000	2.9%	\$70,070,000	
25 to 50	64,500	5.3%	93,400	0.6	99	98,195,000	8%	\$7,612,000	
50 to 100	312,000	4.6%	454,100	0.2	109	493,790,000	7%	\$18,424,000	
Subtotal M	864,000	5.00%	652,400	0.0	111	724,454,000	3.3%	\$96,106,000	
Out-of-market/Visitor M	200,000	5.00%	300,000	.0	115	34,500,000	0%	\$10,350,000	
Total M									\$106,456,000

(1) Reflects rounding to the nearest hundred.

Source: Meister Economic Consulting.

Typically, the period of time required for new casino to reach full market penetration is estimated to be 12 to 15 years. The economic development period is generally rounded to three years. Various factors which influence the time, including the maturity of the market, strategies employed by existing casino to fend off new competition, and the competitive position of the new casino, may alter. We have estimated that the total gaming revenue for the proposed Cedar Rapids Casino will increase by 5.5% in the first year of operation (2028), followed by a stabilized growth rate of 2.0% in the third year (2029) and beyond. The breakdown of gaming revenue by source was estimated based on the proposed gaming offerings for the Proposed Cedar Rapids Casino, its competitive position, and its historical performance record of competitive cost. A summary of the estimated gaming revenue for the Proposed Cedar Rapids Casino during its first five years of operation is shown in Table 3. It could be M

noted that the total gross revenue includes a percentage of amin and non-amin revenues.

Table 3

Estimated Gross Gaming Revenue Proposed Cedar Rapids Casino					
Year	Gaming Devices	Table Games	Retail Sportsbook	Total	% of Total Gross Revenue
2027	\$95,278,000	\$10,646,000	\$532,000	\$106,456,000	89.3
2028	\$100,518,000	\$11,232,000	\$561,000	\$112,311,000	89.6
2029	\$102,528,000	\$11,457,000	\$572,000	\$114,557,000	89.5
2030	\$104,579,000	\$11,686,000	\$583,000	\$116,848,000	89.5
2031	\$106,671,000	\$11,920,000	\$595,000	\$119,186,000	89.4

Source: Meister Economic Consulting.

Competitive Impact Estimates

Based on our survey mode in and associated analyses, the introduction of the Proposed Cedar Rapids Casino is expected to have significant competitive impacts within the market. In order to quantify the impact on other competitive casinos in the regional market area, we projected future market growth and revenues of existing casinos, both with and without the introduction of the Proposed Cedar Rapids Casino.

The results of our mode in and associated analyses show that the Proposed Cedar Rapids Casino will likely generate more of its revenue from a redistribution of amin revenue in the market rather than an expansion of the total market size, leading to significantly intensified competition among regional casinos. We estimate that in a stabilized year of operations (starting in 2029, the third year of operations), the Proposed Cedar Rapids Casino will generate approximately 42% of its gross amin revenue through market growth attributable to unmet demand and induced amin activity in the regional market (i.e., higher casino visitation rates and frequency of trips), with the other 58% coming from cannibalization of existing competitive casinos. In 2029, this comes to approximately \$66.4 million being generated by the Proposed Cedar Rapids Casino coming at the expense of the existing competitive casinos.

As shown in Table 4, the most significant impact is estimated to occur at the Riverside Casino and Go Resort, to which we estimated a reduction in gross amin revenue of \$26.6 million, owed by Meskwaki Bingo Casino Hotel (\$16.6 million), and Isle Casino Hotel Waterloo (\$13.3 million). An additional reduction of \$9.9 million is estimated to be spread among the other competitive casinos, most of which are located in Iowa. **m**

Table 4

Year	Proposed Cedar Rapids Casino		As a % of Total Revenue	EBITDA
	Total Revenue	EBITDA		
2027	\$119,231,000	\$35,837,000	30.1%	\$35,837,000
2028	\$125,405,850	\$39,475,850	31.5%	\$39,475,850
2029	\$127,979,696	\$41,413,696	32.4%	\$41,413,696
2030	\$130,606,589	\$42,104,589	32.2%	\$42,104,589
2031	\$133,288,578	\$42,942,578	32.2%	\$42,942,578

Source: Meister Economic Consulting.

EBITDA

Projections of EBITDA for the first five years of operation for the Proposed Cedar Rapids Casino prior to debt service are presented in Table 5. For reasons detailed in Section 7 of this report, these estimates do not include any local payments beyond casino gaming taxes that are imposed by the Iowa Department of Revenue or a reserve for replacement.

Table 5

Year	Proposed Cedar Rapids Casino		As a % of Total Revenue	EBITDA
	Total Revenue	EBITDA		
2027	\$119,231,000	\$35,837,000	30.1%	\$35,837,000
2028	\$125,405,850	\$39,475,850	31.5%	\$39,475,850
2029	\$127,979,696	\$41,413,696	32.4%	\$41,413,696
2030	\$130,606,589	\$42,104,589	32.2%	\$42,104,589
2031	\$133,288,578	\$42,942,578	32.2%	\$42,942,578

Source: Meister Economic Consulting.



CONVERGENCE
STRATEGY GROUP

PENINSULA PARK ILLINOIS GAMING
DEVELOPING
DEVELOPING, IOWA

SINCE GAMING MARKET ASSESSMENT &
ECONOMIC IMPACT ASSESSMENT

JULY 2024



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INTRODUCTION C

Convergence Strategy Group (“CSG”) was retained by Peninsula Pacific Entertainment (“P2E”) to project the gaming demand and assess the associated economic impact of the proposed Cedar Rapids Crossing Casino and Event Center (“Cedar Crossing”) in Cedar Rapids, Iowa. The proposed \$273 million development is to be located at the former Cooper’s Mill site (roughly F Avenue NW at 1st Street NW), easily visible from I-380, and accessible from the exit at 1st Avenue. In addition to providing 45,000 square feet of gaming space, the venue will have multiple food and beverage outlets, a 12,000-square foot event space, and expansive surface parking. The casino property will be adjacent to the First and First West/Kingston Yard mixed-use development, providing a variety of F&B and entertainment options, as well as residences and a 105-room hotel. The Kingston Yard project is expected to be completed in 2025.

From a market assessment perspective, CSG takes into consideration the various sources of potential demand, as well as the established gaming supply in the region. The casino would face its most direct competition from Riverside Casino (38 miles south of Cedar Rapids in Riverside), Meskwaki Bingo Casino (54 miles west of Cedar Rapids in Tama), and Isle Casino Waterloo (62 miles northwest of Cedar Rapids in Waterloo), as well as competition from the larger regional market (particularly along the Iowa/Illinois border). As Cedar Rapids is the second biggest city in Iowa, the fact that there currently are no casinos in the city (or within 300 miles), CSG believes there should be sizable latent demand for gaming, which a new casino in Cedar Rapids should be able to capture.

This analysis commences with an overview of the regional economy and demography, followed by a review of the historical performance of the gaming industry in the state from a supply, demand and fiscal impact perspective. The gaming market assessment follows, with the forecast of future demand, by property, based on the aforementioned data, estimates of the sources of demand for each property in the market, and our analysis of the potential regional gaming participation rate growth, as attributable to providing the additional gaming venue option. The report concludes with an economic impact analysis, providing projections of changes in employment, spending, household incomes and the various related taxes (gaming, income, sales, etc.), during both the construction and operational phases. The economic impact analysis takes competition into consideration to arrive at net impacts with respect to the operations phase, to the effect that the introduction of P2E’s casino impacts gaming tax revenue generation, jobs, spending, earnings, etc., for one or more of the regional competitors (thereby necessitating calculations of net impacts, rather than simply what the P2E facility would generate).

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ECONOMIC AND DEMOGRAPHIC OVERVIEW

REGIONAL DEMOGRAPHICS

Cedar Rapids is the second largest city in Iowa, with a population of 139,942 according to the latest estimates from ESRI.¹ This population is projected to grow at a rate of approximately 0.21% per year (CAGR) through 2028, to reach 141,418 people. This growth rate, while lower than the national average of 0.30%, is higher than the Iowa statewide average of 0.19%. The strongest growth rates are expected in the areas closest to the Cedar Crossing development, as the population living within a 30-minute drive is currently estimated at 327,816, and is projected to climb to 334,128 by 2028, a CAGR of 0.38%.

TABLE 1: TOTAL POPULATION

	2023	2028 PROJ.	CAGR
0-30 minute drive	327,816	334,128	0.38%
0-60 minute drive	638,573	646,646	0.25%
0-120 minute drive	2,233,203	2,245,767	0.11%
Cedar Rapids City, IA	139,942	141,418	0.21%
Iowa	3,226,869	3,258,203	0.19%
USA	337,470,185	342,640,12	0.30%

Source: ESRI

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¹ ESRI is the worldwide leader in geographical information systems and data aggregation, and is relied upon by both government agencies and private industry. CSG's subscriptions provide access to market data and demographic estimates for projections for 2023 and projections for 2028 at the country, state, county, census tract, block group, block, and ZIP Code levels. Select data sets were updated to 2024 and 2029 during the production of this report, reflected in demographic maps shown herein.

The following table summarizes the five-year growth forecast for casino gaming and sports betting patronage and win, taking into consideration ramp-up of regional demand during the first three years of operation, and a more stabilized growth expectation thereafter.

TABLE 16: FIVE YEAR DEMAND AND GAMING REVENUE FORECAST

	2028	2029	2030	2031	2032
Casino Win (\$M)	\$94.4	\$102.1	\$108.0	\$110.7	\$112.3
Admission (M)	0.98	1.05	1.10	1.11	1.12
Win per Admission	\$96	\$97	\$99	\$100	\$100
Number of Ubit	832	832	832	832	832
Win /Ubit/Day	\$311	\$336	\$356	\$365	\$370
Turnover/Day	3	3.5	3.6	3.7	3.7
Retail Sport Betting Win (\$M)	\$0.28	\$0.31	\$0.32	\$0.33	\$0.34

Source: CS Analysis

PROJECTED AVERAGE IMPACT ON INCUMBENT IOWA OPERATORS

The preceding sections of this report provide the projections of admissions and revenues for the proposed Cedar Crossing casino. As referenced above, the calculations are derived through gravity models of demand from the regional population, and capture rate estimates for the regional tourism market. While the tourism capture likely would most exclusively reflect new gaming revenues in Iowa, given that there are no casinos in Cedar Rapids, the value of gravity modeling is that it yields outputs that reflect market growth, as well as any diversion of demand from one property to another when a property is added to the model.³⁰ As discussed above, our modeling assumptions for the expansion scenario included increases in gaming participation rates for the Primary Cedar Rapids and the Riverside Primary market areas, with no changes in gaming participation rates for our other 13 defined market areas.

So even with the addition of a Cedar Rapids casino to the model, the impact for any of the regional operators would be a decline in demand, with the magnitude of that impact depending largely on proximity to Cedar Rapids. As could be expected, incumbent properties most proximate to Cedar Rapids would be the most significantly impacted, as their existing customer base residing in Cedar Rapids may be more likely to shift to the new property. Those properties further afield, i.e., on the Mississippi River, would feel a comparative negative impact.

From an impact perspective, there are four commercial casinos and one Native American gaming facility for which we project the negative impact on AGR would be greater than 3% (relative to our stabilized 2029 projections):

³⁰ As noted in the regional market analysis, our models were calibrated in part using the data from our proprietary visitation data source, showing where each property was getting their customers from. This is a more precise methodology for creating a baseline model than simply assuming, a priori, that relative proximity is the determinant of which casino someone would patronize.

- Riv ersid : -11.6%, or \$16.6 million
- M skwaki Bingo Casino: -7.7%, or approximat ly \$9.4 million³¹ e
- Isl Wat rloo: -5.8%, or \$6.2 million
- Dubuqu casinos (combin d): -3.6%, or \$5.0 million

Coll ctiv ly, w th r for proj ct div rsion of \$27.8 million in proj ct d 2029 AGR from oth r comm rcial casinos in Iowa casinos to Cedar Crossing. Th r for , w proj ct that \$80.2 million of th e \$108.0 million in pot ntial 2029 AGR for C dar Crossing would b en w to Iowa as taxabl r v ou elt is this n t n w AGR that w us to d t rmin th fiscal impact of adding th eC dar Crossing casino e to th stat . e

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³¹ Our mod l is not bas d on a d finitiv r v nu figur for M skwaki Bingo Casino, giv n that th ir r v nu s ar not publicly e r port d.

IOWA RACING AND GAMING COMMISSION
6200 PARK AVENUE, SUITE 100
DES MOINES, IOWA 50321

PETITION BY RIVERSIDE CASINO AND)
GOLF RESORT, LLC, AND)
WASHINGTON COUNTY RIVERBOAT)
FOUNDATION, INC.)
)
FOR A DECLARATORY ORDER)
)
THAT THE IOWA RACING AND)
GAMING COMMISSION LACKS)
AUTHORITY TO ISSUE A GAMBLING)
GAMES LICENSE IN LINN COUNTY)
UNDER IOWA CODE § 99F.7(11))

**AFFIDAVIT OF
DAVID BINDER**

I, David Binder, certify under the penalty of perjury, and the laws of the state of Iowa, that the following is true and correct:

1. I founded David Binder Research (“DBR”) in 1994. For the past thirty years, DBR has provided research and insight to political, government, and private sector clients. DBR has pioneered the use of qualitative and quantitative research with focus groups and polls to understand how clients can most effectively communicate their intended messages. I received my undergraduate education at Colgate University and Syracuse University and obtained a Masters of Business Administration at Cornell University. A copy of my biographical information and qualifications are attached to this affidavit.
2. On behalf of clients, I have personally moderated hundreds of focus groups, using both qualitative and quantitative techniques, to understand how people react to messages and language. Included within this work has been research related to the language used in referendums. Specifically, DBR has conducted polls and focus groups to understand how varying referendum language can impact people’s perception of the proposed referendum. In conducting these studies, we will poll potential voters online, over the phone, or in focus groups, using two different variations of referendum language in order to determine the impact of differences in the language. Sometimes the referendum language we poll differs based on a single word; other times, it differs more widely. It is not unusual for us to conduct multiple polls over time to measure the impact of varying language and framing on potential voters.
3. Based on our experience in this area, my firm has been asked to provide information and opinions relating to the language of the 2021 gaming referendum in Linn County, Iowa, that we understand to be at issue in this matter: Public Measure G. We have been provided with a copy of the Petition for Declaratory Order, with its included attachments,

filed by Riverside Casino and Golf Resort, LLC, and Washington County Riverboat Foundation, Inc.

4. The 2021 gaming referendum in Linn County, i.e., Public Measure G, stated:

Public Measures
<p align="center">Public Measure G</p> <p>Shall the following public measure be adopted?</p> <p>Summary: Gambling games on an excursion gambling boat or at a gambling structure in Linn County are approved.</p> <p>Gambling games with no wager or loss limits, on an excursion gambling boat or at a gambling structure in Linn County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election.</p> <p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>

5. Generally speaking, we know the language used in referendums matters. The particular words used impacts voters. Likewise, the way an issue is framed impacts voters. We have seen this impact time and time again in our polling and focus groups.
6. One area in which we have polled voters involves the differential impact on voters of referendum language that suggests continuing something that already exists versus referendum language that suggests expanding or creating something that does not already exist.
7. Voters are more favorable when a referendum suggests that the issue being voted on is a continuance of an existing practice than when the referendum suggests an expansion of something or creation of something new.
8. In the former, when voters are asked to continue something that is ongoing, they are more concerned with maintaining the status quo at risk of losing something beneficial. In the latter, however, when voters are asked to approve of something new or additional, voters tend to be more concerned about new costs, externalities, regulations, and other disruptions to the status quo. The difference in perception between these referendums is representative of a recognized cognitive bias, known as the status quo bias, which has been confirmed in many studies in varying scientific fields.
9. Our research has demonstrated this bias. Recently, we polled voters in a case in which a tax referendum being considered was framed as expanding and/or creating a new tax

versus maintaining the tax as it was. We found a statistically significant difference with greater support shown for the version that was maintaining an existing tax.

10. Based on our experience, we would expect voters to respond differently to a gaming referendum that suggests its approval would result in the continuation of existing gambling operations (like the referendum in this matter) versus one that suggests it is authorizing the creation of new gambling operations.
11. Of course, it is possible that a referendum requesting approval for the continuation of gambling games when no such games are in existence would, linguistically speaking, misstate the issues that voters were asked to decide on or confuse the issues.
12. In addition, given our qualitative and quantitative research and understanding of studies on the status quo bias, a referendum requesting the continuation of gambling games would be inherently and naturally perceived more favorably than one that sought the approval of new gambling games. Voters would tend to cognitively favor a referendum that proposed the continuation of gambling games versus the approval of new gambling games.
13. While every election is unique, past testing has shown that voter support varies significantly according to wording, and that, in general, expending and creating new programs is less supported than maintaining existing ones.

I certify under the penalty of perjury that the foregoing is true and correct.

Executed on this 15th date of January, 2025.



David Binder



David Binder Research

David Binder: Bio

David Binder (he/him), Principal

David Binder has over thirty years of experience in qualitative and quantitative research. Born in Kewanee, Illinois, David has a BS from Syracuse University, an MBA from Cornell, and is a member of the American Association of Political Consultants.

After several years as a freelance pollster and focus group moderator, David founded David Binder Research in San Francisco in 1994, a company that now has employees in seven states around the country.

David believes that a proper evaluation of public opinion cannot be accomplished by looking only at poll numbers or focus group transcripts, but rather by a multi-source examination within the larger perspective of everyday life. Local and national media and publications seek his social and political insights on a regular basis.

David is a nationally recognized focus group moderator who has personally moderated what he thinks are over two thousand focus groups, but he never really counted. David's clients include a broad range of political, government, business, labor, health care, communications and advertising firms, as well as non-profit organizations and foundations.