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Attorneys for Proposed Intervenors

UAW REGION 9 OF THE UAW, and
C.E.A.S.E N.J.,

Plaintiffs,

v.

NEW JERSEY GOVERNOR PHILIP
MURPHY, and ACTING NEW JERSEY
HEALTH COMMISSIONER DR. KAILIN
BASTON,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: MERCER
COUNTY

DOCKET NO. MER-C-0026-24

CIVIL ACTION

CERTIFICATION OF SERVICE

I hereby certify that on the 29th day of April 2024, I cause to be served the foregoing documents on behalf of Proposed Intervenors UNITE HERE Local 54 (“Local 54”), International Union of Operating Engineers, Local 68 (“IUOE Local 68”), Eastern Atlantic States Regional Council of Carpenters (“EASRCC”), International Union of Painters and Allied Trades, District Council 21 (“IUPAT District 21”), International Brotherhood of Teamsters, Local 331 (“Teamsters Local 331”), and the Atlantic and Cape May County Building & Construction Trades Council (“Trades Council”) (sometimes collectively, “Proposed Intervenors” or “Unions”), via electronic case filing and overnight mail, upon the following:

Nancy Erika Smith, Esq.
Smith Mullin, P.C.
249 Claremont Avenue
Montclair, New Jersey 07042
Attorneys for Plaintiffs

Robert J. McGuire, DAG
Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
PO Box 116
Trenton, New Jersey 08625
Attorneys for Defendants

**KROLL HEINEMAN PTASIEWICZ &
PARSONS, LLC**
Attorneys for Proposed Intervenors

/s/ SETH PTASIEWICZ

Dated: April 29, 2024

SETH PTASIEWICZ, ESQ.

Seth Ptasiewicz, Esq. (008171994)
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CIVIL ACTION

**NOTICE OF MOTION TO INTERVENE
and DISMISS THE VERIFIED
COMPLAINT OR DENY THE REQUEST
FOR INJUNCTIVE RELIEF**

TO: Nancy Erika Smith, Esq.
Smith Mullin, P.C.
249 Claremont Avenue
Montclair, New Jersey 07042
Attorneys for Plaintiffs

Robert J. McGuire, DAG
Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
PO Box 116
Trenton, New Jersey 08625
Attorneys for Defendants

PLEASE TAKE NOTICE that on Monday, May 13, 2024 at 9:00 a.m. or as soon thereafter as counsel may be heard, Proposed Intervenors UNITE HERE Local 54 (“Local 54”),

International Union of Operating Engineers, Local 68 (“IUOE Local 68”), Eastern Atlantic States Regional Council of Carpenters (“EASRCC”), International Union of Painters and Allied Trades, District Council 21 (“IUPAT District 21”), International Brotherhood of Teamsters, Local 331 (“Teamsters Local 331”), and the Atlantic and Cape May County Building & Construction Trades Council (“Trades Council”) (sometimes collectively, “Proposed Intervenors” or “Unions”), by and through undersigned counsel, shall move before the Honorable Patrick J. Bartels, P.J. Ch., Superior Court, Chancery Division, Mercer County, at the Mercer County Courthouse, 175 Broad Street, Trenton, New Jersey 08625, for an Order:

1. Pursuant to *Rule* 4:33-1, -2, Granting Proposed Intervenors’ Motion to Intervene in the Verified Complaint (“Complaint”) filed by Plaintiffs the International United Automobile, Aerospace, and Agricultural Implement Workers of America (“UAW”), Region 9 of the UAW (“UAW Region 9”) and C.E.A.S.E. N.J. (“Cease”) (collectively, “Plaintiffs”) against Defendants New Jersey Governor Philip Murphy and Acting New Jersey Health Commissioner Dr. Kaitlin Baston (collectively, “Defendants”); and
2. Pursuant to *Rule* 4:6-2, Granting Proposed Intervenors’ Motion to Dismiss the Complaint, or in the alternative, Denying Plaintiffs’ Request for Injunctive Relief; and
3. For such other and further relief as the Court may deem just and proper.

In Support of this Motion, Propose Intervenors shall rely upon the Certification of Raymond G. Heineman, Esq., Memorandum of Law, Certification of Counsel, and all prior pleadings and filings in this matter.

Oral argument is requested.

A proposed form of Order is enclosed.

**KROLL HEINEMAN PTASIEWICZ &
PARSONS, LLC**

Attorneys for Proposed Intervenors

/s/ SETH PTASIEWICZ

Dated: April 29, 2024

SETH PTASIEWICZ, ESQ.

Seth Ptasiwicz, Esq. (008171994)
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Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: MERCER
COUNTY

DOCKET NO. MER-C-0026-24

CIVIL ACTION

[PROPOSED] ORDER

THIS MATTER having been opened to the Court, the Honorable Patrick J. Bartels, P.J.Ch., presiding; Kroll Heineman Ptasiwicz & Parsons, LLC, (Seth Ptasiwicz, Esq., appearing), attorneys for Proposed Intervenors UNITE HERE Local 54 (“Local 54”), International Union of Operating Engineers, Local 68 (“IUOE Local 68”), Eastern Atlantic States Regional Council of Carpenters (“EASRCC”), International Union of Painters and Allied Trades, District Council 21 (“IUPAT District 21”), International Brotherhood of Teamsters, Local 331 (“Teamsters Local 331”), and the Atlantic and Cape May County Building & Construction Trades Council (“Trades Council”) (sometimes collectively, “Proposed Intervenors” or “Unions”, moving pursuant to Rule 4:33-1, -2, to Intervene in the Verified Complaint (“Complaint”) filed by

Plaintiffs the International United Automobile, Aerospace, and Agricultural Implement Workers of America (“UAW”), Region 9 of the UAW (“UAW Region 9”) and C.E.A.S.E. N.J. (“Cease”) (collectively, “Plaintiffs”) against Defendants New Jersey Governor Philip Murphy and Acting New Jersey Health Commissioner Dr. Kaitlin Baston (collectively, “Defendants”); and pursuant to Rule 4:6-2, to Dismiss the Complaint; the Court having considered the moving and opposition papers submitted by the parties and Proposed Intervenors, as well as the arguments of counsel at Order to Show Cause hearing on May 13, 2024; and for good and sufficient cause shown;

IT IS on this _____ day of _____ 2024

ORDERED that Proposed Intervenors’ Motion to Intervene is hereby **GRANTED**; and it is further

ORDERED that the Complaint is hereby **DISMISSED** in its entirety, with prejudice; or alternatively, it is

ORDERED that Plaintiffs’ Request for a Preliminary and Permanent Injunction is hereby **DENIED**; and it is further

ORDERED that a copy of this Order be delivered to the interested parties within seven (7) days hereof.

Hon. Patrick J. Bartels, P J. Ch.

_____ Motion Unopposed
 _____ Motion Opposed



Law Offices

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Seth Ptasiwicz, Esq.

sptasiwicz@krollfirm.com

April 29, 2024

VIA ELECTRONIC CASE FILING

Clerk, Superior Court of New Jersey

Mercer County Courthouse

175 South Broad Street

Trenton, New Jersey 08625

Re: UAW, Region 9 of the UAW v. New Jersey Governor Philip Murphy, et al.
Docket No.: MER-C-0026-24

Dear Sir or Madame:

This Firm represents Proposed Intervenors UNITE HERE Local 54 ("Local 54"), International Union of Operating Engineers, Local 68 ("IUOE Local 68"), Eastern Atlantic States Regional Council of Carpenters ("EASRCC"), International Union of Painters and Allied Trades, District Council 21 ("IUPAT District 21"), International Brotherhood of Teamsters, Local 331 ("Teamsters Local 331"), and the Atlantic and Cape May County Building & Construction Trades Council ("Trades Council") (sometimes collectively, "Proposed Intervenors" or "Unions") in connection with this matter. Enclosed herewith for electronic case filing, please find the following documents:

1. Notice of Motion to Intervene and Dismiss the Verified Complaint, or in the alternative, denying Plaintiffs' Request for Injunctive Relief,
2. Memorandum of Law in Support of Proposed Intervenors' Motions and in Opposition to Plaintiffs' Request for Injunctive Relief;
3. Certification of Raymond G. Heineman, Esq.;
4. Proposed Form of Order; and
5. Certification of Service.

Thank you for your attention to this matter.

Very truly yours,

/S/ SETH PTASIEWICZ

SETH PTASIEWICZ

SP:jc

Enclosures

cc: Honorable Patrick J. Bartels, P.J. Ch. (via electronic case filing and Courtesy Copy via overnight mail, w/ encl.)
Nancy Erika Smith, Esq. (via electronic case filing and overnight mail, w/ encl.)
Robert J. McGuire, DAG (via electronic case filing and overnight mail, w/ encl.)
Local 54 (via email, w/ encl.)
IUOE 68 (via email, w/ encl.)
EASRCC (via email, w/ encl.)
IUPAT District 21 (via email, w/ encl.)
Teamsters Local 331 (via email, w/ encl.)
Trades Council (via email, w/ encl.)

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Defendants.

SUPERIOR COURT OF NEW JERSEY
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DOCKET NO. MER-C-0026-24

CIVIL ACTION

**CERTIFICATION OF RAYMOND G.
HEINEMAN, ESQ. IN SUPPORT OF
MOTION TO INTERVENE, DISMISS
THE VERIFIED COMPLAINT, AND IN
OPPOSITION TO PLAINTIFFS'
REQUEST FOR INJUNCTIVE RELIEF**

RAYMOND G. HEINEMAN, ESQ., of full age, hereby declares under penalty of perjury as follows:

1. I am an attorney at law admitted to practice before this Court. I am a partner with the law firm of Kroll Heineman Ptasiewicz & Parsons, LLC, counsel to Proposed Intervenors UNITE HERE Local 54 (“Local 54”), International Union of Operating Engineers, Local 68 (“IUOE Local 68”), Eastern Atlantic States Regional Council of Carpenters (“EASRCC”), International Union of Painters and Allied Trades, District Council 21 (“IUPAT District 21”), International Brotherhood of Teamsters, Local 331 (“Teamsters Local 331”), and the Atlantic and Cape May County Building & Construction Trades Council (“Trades Council”) (collectively, “Proposed Intervenor”) in connection with this case. As such, I am fully familiar with the facts as stated herein.

2. I submit make this certification in support of the Proposed Intervenors' motion to intervene and its opposition to the Order to Show Cause and Verified Complaint ("Complaint") filed by Plaintiffs UAW ("UAW"), Region 9 of the UAW ("UAW Region 9") and C.E.A.S.E. N.J. ("Cease") (collectively, "Plaintiffs") against Defendants New Jersey Governor Philip Murphy and Acting New Jersey Health Commissioner Dr. Kaitlin Baston (collectively, "Defendants").
3. The Proposed Intervenors are all New Jersey based labor organizations representing employees directly employed by the Atlantic City Casinos, by construction contractors and subcontractors working in the renovation and maintenance of the Casinos, and by the power plants, convention centers, hotels and other employers whose economic livelihood is tied to the success of Atlantic City's Casinos.
4. Local 54 is affiliated with UNITE HERE, and has been representing hospitality workers in the Region for over 100 years. Local 54 currently represents over 11,000 housekeepers, bartenders, food servers, cooks, bellmen, doormen, and other hospitality and service workers in the casinos and hospitality industries in South Jersey, Pennsylvania, and Delaware.
5. Since the inception of casino gambling, Local 54 has represented the full and part time hospitality workers employed in all of the Atlantic City casinos, including over 10,000 members at all nine currently operating casinos (Bally's, Borgata, Caesars, Golden Nugget, Hard Rock, Harrah's, Ocean, Resorts and Tropicana) and the hospitality workers previously employed at five casinos which have permanently ceased operations (Atlantic Club Casino, Atlantis Hotel and Casino, Sands, Showboat and Trump Plaza). Local 54's membership employed at the Casinos includes cocktails servers, bartenders, bar porters,

EVS Attendants and Heavy Porters, who all work on the casino floor, as well as housekeepers, bellmen, food servers, dishwashers and cooks. Notably, the housekeepers work in the casinos' guest rooms, where smoking is permitted under the exception to the New Jersey Smoke Free Air Act, provided at N.J.S.A. § 26:3D-60, for hotel and motel guest rooms.

6. Local 54 has been party to successive collective bargaining agreements with the currently nine operating casinos: Harrah's Resort Atlantic City, Borgata Hotel Casino & Spa, Golden Nugget Atlantic City, Ocean Casino Resort, Hard Rock Hotel & Casino, Resorts Casino, Bally's Atlantic City Casino Resort, Caesar's Atlantic City Hotel & Casino, and Tropicana Atlantic City. Local 54 is responsible for the negotiation and administration of these collective bargaining agreements, including their respective provisions balancing job security, working conditions and health and safety. For example, Local 54 has recently negotiated restrictions on cigar smoking in the casinos, banning smoking within 15 feet of the outer ledge of any bar near a gaming area and within 15 feet of any pit games, where live dealers are working. As another example, the past practice developed under Local 54's collective bargaining agreements permits cocktail servers and other workers, who prefer not to work in smoking areas of the casino floor, to voluntarily switch assignments with co-workers, who are interested in the generally higher tips paid by patrons in the smoking areas.
7. From its lengthy bargaining history with the New Jersey casinos, Local 54 has obtained invaluable information regarding the economic, health, and safety concerns of its members, and is in a unique position to advance and represent the interests of its members employed by the nine New Jersey casinos. Attached as **Exhibit A** is a true and complete

copy of the economic analysis authored by Local 54, on April 1, 2024, “Policy Implications of a Total Smoking Ban in Atlantic City Casinos”, which provides the perspective of Local 54 and its membership on the economic challenges facing its members in an era of heightened competition in the casino industry and of the projected impact of a complete smoking ban. As noted in the report, a total smoking ban would place thousands of jobs at risk, endangering the wages, health and welfare benefits and retirement benefits of Local 54 members and their families. In 2008, when the Atlantic City Council imposed a total smoking ban, casino revenues fell by 19.8%, within the first week, leading to the enactment of the current 25% smoking area on the casino floors. With alternatives for smoking casino patrons in Pennsylvania, New York and Connecticut, Local 54 projects a loss of 3,000 jobs in Atlantic City, with the imposition of a smoking ban.

8. Local 68 is affiliated with the International Union of Operating Engineers and has been representing stationary engineers and maintenance employees in New Jersey for over 100 years. Local 68 represents over 6,000 stationary engineers, skilled maintenance employees and allied employees employed by over 300 employers throughout the State of New Jersey. Local 68 has recently invested in the construction of a new 7,000 square-foot training center in the City of Atlantic City to provide local residents with training in electrical wiring and troubleshooting, commercial kitchen equipment repair and maintenance, plumbing and HVAC, etc. to provide a skilled local workforce to the Atlantic City casinos and surrounding industries. Throughout the State of New Jersey, Local 68 HVAC-R mechanics work on systems to mitigate exposure to smoke and contaminants through advancements in HVAC technology, such as :

- Direct exhaust systems in which contaminated air is removed from the space and exhausted to the outdoors, without no recirculation.
 - Ventilation systems in which clean/filtered/tempered air is ventilated into the space.
 - Negative air pressure rooms, which are similar to those utilized in hospital settings: <https://www.news-medical.net/health/What-are-Negative-Pressure-Rooms.aspx>.
 - Industrial smoke eaters, which are air purification systems designed to remove contaminants from the air: <https://www.blueoxaircleaners.com/air-cleaner-OX3500C.php>.
9. Since the inception of casino gambling in New Jersey, Local 68 has represented the full time stationary engineers, electricians, HVAC mechanics, plumbers, kitchen mechanics, general maintenance mechanics and groundskeepers employed in all of the Atlantic City casinos and mechanics employed at the casinos' entertainment venues, including the nine currently operating casinos, and the five casinos which have permanently ceased operations. Currently, over 600 Local 68 members are employed on a full-time basis by all nine operating casinos in Atlantic City. An additional 100 Local 68 members are employed at other Atlantic City hospitality and entertainment venues and energy and logistics suppliers, all of which depend on the health of the casino industry for their economic survival.
10. The EASRCC represents over 40,000 carpenters, millwrights, pile drivers and wharf and dock builders throughout the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia in the commercial and residential construction, maintenance and entertainment industries. In addition to the carpenters employed in the Atlantic City casinos, the EASRCC also represents carpenters working in casinos in Pennsylvania, Maryland, Delaware and West Virginia. The EASRCC is

committed to harnessing the collective power of its members to protect workers' rights, job security and safety, including balancing safety concerns and job security in the interests of its members.

11. Since the inception of casino gambling in New Jersey, the EASRCC has represented the carpenters, upholsterers and locksmiths employed at all the casinos throughout Atlantic City, including all nine of the currently Atlantic City casinos, and the five casinos which have ceased operations. The EASRCC represents 250 full time carpenters, upholsterers and locksmiths currently employed in various maintenance capacities throughout all nine of the existing Atlantic City, New Jersey casinos, who work on a daily basis in the smoking and non-smoking gaming areas of the casinos, leveling roulette wheels, changing rails on table games, and performing other maintenance functions. In addition, hundreds of members of the EASRCC are currently actively working on renovation projects at New Jersey casinos.
12. IUPAT District Council 21 represents over 6,000 painters, drywall finishers, wall coverers, glaziers, and glass workers in New Jersey, Pennsylvania, and Delaware. Currently, over 100 members of District Council are actively working on renovation projects at New Jersey casinos. IUPAT District Council 21's mission is to represent members for purposes of collective bargaining, and to advocate for workers and their families, balancing the often conflicting goals confronting workers and their unions throughout the Region.
13. Since the inception of casino gambling in New Jersey, IUPAT District Council 21 has represented the painters and wall coverers employed at all the casinos in Atlantic City, including all nine of the currently Atlantic City casinos, and the five casinos which have

ceased operations. District Council 21 represents 125 full time painters and wall coverers currently employed throughout all nine of the existing Atlantic City casinos.

14. Local 68, the EASRCC and IUPAT, District Council 21 have traditionally bargained jointly with the casinos on behalf of the skilled maintenance trades, and each has been party to successive collective bargaining agreements with Harrah's Resort Atlantic City, Borgata Hotel Casino & Spa, Golden Nugget Atlantic City, Ocean Casino Resort, Hard Rock Hotel & Casino, Resorts Casino, Bally's Atlantic City Casino Resort, Caesar's Atlantic City Hotel & Casino, and Tropicana Atlantic City. Local 68, the EASRCC, and District Council 21 are responsible for the negotiation and administration of these collective bargaining agreements, including their respective provisions regarding working conditions and health and safety.
15. From its bargaining history with the New Jersey casinos, Local 68, the EASRCC, and IUPAT, District Council 21 have obtained invaluable information regarding the economic, health, and safety concerns of its members, and are in a unique position to advance and represent the interests of their members employed by the New Jersey casinos. In this regard, Local 68 members repair and maintain the basic heating, ventilation and air conditioning, electrical, steam, gas, water, sewer, and alarm systems of all nine currently operating casinos. As such, Local 68 members have unique industry knowledge regarding the different safety protocols implemented by their employers; and specific proposals regarding improved air quality and filtration, and their efficacy. As another example, IUPAT, District Council 21's skilled glaziers work with glass partitions, which offer an alternative for enclosing smoking areas and, in conjunction with advanced air handling systems, would allow for a safer alternative than the traditional casino floor

configurations.

16. Local 331 is an affiliate of the International Brotherhood of Teamsters, which represents 5,000 casino workers nationwide. Local 331 represents drivers, warehouse workers, valets and logistics employees throughout Atlantic, Cape May, Cumberland, and Gloucester counties in New Jersey.
17. Since the inception of casino gambling in New Jersey, Local 331 has represented the warehouse employees and drivers employed by the Atlantic City casinos. More recently, Local 331 has organized over 50 valets employed at the Ocean Casino. Local 331 has been party to successive collective bargaining agreements with various casinos. Local 331 is responsible for the negotiation and administration of these collective bargaining agreements, including their respective provisions regarding working conditions and health and safety.
18. The job security and safety and health interests of the over 12,000 members of Local 54, IUOE Local 68, the EASRCC, IUPAT District Council 21, and Teamsters Local 331 are not represented by the existing parties. The Proposed Intervenors have sought to balance their members interests in job security and continued employment with health and safety concerns, both at the bargaining table and in public debate. In contrast, Plaintiff UAW Region 9 represents fewer than 800 dealers limited to only three of the nine casinos: Bally's, Tropicana, and Caesar's. Many of the dealers represented by Plaintiff UAW Region 9 are employed on a casual part-time basis and mainly work during the summer months. Further in contrast to the Proposed Intervenors, Plaintiff UAW Region 9, on behalf of its relatively few members, is advocating for a total smoking ban, which will impact the job security, wages, and benefits of the Proposed Intervenors, potentially

causing job losses in excess of its total membership in the casino industry.

19. The Atlantic and Cape May County Building & Construction Trades Council (“Trades Council”) is one of thirteen Local Building Trades Councils comprising the New Jersey Building & Construction Trades Council (“NJ B&CTC”). Affiliates of the NJ B&CTC represent more than 100 local unions and over 150,000 rank and file members in New Jersey. The Trades Council is comprised of 26 local affiliates, representing over 2,700 members in Atlantic, Cape May, and parts of Burlington, Ocean, and Cumberland Counties in New Jersey. Skilled construction trade employees represented by the Trades Council have worked on both private sector and public work projects in New Jersey, including in New Jersey casinos. Currently, anywhere from 300 to 500 construction workers, affiliated with the Trades Council are working in Atlantic City casinos on a daily basis, with as many as 1,000 construction workers on casino projects in the off-season.
20. The Trades Council and its affiliated local unions have been party to successive collective bargaining agreements with construction contractors and subcontractors in the construction, renovation and maintenance of the Atlantic County casinos. In particular, Trades Council affiliated local unions have been responsible for installation and maintenance of HVAC systems and equipment, which are key to providing a safe workplace for employees and a safe and enjoyable experience for members of the public visiting casinos, including both smoking and non-smoking patrons. Construction workers are active on projects installing negative air pressure ventilation systems and complete air exhaust systems, which can contain and negate the health impact of smoking in the 25% of the casino floors, where smoking is currently allowed.

21. From its history in the construction, renovation, and maintenance of New Jersey casinos, the Trades Council has obtained invaluable information regarding the economic, health, and safety concerns of its members, and is in a unique position to advance and represent the interests of union members employed by and in the New Jersey casinos. For example, multiple companies now manufacture quality air filtration systems, which can be retrofitted to the Casinos current air handling system. Also, many areas of the casinos have a raised floor for running networks to the gaming areas. The flow of the air on Casino floors can be improved by using raised floors for air supply, with the return air ducts placed in the ceiling, pulling all smoke immediately up and away from all patrons and workers. <https://airfixture.com/products/ufad/raised-access-flooring>. In addition, manufacturers are currently making gaming tables with a built in capture/filtration system for smokers, which keep smoke out of the face of the dealers and other casino workers. <https://www.casinoair.com/>. The foregoing systems are used to clean the air in casinos and other work spaces, allowing an improvement in the safety and health of workers and the public, without the risk of economic dislocation posed by a total smoking ban.
22. The interest of the skilled construction trades employees represented by the Trades Council is in the continued growth and development of the casino industry in Atlantic City, and in the protection of the public and their fellow union members working for the casinos through the renovation of more advanced air handling and protective systems. The Trades Council's interests are not represented by the Plaintiffs, which is focused solely on the banning of smoking in Atlantic City's casinos, regardless of the risk of economic dislocation to the members of the Trades Council and the other Proposed Intervenors.
23. The Proposed Intervenors understand that a smoking ban is a very challenging issue,

where their members' jobs and many of those in the regional economy are directly tied to the success of the casino industry in Atlantic City. The jobs provided under the collective bargaining agreements with the casinos are among the best in the entire region, for those without a college degree. For the past two decades, there have been annual decreases in the number of these jobs available in the industry, due to increased competition from surrounding states, as well as online gaming that has pulled away patrons, who once regularly visited Atlantic City. The revenue numbers for the casinos and the derisive chant of "greedy casinos" is deceiving in that online gaming and sports wagering have obfuscated the continuing decline in spending and attendance at brick-and-mortar casinos, the locations which provide employment to the Unions' members.

24. A resolution of the issue of a smoking ban, in light of the importance of the casino industry to the Union members' economic viability, requires a balancing of interests of the Unions, the industry, the State and Atlantic City, and the public at large. Up to this point, the Proposed Intervenors' concerns and efforts to find a resolution have been dismissed by the Plaintiffs, who will not bear the burdens of the consequences the region will face if a full ban is imposed by the Order sought by Plaintiffs.

25. Atlantic City continues to have one of the highest unemployment rates in this State. Its residents and employees should not have to face any self-inflicted economic injuries as it confronts lingering inflation and downward economic trends. While neighboring Pennsylvania continues to allow smoking in their casinos, a complete ban here in New Jersey would drive many of profitable and loyal customers back across the Delaware River. At the same time, New York City is on the cusp of establishing multiple casinos that will attract many of New Jersey customers. The industry and its workers are on the

verge of another challenging decade ahead. The Proposed Intervenors' position is that a balanced resolution should be sought in the collective bargaining and legislative processes, rather than through litigation in which only one side prevails and everyone risks ultimately losing job security and the wages and benefits needed to support their families and their communities.

26. A true and correct copy of Pakko, M.R., 2005; No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues, Federal Reserve Bank of St. Louis Working Paper 2005-054, at <https://doi.org/10.20955/wp.2005.054>, is attached hereto as **Exhibit B**.

27. A true and correct copy of New Jersey Casino Control Commission, Casino Revenues Pass \$5 Billion Mark, January 10, 2006, at https://www.nj.gov/lps/ge/docs/Financials/PressRel2005/dec_05.pdf, is attached hereto as **Exhibit C**.

28. A true and correct copy of Thomas A. Garrett, and Michael R. Pakko, "The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois," Federal Reserve Bank of St. Louis, March 2010, at <https://doi.org/10.20955/wp.2009.027>, is attached hereto as **Exhibit D**.

29. A true and correct copy of Spectrum Gaming Group, Gaming Industry Analysis: Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue, November 3, 2021, at <https://www.spectrumgaming.com/wp-content/uploads/2022/02/spectrum-report-for-canj-released-february-2022.pdf>, is attached hereto as **Exhibit E**.

**KROLL HEINEMAN PTASIEWICZ &
PARSONS, LLC**
Attorneys for Proposed Intervenors

/s/ Raymond G. Heineman

Dated: April 29, 2024

RAYMOND G. HEINEMAN, ESQ.

Exhibit A



Policy Implications of a Total Smoking Ban in Atlantic City Casinos

April 1, 2024

A TOTAL SMOKING BAN WOULD PUT THOUSANDS OF JOBS AT RISK

A 2021 study by Spectrum Gaming Group found that a total smoking ban in Atlantic City casinos would result in a net decline of 4.2% - 10.9% of gaming revenues, causing a loss of 1,021 - 2,512 jobs.¹

John DeCree, a gaming industry analyst for CBRE, projected an even greater potential decline in gaming revenues of up to 20 - 25%.² DeCree wrote in a 2022 report:

“We would not be surprised if the impact in Atlantic City was at the high end or even greater than indicated by some of these case studies for a variety of reasons... Atlantic City casinos have likely been out-earning its share of discretionary entertainment among the smoking population for the past 15-plus years. Atlantic City must pull its customers away from more conveniently located gaming options and the absence of smoking would leave many of its higher value smoking customers without reason to make the trip.”³

“In markets like Chicagoland, New Orleans, and at Mountaineer in West Virginia, where customers had conveniently-located smoking alternatives, gaming revenue declined 20%+ in the first year after smoking was banned.”⁴

The dramatic declines in gaming revenues projected by Spectrum and CBRE would be devastating to employment levels in the Atlantic City casino industry. Many factors indicate that a total ban could create revenue and job losses at the high end of projections:

- **Atlantic City’s 2008 smoking ban caused a 19.5% decline in gaming revenue.** In 2008, the City Council of Atlantic City passed a smoking ban that ended indoor smoking in the casinos. Immediately after implementation, gaming revenues fell by 19.5%. Just twelve days after implementation, the City Council reversed the ban and implemented a compromise to allow smoking on up to 25% of the casino floor.⁵
- **Revel’s attempt to operate as Atlantic City’s first smokefree casino ended in failure.** In 2012, Revel opened as a smokefree property in Atlantic City. After its first year of operation, it filed for bankruptcy and began allowing smoking on the casino floor.⁶ The casino never generated a profit and closed in 2014, causing over 3,000 workers to lose their jobs.⁷ Today, the property is successfully operating as Ocean Casino Resort, which allows smoking.⁸

- Atlantic City casino games in smoking sections strongly outperform games in non-smoking sections.** Even though smoking sections only make up a maximum of 25% of casino floor space, games in these sections greatly outperform games in non-smoking sections, indicating that a smoking ban could have an outsize impact on gaming revenues and consequently job loss. In 2021, Spectrum Gaming Group conducted interviews with seven Atlantic City casino property and/or finance heads. All reported stronger performance in smoking sections compared to non-smoking sections. Some cited specific figures for higher performance including one report of 33 – 53% stronger performance, two reports of 40% higher performance, and one report of 72% stronger performance on table games and 91% stronger performance on slots.⁹ Another casino president reported to Spectrum that “approximately 50% of its slot revenue was generated from the smoking section.” In May 2022, Hard Rock Atlantic City President Joe Lupo told CNBC, “My roulette and blackjack and slot machine in smoking sections make 50% more money than my non-smoking games. That’s a fact.”¹⁰
- Pennsylvania casinos allow smoking within a one-hour drive from Atlantic City.** Pennsylvania law allows smoking in casinos on up to 50% of the gaming floor, twice as large as the 25% allowed in Atlantic City.¹¹ Live! Casino & Hotel Philadelphia, which opened in 2021, allows smoking only 59 miles from Atlantic City.¹² Rivers Casino Philadelphia allows smoking only 64 miles away. Rivers had previously voluntarily banned smoking in April 2022, but less than a year later it reversed its policy to allow smoking again.¹³ These casinos, as well as others throughout the state, present a serious competitive challenge because of the Atlantic City market’s reliance on out of state customers. Customers who prefer smoking would have a smoking alternative a short distance away.
- Casino gaming revenues began the year down 2.4% overall compared to 2023, showing a downward trend that could be exacerbated by the addition of a total smoking ban.** According to the New Jersey Division of Gaming Enforcement, during the first two months of 2024, six properties saw declines in casino win compared to 2023. Resorts was down 2.6%, Borgata down 4.0%, Tropicana down 10.4%, Caesars down 10.9%, Bally’s down 13.0%, and Harrah’s down 17.7%.¹⁴ Only Ocean, Hard Rock, and Golden Nugget showed gains.

UNION JOB STANDARDS AT ATLANTIC CITY’S CASINOS CANNOT BE REPLACED AND SHOULD BE PROTECTED

Through decades of organizing and collective bargaining, UNITE HERE Local 54 has set a high standard of wages and benefits at all nine Atlantic City casino hotels. In June 2024, the minimum wage for Guest Room Attendants will rise from the current \$19 per hour to \$20 per hour. Next year, in June 2025, it will rise to \$22 per hour. In comparison, the median hourly wage for maids and housekeeping cleaners in the state of New Jersey is \$15.81, according to the US Bureau of Labor Statistics as of May 2022.¹⁵ In addition to high wages, union casino workers represented by Local

54 have a defined benefit pension plan and free family health insurance coverage that is completely paid by the employers. Nationwide, workers in the leisure and hospitality industry have the least access to retirement plans compared to other industries and *only 1% have a defined benefit retirement plan like Local 54 members.*¹⁶ The standard that has been achieved in the Atlantic City casino industry could not easily be replaced by other jobs with comparable standards. State policy should protect these valuable jobs.

BEYOND DIRECT JOB LOSSES, LOST GAMING REVENUE WOULD HAVE BROAD NEGATIVE IMPACTS ON EMPLOYMENT IN NEW JERSEY

Direct job losses of employees such as dealers, housekeepers, bartenders, servers, cooks, dishwashers, and cleaners at casino hotels would only be one part of the job losses caused by a major decline in gaming revenues. Beyond direct employment, the economic impact of Atlantic City's nine casinos supports many more jobs in New Jersey through secondary impacts. According to the American Gaming Association, New Jersey's commercial gaming industry creates \$11.9 billion of annual economic impact that supports 51,834 jobs in the state.¹⁷

CASINO REVENUES SUPPORT VITAL GOVERNMENT PROGRAMS IN NEW JERSEY

The Casino Revenue Fund, generated from taxes on New Jersey's gaming industry, funds vital government programs including programs for the elderly and disabled. In fiscal year 2024, expenditures from the fund were over \$526 million. A reduction in gaming revenues would negatively impact this funding, like the state experienced after the casino closures in 2014.¹⁸

Agency	Casino Revenue Fund Expenditures Fiscal Year 2024 (Estimated)
Department of Health	\$516,000
Department of Human Services	\$523,850,000
Department of Labor and Workforce Development	\$2,196,000
Department of Law and Public Safety	\$92,000
Total	\$526,654,000

Source: State of New Jersey Budget, Fiscal Year 2024¹⁹

¹ Spectrum Gaming Group, *Gaming Industry Analysis: Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue*, November 3, 2021, retrieved from <https://www.spectrumgaming.com/wp-content/uploads/2022/02/spectrum-report-for-canj-released-february-2022.pdf>

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⁴ CNBC, "Battle over smoking in New Jersey casinos pits workers' health against profits," May 19, 2022, retrieved from <https://www.cnn.com/2022/05/19/atlantic-city-smoking-ban-fight-worker-health-vs-profits.html>

⁵ New York Times, "Atlantic City Suspends Casino Smoking Ban," October 27, 2008, retrieved from <https://www.nytimes.com/2008/10/28/nyregion/28ac.html>

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⁷ New York Times, "Revel, Atlantic City's Newest and Largest Casino, Is Closing," August 12, 2014, retrieved from <https://www.nytimes.com/2014/08/13/nyregion/revel-atlantic-citys-newest-and-largest-casino-is-closing.html>

⁸ <https://www.theoceanac.com/frequently-asked-questions>

⁹ Spectrum Gaming Group, Gaming Industry Analysis: Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue, November 3, 2021, retrieved from <https://www.spectrumgaming.com/wp-content/uploads/2022/02/spectrum-report-for-canj-released-february-2022.pdf>, see page 30

¹⁰ CNBC, "Battle over smoking in New Jersey casinos pits workers' health against profits," May 19, 2022, retrieved from <https://www.cnn.com/2022/05/19/atlantic-city-smoking-ban-fight-worker-health-vs-profits.html>

¹¹ Pennsylvania Department of Health, Clean Indoor Air Act Guidance, retrieved on March 26, 2024 from <https://www.health.pa.gov/topics/programs/CIAA/Pages/Guidance.aspx>

¹² Play Pennsylvania, "My First-Hand Account of Second-Hand Smoke At Pennsylvania Casinos," December 29, 2023, retrieved from <https://www.playpennsylvania.com/experience-smoking-vs-non-smoking-casinos/>

¹³ Play Pennsylvania, "Rivers Casino Philadelphia Brings Back Indoor Smoking," January 24, 2023, retrieved from <https://www.playpennsylvania.com/indoor-smoking-returns-2023-rivers-casino-philadelphia/>

¹⁴ NJ Division of Gaming Enforcement, DGE Announces February 2024 Gaming Revenue Results, retrieved from <https://www.nj.gov/oag/ge/docs/Financials/PressRelease2024/February2024.pdf>

¹⁵ US Bureau of Labor Statistics, May 2022 State Occupational Employment and Wage Estimates, New Jersey, retrieved from https://www.bls.gov/oes/current/oes_nj.htm

¹⁶ US Bureau of Labor Statistics, 1974 - 2024: Celebrating 50 Years of Protected Retirement Plans, March 2024, retrieved from <https://www.bls.gov/spotlight/2024/celebrating-50-years-of-protected-retirement-plans/home.htm>

¹⁷ American Gaming Association, Gaming by the Numbers: New Jersey, as of December 31, 2023, retrieved from: <https://www.americangaming.org/wp-content/uploads/2019/07/AGA-2021-State-Economic-One-Pager-New-Jersey.pdf>

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Exhibit B



ECONOMIC RESEARCH

FEDERAL RESERVE BANK OF ST. LOUIS

WORKING PAPER SERIES

No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues

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**No Smoking at the Slot Machines:
The Effect of a Smoke-Free Law on Delaware Gaming Revenues**

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Abstract

As communities around the nation consider laws restricting smoking in public places, a key political and economic issue that often arises is the effect that such laws have on the sales and profits of particular sectors. The gaming industry has been active in opposition to such ordinances, citing large prospective losses. This article analyzes the revenues of three gaming facilities in Delaware following the implementation of a smoke-free law in December 2002. Revenues are found to have declined significantly at each of the three facilities, with relative magnitudes of losses corresponding to the availability of alternative gaming venues in the region.

*The views expressed in this paper are those of the author and do not necessarily represent official positions of the Federal Reserve Bank of St. Louis or the Federal Reserve System.

1. Introduction

As communities around the nation consider laws restricting smoking in public places, a key political and economic issue that often arises is the effect that such laws have on the sales and profits of particular businesses or sectors of the local economy. The gaming industry has been active in opposition to such ordinances, citing large prospective losses.

The experience of gaming facilities in Delaware following the implementation of a smoke-free law provides a useful case study for evaluating the empirical relevance of such claims. Delaware has three gaming facilities located at racetracks: Delaware Park, Dover Downs, and Harrington. They offer video lottery terminals (VLTs)—slot machines—that operate under the auspices of the Delaware Lottery. The Delaware Clean Air Act—implemented November 27, 2002—prohibited all smoking at these facilities.

After examining the raw data on statewide net proceeds for the Delaware “racinos,” Mandel, Alamar, and Glantz (2005) concluded that there was no statistically significant effect of the smoking ban.¹ In a subsequent response, Pakko (2006) found that after correcting for data errors and using a more robust estimation

¹ See also the “Erratum” subsequently published in *Tobacco Control* (Glantz and Alamar, May 2005).

methodology, the model used in Mandel et al. revealed a significant decline in revenues.²

In this note I take a closer look at the data, examining revenues of the three racinos individually and considering some of the idiosyncratic features of the data and of the markets served by the three gaming facilities. After adjusting for the irregular reporting period of the data and considering distinct seasonal effects, I find that revenues at each of the three racinos declined significantly after the implementation of the smoke-free law. The effect is modeled as a permanent decline in the level of revenues relative to trend—a specification that is evidently consistent with the data.

Moreover, the relative magnitudes of losses at the three Delaware racinos correspond to the availability of alternative gaming venues in the region, suggesting consumer flight. Efforts to mitigate revenue losses associated with the smoking ban engendered additional costs for racino operators, further reducing the profitability of gaming in Delaware.³

² Losses associated with the Delaware smoke-free law are also suggested by Dover Downs (2004a, b) and Marcel (2004).

³ The distinction between the effects of smoking laws on revenues versus profits is emphasized by Dunham and Marlow (2003).

2. Data

Monthly data on racino net proceeds and the number of VLTs in service are available from the Delaware Lottery.⁴

Gaming was authorized to begin at the three racetracks on December 28, 1995, but Harrington did not begin operations until August 1996. Revenues at each facility experienced rapid growth in their initial months of operation as gaming operations became established. Data for 1996 are therefore uncharacteristic of the more stable growth trends that subsequently emerged. Moreover, the statewide series also includes a discontinuity induced by the opening of the Harrington racino midway through the year. Consequently, the sample period used in this analysis begins in 1997—the first full calendar-year of gaming operations for all three facilities. The sample period extends through March 2005.

The data are reported monthly, covering four- or five-week intervals, with the reporting period ending on the last Sunday of the month. The irregular reporting periods differ from quarter-to-quarter and from year-to-year, so that standard seasonal adjustment techniques do not fully account for this feature of the data.

[Figure 1]

Figure 1 displays the raw data for net revenues at the three racinos and for total statewide revenues, along with series that are adjusted to correspond to calendar months:

$$\text{Adjusted Revenues} = \text{Reported revenues} \times (\text{Calendar days} / \text{Reported days}) \quad (1)$$

⁴ Delaware Lottery (2005).

A clear seasonal pattern is evident in the adjusted data, as is a decline in revenues relative to trend at all three racinos following the implementation of the smoking ban. A significant feature of the decline, however, is a sharp downward spike in February 2003—presumably related to a snowstorm that paralyzed the region for several days.⁵

3. Regression Analysis

To estimate the effects of the smoke-free law on the net proceeds of the Delaware racinos, a simple regression model was estimated. The model is a modified version of the one used in Mandel *et al.* (2005):

$$\ln(REV_t) = C + \beta_1 TIME + \beta_2 TIME^2 + \beta_3 \ln(MACH_t) + \beta_4 \ln(ICEA_t) + \beta_5 FEB03 + \sum_{i=Jan}^{Nov} \gamma_i MONTH_{it} + \delta SMOKE \quad (2)$$

The dependent variable is the natural log of calendar-adjusted real net proceeds, converted to constant dollars using the CPI-U. The regressions include a constant, trend, and trend-squared terms.⁶ They also include the variable *MACH*, the

⁵ Mandel et al. assert that initial revenue losses were “mainly caused by inclement weather” (p. 10), but do not control for this factor in their analysis.

⁶ The trend terms are based on the variable *TIME*, specified as $t*100$. As cited by Mandel et al. (2005), the inclusion of a quadratic trend specification is intended to account for the slowdown naturally associated with the maturing of the industry after a period of rapid initial growth; moreover, it is supported by the data.

number of VLTs in operation at each facility.⁷ An Index of Coincident Economic Activity (*ICEA*) for Delaware, as compiled by the Federal Reserve Bank of Philadelphia, was included to control for general economic conditions.⁸ Dummy variables for seasonal effects (*MONTH*) and for the snowstorm of February 2003 (*FEB03*) are included, along with a dummy variable that is the focus of analysis (*SMOKE*), which takes on a value of one in December 2002 and thereafter, zero before. An adjustment for potential first-order serial correlation of the residuals is also included in each of the regressions.

[Table 1]

Table 1 shows the results of these regressions. Seasonal dummy variables were found to be highly significant in each case.⁹ Coefficients on the dummy variable for the February 2003 snowstorm are also significant. The trend variables, number of machines and *ICEA* contribute, by varying degrees, to explaining the trends in the series. The correction for autocorrelated residuals is only relevant for the Dover Downs and Harrington equations.

⁷ The number of terminals is limited by Delaware law, providing a degree of exogeneity to this supply-side variable.

⁸ A regional *ICEA*, using an average for Delaware, Pennsylvania, Maryland and Virginia was also tested, but made little difference for the results. For methodology used to construct the *ICEA*, see Crone (2003).

⁹ F-tests showed that seasonal dummies were jointly significant in each regression, with p-values < .01.

More important, the coefficients on the smoking-ban dummy variable are negative and statistically significant for each of the three racinos, as well as for the statewide total.

An alternative approach to controlling for seasonal effects is also considered: A second set of regressions uses seasonally-adjusted (real) net proceeds as the dependent variable, obviating the need for seasonal dummy variables. The Census X12 seasonal adjustment procedure was used to produce seasonally adjusted series for nominal revenues, which were deflated to 2004 dollars using the CPI-U.

[Table 2]

Table 2 reports the results of regressions using the seasonally adjusted data. The results are very similar to the regressions using seasonal dummies. However, point-estimates of the losses attributed to the smoking ban are uniformly lower. Using these results as a conservative estimate, the smoking-ban dummy variable accounted for average monthly revenue declines of 15.8 percent at Delaware Park, 8.6 percent at Dover Downs, and 12.1 percent at Harrington.¹⁰ Because Delaware Park is the largest of the three facilities, the losses in net proceeds at that location account for a large share of the statewide loss—estimated to be 14.9 percent.

Figure 2 shows the actual and fitted values for the seasonally adjusted data and the regression estimates reported in Table 2. Several features of the data and the model specification are clearly revealed in the seasonally adjusted series: The specification of trends, the importance of the snowstorm of February 2003, and—

¹⁰ The conversion of regression coefficients to percentage changes uses the formula $\exp(\delta)-1$ (Halvorsen and Palmquist, 1980).

most important—the relevance of a downward shift in revenues corresponding to the implementation of the smoking ban are evident.¹¹

[Figure 2]

Note that the seasonally adjusted data in Figure 2 show no evidence of a change in the growth trend after the implementation of the smoking ban. If the decline in revenues captured by the shift-intercept dummy variable was a transitory phenomenon, we would expect to see higher trend growth during 2003 and 2004 as revenues recovered. However in the two year period from March 2003 to March 2005, total statewide revenues grew at a rate of 7.4% annually, compared with a growth rate of 8.7% in the two years preceding the smoking ban. The data are consistent with the model specification that Delaware's smoke-free law resulted in a permanent downward shift in racino revenues.

4. Discussion

All three racinos experienced significant revenue losses following the implementation of the smoke-free law. However, the magnitudes of the percentage losses differ considerably: the percentage decrease for Delaware Park was nearly twice as large as that for Dover Downs, with Harrington's losses midway between the two.

¹¹ The fitted regression for Harrington, the smallest of the three racinos, shows the significance of including the number of VLTs as an explanatory variable in the regressions.

The three Delaware racinos draw customers from a wide area. Dover Downs (located in the center of the state) reports that 70 percent of its customers are from Pennsylvania, Maryland, Virginia and the District of Columbia.¹²

Delaware Park, with the largest revenues and the greatest losses following the smoking ban, is located near the northern city of Wilmington—less than 40 miles from Philadelphia. In this market, Delaware Park faces strong competition from Atlantic City (about 60 miles from Philadelphia). Delaware Park is also the closest Delaware racino to Baltimore (70 miles). However, a similar facility in Charles Town, WV offers an equidistant alternative for Baltimore residents.¹³

Harrington, the southernmost of the Delaware racinos, is the closest to the Washington D.C. area (less than 90 miles), and is accessible from Baltimore as well (85 miles). Charles Town, WV is even closer for D.C. residents (64 miles).

The Delaware racinos with the largest proportionate losses are those that face the most direct competition from alternative gaming facilities in the region.

Dover Downs, on the other hand, competes in the same markets as the other two Delaware racinos, but its central location places it further from each of the surrounding major metropolitan areas. By location alone, Dover Downs is likely to draw a larger local customer-base, limiting potential losses to alternative regional gaming venues.

As suggested by Dunham and Marlow (2003), the changes in net revenues documented here might reveal only a part of the overall effects of smoking

¹² Dover Downs (2004b).

¹³ See also, Marcel (2004).

restrictions. Smoke free laws may also “lead owners to alter prices, output, and other business attributes in ways that affect the welfare of all customers and workers.”

For example, Dover Downs is the only Delaware racino with an onsite luxury hotel. This asset was actively leveraged to buffer gaming revenues from the effects of the smoking ban: “As a result of the [Delaware Clean Indoor Air] Act, we redirected our marketing efforts to attract more casino customers to our hotel by providing additional complimentary and discounted rooms” (Dover Downs, 2004b). This effort may have stemmed revenue losses from gaming, but it also represents an additional source of profit loss.

In mid-2003, faced with sharply declining gaming revenues, the Delaware legislature authorized a 25 percent expansion in the maximum number of VLTs. Delaware Park and Dover Downs responded by embarking on construction projects to expand their facilities. The authorizing legislation also extended operating hours and imposed an additional state surcharge on revenues of the Delaware racinos, further increasing costs and reducing profit margins for the operators.

Finally, one additional issue is relevant from public finance perspective: Prior to the implementation of the smoke-free law, total revenues at Delaware racinos totaled nearly \$570 million per year. With an average distribution of 35 percent going to state coffers, Delaware received nearly \$200 million in revenues in 2002 —amounting to approximately 3.6 percent of the state’s general revenues. The regression estimates reported in Table 2 are associated with losses of \$94 million dollars per year since the implementation of the smoking ban, corresponding to state revenue losses of \$33 million annually.

5. Conclusion

The evidence clearly indicates that the Delaware Smoke Free Air Act resulted in statistically significant revenue losses at each of the three Delaware racinos. The patterns of losses suggest customer diversion to competing gaming venues.

Moreover, responses to revenue declines following the smoking ban engendered additional costs that reduced operating margins. Losses in business profits therefore exceeded the estimated revenue declines.

As state and local governments consider the efficacy of public smoking bans, the issue is often cast in terms of public health versus economic impact. However, there are few cases for which disaggregated data are available to examine the impact on a specific sector or particular businesses. The data from Delaware racinos therefore provide a valuable case study for illustrating potential economic losses that should be weighed against the public health benefits of smoke free laws.

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Table 1: Regression Results Using Seasonal Dummy Variables

Variable	Delaware Park	Dover Downs	Harrington	Total
<i>SMOKE</i>	-0.1826** (0.0138)	-0.0935* (0.0389)	-0.1402** (0.0327)	-0.1704** (0.0140)
<i>FEB03</i>	-0.1704** (0.0269)	-0.2275** (0.0349)	-0.2372** (0.0424)	-0.2053** (0.0264)
<i>C</i>	11.9981** (0.6597)	12.0478** (2.9425)	18.7304** (2.1331)	14.8737** (0.7723)
<i>TIME</i>	0.7335** (0.0906)	1.1406** (0.3603)	0.7011* (0.3398)	1.1346** (0.1304)
<i>TIME²</i>	-0.3432** (0.0616)	-0.6169** (0.2306)	-0.2423 (0.1880)	-0.4878** (0.0773)
<i>ln(MACH)</i>	0.2330** (0.0287)	0.2154 (0.1171)	0.4550** (0.0799)	0.1233* (0.0515)
<i>ln(ICEA)</i>	0.5448** (0.1469)	0.4419 (0.6795)	-1.3203** (0.3949)	0.2072 (0.1971)
<i>AR(1)</i>	0.0528 (0.1120)	0.6562** (0.0864)	0.3772** (0.1048)	0.0870 (0.1196)
<i>Adjusted R²</i>	0.9802	0.9671	0.9583	0.9790

* Significant at 0.95

**Significant at 0.99

NOTES: The variables used in the regression are: SMOKE=dummy variable for the smoking ban, FEB03=dummy variable for the snowstorm of February 2003, TIME and TIME2=linear and quadratic time trends, ln(MACH)=natural log of the number of VLTs in operation, ln(ICEA)=natural log of the Index of Coincident Economic Activity for Delaware and AR(1)=first order autoregressive error term.

Table 2: Regression Results Using Seasonally Adjusted Data

Variable	Delaware Park	Dover Downs	Harrington	Total
<i>SMOKE</i>	-0.1722** (0.0144)	-0.0901** (0.0330)	-0.1292** (0.0315)	-0.1611** (0.0146)
<i>FEB03</i>	-0.1757** (0.0248)	-0.2111** (0.0308)	-0.2289** (0.0366)	-0.1923** (0.0238)
<i>C</i>	12.0504** (0.7036)	10.8979** (2.2965)	19.4568** (2.0863)	14.5965** (0.7199)
<i>TIME</i>	0.7126** (0.0953)	1.2855** (0.2835)	0.8325* (0.3256)	1.1727** (0.1103)
<i>TIME²</i>	-0.3462** (0.0646)	-0.6809** (0.1843)	-0.3127 (0.1827)	-0.5200** (0.0680)
<i>ln(MACH)</i>	0.2438** (0.0302)	0.0893 (0.0888)	0.4120** (0.0732)	0.1017* (0.0396)
<i>ln(ICEA)</i>	0.5521** (0.1568)	0.8912 (0.5238)	-1.3723** (0.3918)	0.3342* (0.1569)
<i>AR(1)</i>	0.1296 (0.1041)	0.6066** (0.0843)	0.4262** (0.0962)	0.1772 (0.1033)
<i>Adjusted R²</i>	0.9781	0.9687	0.9569	0.9822

* Significant at 0.95

**Significant at 0.99

NOTES: See Notes to Table 1.

**Figure 1:
Monthly Net Proceeds at Delaware “Racinos”**

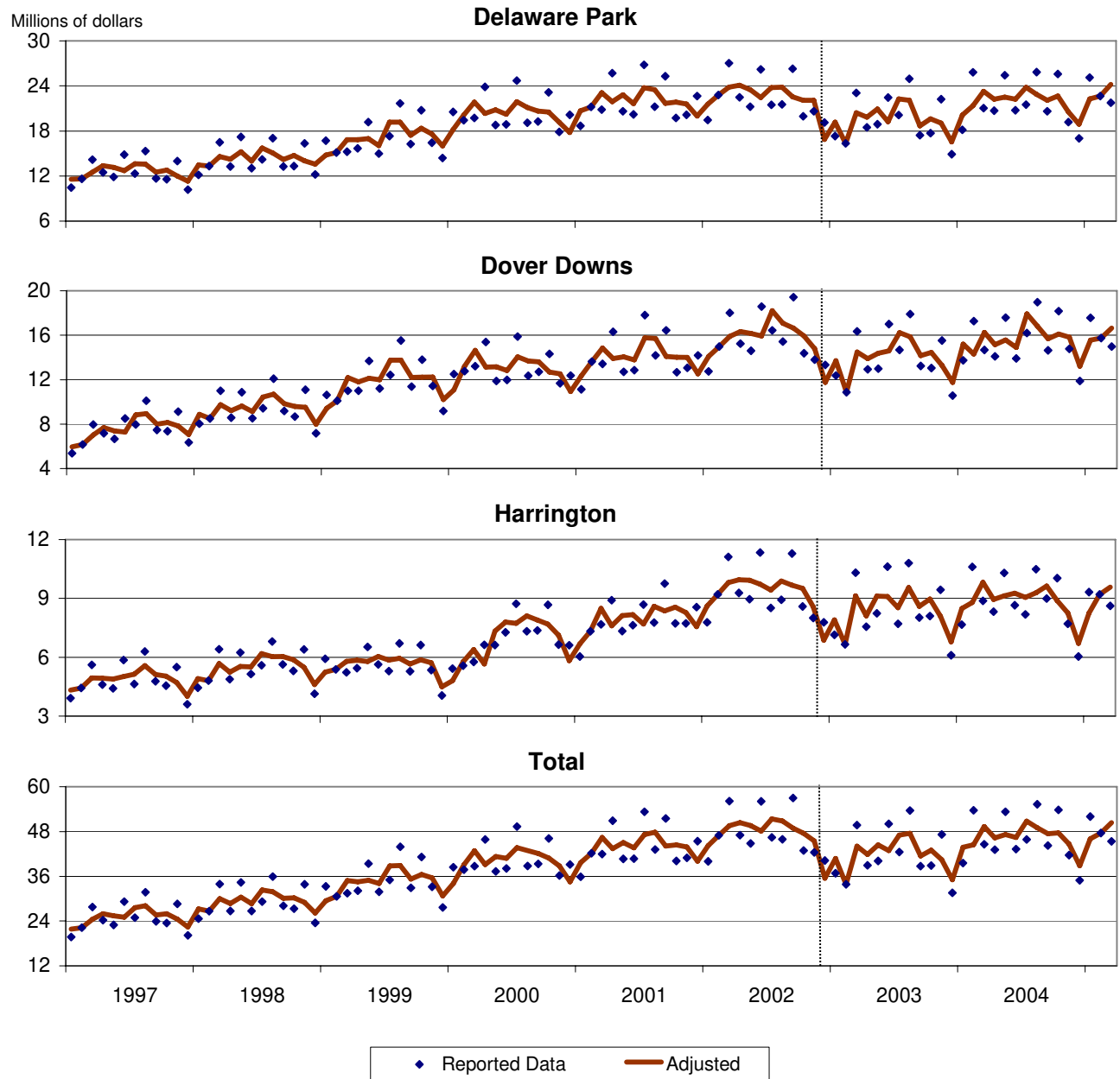


Figure 2:
Actual and Fitted Values for Seasonally-Adjusted Net Proceeds

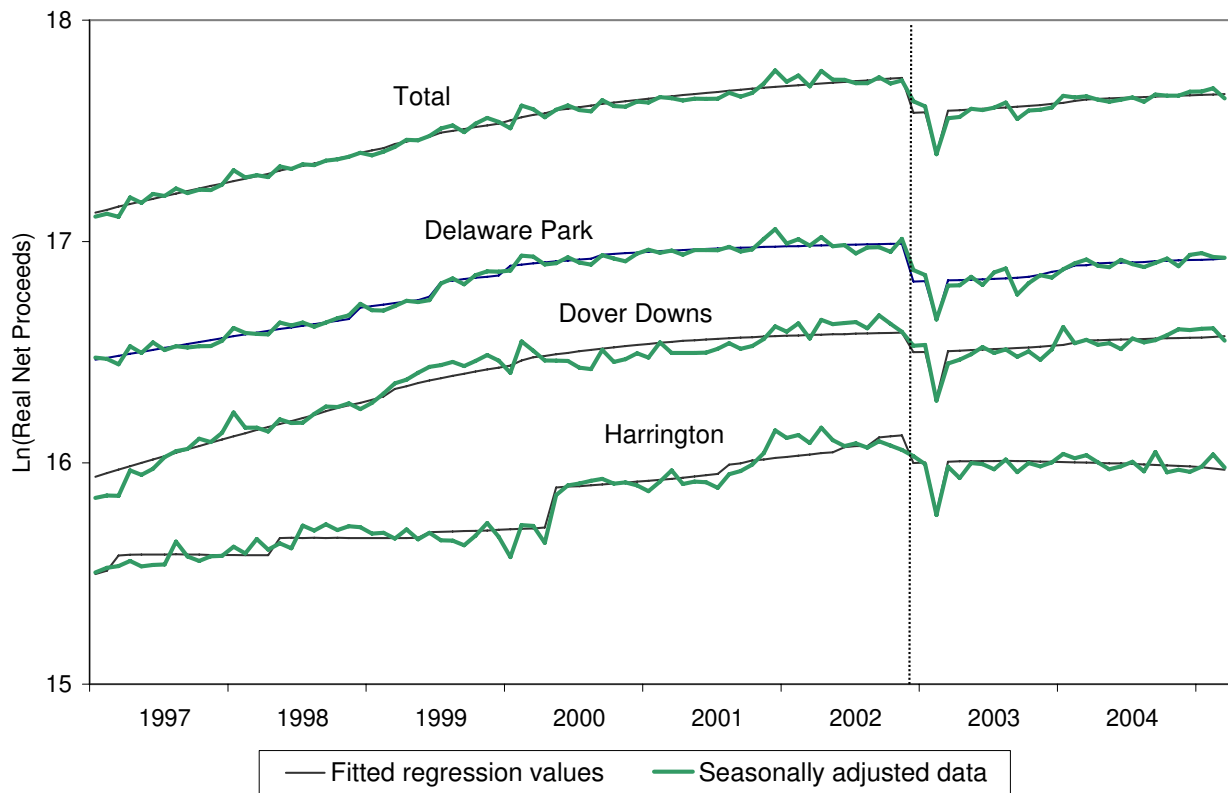


Exhibit C

NEW JERSEY CASINO CONTROL COMMISSION

Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

Casino revenues pass \$5 billion mark

For Immediate Release

Tuesday, January 10, 2006

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ATLANTIC CITY— Casino revenues rose 4.4 percent in 2005 to a record \$5.02 billion, according to figures released Tuesday by the state Casino Control Commission. Results submitted to the commission show that slot machine revenue rose 3.3 percent to almost \$3.8 billion while table game revenue increased 7.5 percent to \$1.3 billion.

“Thirty years ago when we were debating casino gambling in the Legislature, no one could have imagined a \$5 billion industry,” Gov. Richard J. Codey said. “These figures prove that Atlantic City has become a great destination.”

Casino Control Commission Chair Linda M. Kassekert said the record revenues reflect the expansion of the casino industry over the last several years.

“Atlantic City’s casino industry has been redefining itself with more entertainment, more shopping and more restaurants and it is attracting new visitors who wouldn’t consider coming here just a few years ago,” Kassekert said. “It is the economic engine that drives much of the economy in southern New Jersey.”

The governor said the record revenues are also the result of the state’s ongoing commitment to creating a business-friendly environment for the casinos while maintaining the highest levels of integrity.

“Our efforts to help the industry develop and the state’s ability to regulate it in a responsible manner have paid enormous returns to the State of New Jersey,” he said. Those benefits include more than 80,000 direct and indirect jobs and hundreds of millions of dollars annually in taxes for local, county, state and federal governments.

“The Gross Revenue Tax alone on \$5 billion in casino revenue is \$401.5 million which goes to support programs for our seniors and people with disabilities,” Codey said. Since the first casino opened in 1978, casinos have paid \$6.6 billion in taxes on their gross revenues.

The commission chair noted that in addition to the amount of Gross Revenue Tax collected, the casinos incurred \$62.7 million in reinvestment obligations last year. They are required to reinvest 1.25 percent of gross revenues in projects approved by the Casino Reinvestment Development Authority.

In December, casino win increased 7.3 percent over December 2004 to \$387 million. Slot revenues increased 4.9 percent while table revenues rose 13 percent.

Win, or casino revenue, is the net amount of money won by casinos. It is not profit.

DECEMBER 2005 STATISTICS**CASINO WIN AND GROSS REVENUE**

	2005	2004	Favorable (Unfavorable)	
			\$	%
<u>December</u>				
Casino Win	\$386,990,219	\$360,797,491	26,192,728	7.3
Uncollectible Patrons' Checks Adjustment	0	(58,021)	(58,021)	N/A
Gross Revenue	<u>\$386,990,219</u>	<u>\$360,855,512</u>	<u>26,134,707</u>	7.2
<u>December YTD</u>				
Casino Win	\$5,018,271,706	\$4,806,800,604	211,471,102	4.4
Uncollectible Patrons' Checks Adjustment	0	(541,934)	(541,934)	N/A
Gross Revenue	<u>\$5,018,271,706</u>	<u>\$4,807,342,538</u>	<u>210,929,168</u>	4.4

CASINO REVENUE FUND

	8% Tax on Gross Revenue	Interest Earned on Casino Revenue Fund
December 2005	\$30,959,218	\$1,678
January through December 2005	\$401,461,736	\$1,296,477
May 1978 through December 2005 Includes payments from tax audit deficiencies	\$6,599,084,957	\$125,845,698

CASINO REINVESTMENT DEVELOPMENT AUTHORITY OBLIGATIONS

(Based on 1.25% of Gross Revenue)

December 2005	\$4,837,378
January through December 2005	\$62,728,396

FIVE HIGHEST MONTHS AND YEARS-TO-DATE OF WIN FOR DECEMBER

(\$ in Millions)

December 2005	\$387.0	December YTD 2005	\$5,018.3
December 2004	\$360.8	December YTD 2004	\$4,806.8
December 2001	\$347.9	December YTD 2003	\$4,488.3
December 2003	\$320.3	December YTD 2002	\$4,381.6
December 2002	\$311.6	December YTD 2001	\$4,303.1

FIVE HIGHEST MONTHS OF WIN IN THE HISTORY OF ATLANTIC CITY

(\$ in Millions)

July 2005	\$504.8
August 2003	\$474.9
July 2004	\$473.9
August 2005	\$473.0
August 2004	\$452.1

**ATLANTIC CITY CASINO INDUSTRY
COMPARISON OF CASINO WIN
FOR THE MONTH AND YEAR-TO-DATE ENDED DECEMBER 2005 AND 2004
(PARENTHESIS INDICATE DAILY AVERAGES)***

	December 2005		December 2004	
	Month	Year-to-Date	Month	Year-to-Date
AC Hilton (a)	19,593,681 (632,054)	289,415,122 (792,918)	22,999,825 (741,930)	295,433,182 (807,194)
Bally's AC	50,156,417 (1,617,949)	645,633,528 (1,768,859)	47,434,868 (1,530,157)	644,728,387 (1,761,553)
Borgata	58,477,781 (1,886,380)	704,358,317 (1,929,749)	54,955,431 (1,772,756)	636,540,845 (1,739,183)
Caesars	41,701,080 (1,345,196)	523,544,263 (1,434,368)	36,155,321 (1,166,301)	495,965,726 (1,355,098)
Harrah's Marina	36,567,351 (1,179,592)	476,254,420 (1,304,807)	32,175,495 (1,037,919)	449,861,703 (1,229,130)
Resorts	20,592,437 (664,272)	271,983,724 (745,161)	16,648,679 (537,054)	252,785,105 (690,670)
Sands	11,563,556 (373,018)	176,647,163 (483,965)	14,477,716 (467,023)	190,208,971 (519,697)
Showboat	30,866,681 (995,699)	414,379,475 (1,135,286)	28,089,041 (906,098)	392,580,550 (1,072,624)
Tropicana	34,553,611 (1,114,633)	441,914,962 (1,210,726)	29,036,625 (936,665)	363,949,112 (994,396)
Trump Marina	18,150,518 (585,501)	250,660,490 (686,741)	18,157,018 (585,710)	263,030,274 (718,662)
Trump Plaza	21,321,703 (687,797)	303,547,972 (831,638)	24,100,644 (777,440)	318,434,974 (870,041)
Trump Taj Mahal	43,445,403 (1,401,465)	519,932,270 (1,424,472)	36,566,828 (1,179,575)	503,281,775 (1,375,087)
Industry	<u>\$386,990,219</u> (12,483,555)	<u>\$5,018,271,706</u> (13,748,690)	<u>\$360,797,491</u> (11,638,629)	<u>\$4,806,800,604</u> (13,133,335)

* Industry daily averages may not foot due to rounding.

(a) AC Hilton was under Caesars Entertainment Inc. ownership until April 25, 2005 and under Colony investors VI, L.P., et al. ownership since April 26, 2005.

**THE ATLANTIC CITY CASINO INDUSTRY
CASINO WIN ANALYSIS
FOR THE MONTH ENDED DECEMBER 2005 VERSUS 2004**

	SLOT MACHINE WIN		INCREASE (DECREASE)	TABLE GAME WIN		INCREASE (DECREASE)	TOTAL CASINO WIN		INCREASE (DECREASE)
	2005	2004	%	2005	2004	%	2005	2004	%
AC Hilton	15,017,106	15,023,059	0.0	4,576,575	7,976,766	(42.6)	19,593,681	22,999,825	(14.8)
Bally's AC	35,587,409	32,743,489	8.7	14,569,008	14,691,379	(0.8)	50,156,417	47,434,868	5.7
Borgata	33,862,281	30,981,291	9.3	24,615,500	23,974,140	2.7	58,477,781	54,955,431	6.4
Caesars	26,539,746	25,178,141	5.4	15,161,334	10,977,180	38.1	41,701,080	36,155,321	15.3
Harrah's Marina	31,732,475	28,882,194	9.9	4,834,876	3,293,301	46.8	36,567,351	32,175,495	13.6
Resorts	13,450,140	12,329,112	9.1	7,142,297	4,319,567	65.3	20,592,437	16,648,679	23.7
Sands	8,862,633	10,222,540	(13.3)	2,700,923	4,255,176	(36.5)	11,563,556	14,477,716	(20.1)
Showboat	26,445,763	24,468,965	8.1	4,420,918	3,620,076	22.1	30,866,681	28,089,041	9.9
Tropicana	24,211,954	19,356,707	25.1	10,341,657	9,679,918	6.8	34,553,611	29,036,625	19.0
Trump Marina	13,605,890	15,253,231	(10.8)	4,544,628	2,903,787	56.5	18,150,518	18,157,018	0.0
Trump Plaza	15,596,284	16,643,195	(6.3)	5,725,419	7,457,449	(23.2)	21,321,703	24,100,644	(11.5)
Trump Taj Mahal	23,488,890	24,784,190	(5.2)	19,956,513	11,782,638	69.4	43,445,403	36,566,828	18.8
Total	\$268,400,571	\$255,866,114	4.9	\$118,589,648	\$104,931,377	13.0	\$386,990,219	\$360,797,491	7.3

**THE ATLANTIC CITY CASINO INDUSTRY
CASINO WIN ANALYSIS
FOR THE YEAR-TO-DATE ENDED DECEMBER 2005 VERSUS 2004**

	SLOT MACHINE WIN		INCREASE (DECREASE)	TABLE GAME WIN		INCREASE (DECREASE)	TOTAL CASINO WIN		INCREASE (DECREASE)
	2005	2004	%	2005	2004	%	2005	2004	%
AC Hilton (a)	205,075,541	200,292,984	2.4	84,339,581	95,140,198	(11.4)	289,415,122	295,433,182	(2.0)
Bally's AC	477,973,519	471,786,040	1.3	167,660,009	172,942,347	(3.1)	645,633,528	644,728,387	0.1
Borgata	437,871,396	403,839,339	8.4	266,486,921	232,701,506	14.5	704,358,317	636,540,845	10.7
Caesars	362,964,443	349,422,405	3.9	160,579,820	146,543,321	9.6	523,544,263	495,965,726	5.6
Harrah's Marina	422,955,800	402,391,669	5.1	53,298,620	47,470,034	12.3	476,254,420	449,861,703	5.9
Resorts	202,790,252	188,881,066	7.4	69,193,472	63,904,039	8.3	271,983,724	252,785,105	7.6
Sands	137,009,344	149,840,222	(8.6)	39,637,819	40,368,749	(1.8)	176,647,163	190,208,971	(7.1)
Showboat	366,586,059	349,562,307	4.9	47,793,416	43,018,243	11.1	414,379,475	392,580,550	5.6
Tropicana	306,357,790	255,768,558	19.8	135,557,172	108,180,554	25.3	441,914,962	363,949,112	21.4
Trump Marina	197,991,350	210,527,327	(6.0)	52,669,140	52,502,947	0.3	250,660,490	263,030,274	(4.7)
Trump Plaza	223,675,878	235,514,048	(5.0)	79,872,094	82,920,926	(3.7)	303,547,972	318,434,974	(4.7)
Trump Taj Mahal	332,703,826	338,689,087	(1.8)	187,228,444	164,592,688	13.8	519,932,270	503,281,775	3.3
Total	<u>\$3,673,955,198</u>	<u>\$3,556,515,052</u>	3.3	<u>\$1,344,316,508</u>	<u>\$1,250,285,552</u>	7.5	<u>\$5,018,271,706</u>	<u>\$4,806,800,604</u>	4.4

(a) AC Hilton was under Caesars Entertainment Inc. ownership until April 25, 2005 and under Colony Investors VI, L.P., et al. ownership since April 26, 2005.

Exhibit D



ECONOMIC RESEARCH
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The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois

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The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois

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Abstract

Recent state-wide smoking bans are likely the most significant regulations imposed on the casino gaming industry. We explore the effects that the Illinois state smoking ban has had on Illinois casino revenue and attendance as well as casino tax revenue. Our empirical methodology extends and enhances that of previous literature in that we observe a natural experiment in comparing the performance of Illinois casinos with out-of-state casinos (no smoking ban) that share a market with Illinois casinos. Estimates suggest that revenue and admissions at Illinois casinos declined by more than 20 percent (\$400 million) and 12 percent, respectively. Calculations reveal that casino tax revenue to state and local governments declined by approximately \$200 million.

The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois

Introduction

Over the past decade a growing number of state and local governments have enacted laws that restrict or prohibit smoking in bars, restaurants, and other public places. As of January 2009, fifteen states and 774 city and county jurisdictions across the United States have enacted laws prohibiting smoking in bars, restaurants, and workplaces. Of the local prohibitions against smoking, 593 require smoke-free workplaces and 594 require smoke-free restaurants.¹

Proponents of smoking bans cite public health benefits, whereas opponents argue that revenue and employment losses may outweigh the health benefits from a smoking ban. Research on the economic effects (revenue and employment) of smoking bans has revealed a negative effect for some businesses, although the magnitude of the smoking ban effect differs across studies.²

In addition to prohibiting smoking in bars and restaurants, many state and local governments have also enacted smoking bans in gaming establishments. As of January 2009, 15 states have enacted 100 percent smoke-free laws for state-regulated gaming.³ However, the extension of smoking prohibitions to commercial casinos is a new phenomenon. Of the 12 states

¹ See American Nonsmokers' Rights Foundation (2009a).

² Recent studies include Phelps (2006), Adams and Cotti (2007), and Fleck and Hanssen (2008). Phelps (2006) and Adams and Cotti (2007) used nationwide county-level employment data and examined the change in employment at bars and restaurants after communities adopted a smoking ban. Neither study found significant employment changes at restaurants, on average, but both find statistically significant employment declines at bars, with loss estimates ranging from 4 percent to 16 percent. Fleck and Hanssen (2008) analyzed quarterly restaurant sales data for 267 California cities over 25 years. They find a statistically significant 4 percent decline in revenue that is attributed to smoking bans. Other studies on the subject include Dunham and Marlow (2000a, 2000b, 2003), Glantz and Smith (1994), and Pakko (2008b). Difficulties in estimating the effects of smoking bans and likely reasons for the divergent results across studies include differences in the type of ban (partial, full) across jurisdictions, the length of time each ban has been in place, the coverage of the data used in the analyses, and the size of the smoking population relative to the non-smoking population.

³ See American Nonsmokers' Rights Foundation (2009b). Native American gaming exists in 29 states and is not subject to state and local smoking laws.

with commercial casino gaming, only Colorado and Illinois prohibit smoking in commercial casinos.⁴ The smoke-free laws in those two states both took effect at the beginning of 2008.

For several reasons, the policy discussion on prohibiting smoking in casinos has received separate, and arguably sharper, debate than smoking bans in bars and restaurants.⁵ First, the marginal contribution of one or two casinos to local employment and tax revenue, most notably in the Midwest and South, is much greater than for a bar or restaurant; in many small communities, one or two casinos employ a large percentage of the population and also provide a large percentage of tax revenue to local communities.⁶ Second, many state and local governments earmark casino revenue to specific programs such as infrastructure and education. Third, a casino smoking ban is likely to have a greater negative revenue impact on the gaming industry than a smoking ban would have on the restaurant industry because customers patronize casinos for longer time periods than they do restaurants. Finally, the view by some that casino gaming is an immoral activity increases attention to any public policy affecting casino gaming.

Research on the effects of a smoking ban on casino revenue has thus far focused on the state of Delaware, which implemented a smoke-free law in December 2002.⁷ In the first study on the subject, Mandel, Alamar, and Glantz (2005) found that the smoking ban in Delaware had a negative but statistically insignificant effect on gaming revenue. After correcting for errors in the Mandel, Alamar, and Glantz (2005) study, Pakko (2006) found that the smoking ban in Delaware casinos resulted in a loss of about \$6 million, which represented a loss of over 12

⁴ See American Nonsmokers' Rights Foundation (2009b). Many commercial casinos designate a percentage of their floor space as non-smoking.

⁵ Points of debate have been summarized from transcripts from floor debate in the Illinois General Assembly prior to passage of the Smoke Free Illinois Act in July of 2007. See http://www.ilga.gov/search/iga_search.asp?scope=sentran95 and search by keywords "smoking ban."

⁶ For example, contacts at the Casino Queen in East St. Louis, Illinois, report that the city of East St. Louis receives over half of its annual operating revenue from the casino.

⁷ The three casinos in Delaware are not commercial casinos. They operate as part of the Delaware State Lottery and represent "electronic gaming devices" (slot machines) located at racetracks throughout the state. Casinos operating at racetracks are often called racinos.

percent relative to average monthly revenue in the year preceding the smoking ban. In a subsequent study, Pakko (2008a) examined the effect of smoking bans on individual casino revenue in Delaware, finding that casino revenue declined significantly at each of the three Delaware casinos as a result of the smoking ban, with a total revenue effect of approximately 15 percent. Finally, Thalheimer and Ali (2008) estimate a system of slot machine demand equations for the three Delaware casinos. They find that the smoking ban in Delaware reduced gaming demand by nearly 16 percent.

In this paper we extend the economic research on the effect of smoking bans on casino gaming revenue. Our work has several advantages over previous studies on the subject. First, the focus of our analysis is casino gaming in the state of Illinois, the first example of a smoking ban that applies to full-service commercial casinos. Second, we use casino revenue data in adjacent states to help identify the effect of the smoking ban in Illinois and to examine whether there were any revenue spillover effects for casinos located within the same markets but not subject to the smoking ban. This provides for a natural experiment in comparing the performance of Illinois casinos with out-of-state casinos (no smoking ban) that share a market with Illinois casinos. Third, we explore the effect of the Illinois smoking ban on casino admissions as well as casino revenue to generate insight into any difference in the number of patrons versus intensity of casino wagering after the smoking ban. Finally, we conduct several analyses using state-level data, market-level data, and individual casino-level data to assess the impact of the Illinois casino smoking ban on Illinois casinos as well as the casino markets in neighboring states that border Illinois. Our results have implications for the casino industry and the state and local governments that receive a portion of their revenue from casino gaming taxes.

Background and Motivation

Riverboat gaming was legalized in Illinois in February 1990 with passage of the Riverboat Gambling Act, making Illinois the second state in the nation to legalize riverboat gambling. There are currently nine riverboat casinos in Illinois, eight of which border neighboring states – two along the Mississippi River across from St. Louis, Missouri; one along the Mississippi River near Davenport, Iowa; one in southern Illinois on the Ohio River; and four along rivers in the Chicago area.⁸ In 2007, Illinois casinos generated nearly \$2 billion in adjusted gross receipts (AGR) and \$685 million in casino tax revenue to the state government (all earmarked for education) and \$120 million to the municipalities where the riverboats are located.⁹ The state of Illinois ranks 6th in state-wide casino revenue generated, but has the fewest number of casinos of the top 6 states.

In July 2007, the state of Illinois passed the Smoke Free Illinois Act (SB0500, Public Act 095-0017).¹⁰ The Act prohibits smoking in public places, places of employment, and governmental vehicles. During debate, numerous industries including the casino industry argued, eventually unsuccessfully, for an exemption from the state-wide smoking ban.

One contribution of our study is that we empirically estimate the effect of the Illinois smoking ban on the revenue of out-of-state casinos that border Illinois. For our purposes, there are four distinct casino markets (based on geographic proximity) that each consist of casinos in both Illinois and the border state (see Figure 1). Each market therefore has Illinois casinos directly affected by the smoking ban and out-of-state casinos that may have experienced revenue and visitation spillovers from the Illinois smoking ban. The first market, which we term the

⁸ The ninth casino is in Peoria, which is located in central Illinois and thus faces no nearby out-of-state competitors.

⁹ See the Illinois Gaming Board 2007 *Annual Report* (<http://www.igb.state.il.us/annualreport/2007igb.pdf>.)

Adjusted gross revenues are defined as total wagers less player winnings.

¹⁰ Full text of the Smoke Free Illinois Act as well as the voting history can be found at http://www.ilga.gov/search/iga_search.asp?scope=sentran95 and by searching with the keywords “smoking ban.”

“Chicago area market,” consists of four casinos along Chicago area rivers and four casino locations in northwestern Indiana.¹¹ Second, the “Southern” market includes one casino in the city of Metropolis Illinois, which faces competition from a casino in southern Missouri as well as one in southern Indiana. The third market, the “Quad City market,” has one casino on the Illinois side of the Mississippi River and four nearby riverboat casinos on the Iowa side of the Mississippi River.¹² Finally, the “St. Louis market” includes three casinos in Missouri and two casinos in Illinois that are all located within the St. Louis metropolitan area.¹³ A listing of the Illinois casinos used in our analysis, along with descriptive statistics, is provided in Table 1.

The conceptual basis for the hypothesis that a smoking ban will have a negative effect on casino revenue (for those casinos in the smoking ban state) is straightforward: Casino patrons who smoke will chose not to visit the now-smoke-free casino or will gamble less as a result of taking breaks from gambling to go outside the facility to smoke. The effect of the smoking ban will depend on the size of these effects, and the size of each effect is a function of casino patron smoking rates.¹⁴ By examining both casino revenue and casino admissions, we provide insights into whether fewer patrons visited the Illinois casinos after the ban or whether wagering by the same number of patrons is less (thus suggesting no substitution with area casinos but rather less-intense wagering).

One key factor in the potential revenue loss from a casino smoking ban is the percentage of gamblers who smoke. Those in the casino industry argue that a smoking ban will unfairly hurt their industry because casino patrons have a higher smoking rate than that of the general

¹¹ We treat the Majestic I and Majestic II—two casinos in Gary, Indiana, sharing a common admissions gate—as one casino location.

¹² The Quad Cities include Davenport (Iowa), Moline (Illinois), Rock Island (Illinois), and Bettendorf (Iowa).

¹³ Data from the Lumiere Place casino, which opened in December 2007, is treated separately from those of the pre-existing casinos in the St. Louis market.

¹⁴ We assume that the smoking ban will not induce a significant number of people to begin gambling as a result of the ban.

population. This premise is included in the work of Pritsos, Pritsos, and Spears (2008).

However, these authors find evidence that the smoking rate (about 21 percent) in casinos located in Nevada (Las Vegas, Reno, and Lake Tahoe) is not statistically different from that of the general population. It may be the case, however, that smoking casino patrons have higher gaming expenditures than non-smoking patrons. Petry and Oncken (2002) conducted a survey of gamblers who smoke and those who do not and found that smokers gambled on more days and spent more money gambling than did non-smoking gamblers. Thus, at a minimum, a casino smoking ban is likely to influence about 20 percent of all casino patrons and 20 percent of casino revenue if one assumes that the smoking rate for gamblers is the same as the general population and gamblers who smoke do not gamble more than non-smoking gamblers.¹⁵

One confounding issue with estimating the effects of the smoking ban is that the timing of the ban coincides with a general economic downturn. The 2008 Annual Report of the Illinois Gaming Board reports uncertainty about the relative importance of the two effects:

There are two factors underlying the reductions in this year's gaming revenues. The first is the smoking ban implemented by the Smoke Free Illinois Act (Public Act 95-0017), effective January 1, 2008. According to the casino industry, implementation of this Act has caused the AGR [adjusted gross receipts] per admission to fall. This is because habitual smokers take smoking breaks, during which time they do not engage in gaming activity. The second factor is the downturn in the Illinois and national economies. As a discretionary form of spending, gaming expenditures are especially prone to reductions during hard economic times. The relative importance of the above two factors has not yet been quantified with certainty.

- 2008 Annual Report, Illinois Gaming Board, p. 12

¹⁵ The adult smoking rates in 2007 for Illinois, Indiana, Missouri, and Iowa were, respectively, 20.1 percent, 24.1 percent, 24.5 percent, and 19.8 percent. The U.S. smoking rate in 2007 was 19.3 percent. Data from the Centers for Disease Control and Prevention were compiled by the Henry J. Kaiser Family Foundation. See <http://www.statehealthfacts.org/comparemaptable.jsp?ind=80&cat=2>.

Our objective in this paper is to statistically disentangle the factors underlying the decline in Illinois casino revenue. We approach the issue by estimating multiple linear regression models for casinos in Illinois, as well as in the surrounding states that also have riverboat casinos: Iowa, Indiana, and Missouri. The model includes controls for seasonality, general economic conditions, previous policy changes, and weather events.

Empirical Model and Data

We follow previous literature by capturing the revenue impact of the smoking ban using a dummy variable in a regression equation that includes controls for trend, seasonality, and economic activity. We also include controls for specific exogenous factors, including changes in public policy as well as exceptional weather events. Specifically, the regression model takes the general form:

$$\log(y_t) = c + Trend(t) + Seas(t) + \bar{\beta}X_t + \gamma Smokefree_t + u_t \quad (1)$$

where y_t represents either adjusted gross revenue or admissions. $Trend(t)$ and $Seas(t)$ represent general trend and seasonal components, and $\bar{\beta}$ is a vector of coefficients associated with a matrix of variables (X_t) that measures overall economic activity, policy changes, and other exogenous events. The impact of the smoking ban is estimated by γ , the coefficient on a dummy variable that takes on the value of one since the implementation of the Illinois smoking ban (beginning in January 2008) and zero before.

Data

Monthly data for adjusted gross receipts (AGR) and total admissions for 1997 through 2008 were readily available on websites of the government gaming commissions for Illinois and

its contiguous states with riverboat gaming: Iowa, Indiana, and Missouri. Details about the compilation of the data are reported in the Appendix.

Figure 2 shows statewide revenue over the sample period. Data for Illinois and its surrounding states all show an upward trend, with slowing growth that might be associated with the maturation of a relatively new industry.¹⁶ Each of the series also displays a pronounced seasonal pattern. The data for Illinois also appears to include structural breaks that can be associated with specific policy changes enacted by the state legislature (detailed below). Most prominent among these breaks is the sharp fall in revenue in 2008, coinciding with the implementation of the Illinois smoking ban. Although a nationwide recession began at the same time—and might be expected to depress gaming revenue—the downturn in Illinois represents a clear departure from the experiences of its surrounding states.

Figure 3 presents the data in a way that highlights the unique experience of Illinois casinos during 2008. In the three previous years, casino revenue in all four states grew at rates of 4 to 6 percent. During 2008, revenue in the states surrounding Illinois continued to expand (albeit at lower rates in Indiana and Iowa). In Illinois, however, revenue plummeted by nearly 21 percent. This drop represents a decline of nearly 25 percent relative to trend.

The significance of this difference between the experience of Illinois and its neighbors is explored first in regressions for statewide totals. For this exercise, explanatory variables in the X matrix include $CEAI_{it}$, state-level indexes of coincident economic activity for each of the four states (from the Federal Reserve Bank of Philadelphia); $Snow_{it}$, a measure of monthly snowfall in

¹⁶ Mandel et al. (2005) and Pakko (2006, 2008a) cite this factor as an explanation for a significant quadratic trend in the revenues of gaming venues in Delaware. For the four states considered here, riverboat gaming was established in the early to mid 1990s.

each state; and dummy variables specifying particular policy changes or exogenous events.¹⁷ Two specific policy changes for the Illinois casino are represented by *Jul99*, the date when continuous riverboat boarding took effect, and *Jul03*, the date of a significant increase in the tax rate imposed on admissions and wagering.^{18,19} Because we have an interest in evaluating spillovers from Illinois policy changes on gaming in surrounding states, these two dummy variables are also included in the regressions for Indiana, Iowa and Missouri. Additional dummy variables are relevant for the other states: *Aug02* is the date on which Indiana casinos began continuous boarding, *Apr-May2001* is a dummy variable for a period during which Iowa casinos on the Mississippi river were closed due to flooding, and *Sep-Nov99* controls for the phased-in adoption of continuous boarding in Missouri.²⁰ The regressions each include a constant, a trend, and a trend-squared term. To account for seasonality, a full array of seasonal dummies is also included in each regression (coefficients not reported). The residuals of the regressions are modeled to include an AR(1) term. Standard errors for all regressions are calculated using the heteroskedasticity/autocorrelation adjustment procedure of Newey and West (1987).

Empirical Results: State-Level Analysis

The results for statewide totals of AGR are shown in Table 2. The regressions achieve a reasonable fit to the data, with each of the state-specific policy variables displaying a statistically

¹⁷ Monthly snowfall totals were obtained from the National Oceanographic and Atmospheric Administration (NOAA). The data are measured in inches, represented as deviations from “normal” (1971-2000 averages). For the four states, snowfall data were collected for a representative centrally located city: Illinois-Urbana, Indiana-Indianapolis, Missouri-Columbia, and Iowa-Quad Cities (Moline, IL).

¹⁸ Prior to July 1999, riverboats took excursions that limited admittance to specific cruise departure times. After that date, the boats were allowed to remain permanently docked, with continuous open boarding.

¹⁹ Although the tax changes did not affect customers directly, the response of casino operators was to cut back on expenses and to lower win-ratios. The effect of these responses had a demonstrable effect on both attendance and revenues. See Mellen (2003).

²⁰ Continuous boarding was allowed for St. Louis area riverboats in September 1999, with the policy extended across the rest of the state in November. To account for this phase-in, the variable *SepNov99* takes a value of 0.5 for September and October and a value of 1.0 thereafter.

significant impact (although there is no evident impact of Illinois policy variables on the revenue of other states). The key variable of interest—the dummy variable representing the Illinois smoking ban—enters with a statistically significant coefficient of -0.25, representing a percentage loss of approximately 22 percent.²¹ Coefficients on the smoking ban dummy variable for revenue in surrounding states are all positive. However, the point estimates are small and not statistically significant. Hence, there is no clear evidence that the losses at Illinois casinos are associated with revenue increases in nearby states.

Results for regressions using the natural logarithm of total admissions as the dependent variable are reported in Table 3. The coefficient on the smoking ban dummy variable for Illinois is negative and statistically significant, although the magnitude of the decline is considerably smaller than found for AGR. For admissions, the smoking ban dummy is associated with mixed changes in the other states; however, the point estimates are small and not statistically significant.²²

The statistically significant declines in statewide admissions and revenue in Illinois suggest that the smoking ban affected demand for casino gaming along both extensive and intensive margins. These findings are consistent with the survey results of Petry and Oncken (2002), which suggests that smoking patrons visit casinos more often and wager more money. The results in Tables 2 and 3 suggest that smoking patrons continued to visit the casinos, but perhaps did not visit as often, stay as long, or wager as much as they did before the ban. To further investigate this proposition, and to evaluate more carefully the possibility of demand

²¹ The conversion of regression coefficients to percentage changes uses the formula $\exp(\gamma)-1$ (Halvorsen and Palmquist, 1980).

²² In these and subsequent regressions, the coefficient on the open boarding policy change of July 2003 is a large, negative, and statistically significant. This is an artifact of the counting of admissions. Before open boarding, patrons who stayed for more than one “cruise” were double counted. This practice ended with open boarding.

spillovers into neighboring states, we now turn to an analysis of data for individual casinos in the context of geographically defined markets.

Empirical Results: Individual Casinos in Illinois

Table 4 presents the coefficient estimates for the *Smokefree* dummy variable in regressions for each of the nine individual casinos in Illinois.²³ For the sake of brevity in presentation here, the full regressions results for each casino are reported in a separate online Appendix.²⁴ All regressions include the policy variables for July 1999 and July 2003, along with a number of casino-specific events, described in the paper's Appendix.²⁵

The first column of Table 4 shows the results for revenue (AGR). The impact of the smoking ban on Chicago area AGR is remarkably uniform, with each showing losses of over 20 percent. For casinos outside the Chicago area, the revenue losses range from less than 10 percent to nearly 30 percent. In every case, however, the coefficients from the AGR regressions are negative and statistically significant.

The second column of Table 4 reports the findings when total admissions is used as the dependent variable. A comparison of these estimates with those found for revenue highlights the importance of extensive versus intensive changes in demand. In some cases, admissions declined by magnitudes similar to the fall in revenue (e.g., the Empress casino in Joliet). In other

²³ The casino in Rock Island opened a new, expanded facility in December 2008, resulting in a one-month surge in attendance and revenues at the end of the sample period. To account for this event, regressions for Rock Island (and other casinos in the Quad Cities market) were estimated using data through November 2008 only.

²⁴ See <http://research.stlouisfed.org/econ/garrett/2009-027appendix.pdf>.

²⁵ For example, the two casinos in Joliet engaged in major renovations or built new facilities in October 2001 (Harrah's) and May 2003 (Empress). The Hollywood casino in Aurora opened new facilities in February and June of 2002. Renovations and new facilities were also relevant for the Par-A-Dice in Peoria (Sept. 2005 and March 2007) and the Casino Queen in East St. Louis (August 2007). For the casino in Metropolis, Illinois, river conditions created transitory disturbances to business, which we modeled with pulse dummy variables. All regressions for the individual casinos include the Coincident Economic Activity Index for Illinois. Snowfall variables are as follows: For Chicago area casinos, the snowfall at Chicago's Midway Airport is used; regressions for the casinos in East Peoria and Metropolis use snowfall totals for Urbana, Illinois. For the Rock Island casino, snowfall for Moline, Illinois, is used. For the Alton Belle and Casino Queen, the snowfall for St. Louis, Missouri, is used.

cases, declines in attendance were quite smaller than the corresponding declines in AGR. In the majority of cases, attendance figures were significantly lower after the imposition of the smoking ban, but the magnitude of the declines were smaller than the declines in revenue. This observation supports the results reported for the state-level regressions shown in Tables 2 and 3.

Before examining regional markets more closely, it is worth noting that the one casino that seems least affected by the smoking ban is the one that faces the least competition - the Par-A-Dice casino in Peoria. Its location in the center of the state sets it approximately 90 miles from the nearest competition.²⁶ This is clearly one factor that could account for the relatively good performance of that particular venue.

Empirical Results: Regional Casino Markets

It is possible that factors in each of the four geographic market areas of the state are relevant for the assessment of the smoking ban's impact on Illinois casinos. After all, we are limited to measuring the effects of the smoking ban solely by the timing of its imposition. It might still be the case that the 2008 recession had an impact on casino attendance and revenue that was not completely captured by the regression analysis of Illinois casinos alone. A comparison of the Illinois casinos with those in common markets but across state lines provides some insight in this possibility.

Chicago Market

The largest casino market is the Chicago area market. In addition to the four casinos in Illinois, there are four casino locations in northwest Indiana that are part of the greater Chicago

²⁶ Boyd Gaming Corporation, *2008 Annual Report*

metropolitan area.²⁷ Table 5 reports regression coefficients on the *smokefree* variable for AGR and total attendance for these locations.

In contrast to the AGR results for Illinois casino revenue, for which the coefficients on the smoking ban dummy variable were all negative and significant, no clear pattern emerges for the Indiana casinos. There is only one case (the Blue Chip casino) for which the smoking ban dummy is associated with a significant negative effect, and this might be associated with the impact of the competing casino in Michigan that opened only 5 months before the Illinois smoking ban was implemented. Similarly, there is no clear pattern of changes in admissions at Indiana casinos after January 2008. Again, with the exception of the Blue Chip casino, coefficients on the smoking ban dummy variable are very small and not statistically significant.²⁸

The clear differences between the Indiana casinos and the Illinois casinos in the Chicago area market are summarized in the last two rows of Table 5. The four casinos in Illinois show a revenue decline of approximately 20 percent after the smoking ban implementation, whereas the Indiana casinos show no significant decline in revenues as a result of the Illinois smoking ban. Admissions figures show a decline of about 13 percent in Illinois, compared to a decline of 3 percent at the Indiana casinos.

²⁷ The Majestic Star casinos in Gary Indiana are two separate gaming floors that share a common admission gate. For the purposes of this analysis, the revenues of these two casinos are combined.

²⁸ The full regression results – reported in the Appendix – include the July 1999 and July 2003 dates in order to evaluate the prevalence of cross-border spillovers from policy changes in Illinois. There is little evidence of such spillover effects from these events, suggesting that it is not surprising for the smoking ban to show no significant, measurable effects on the nearby Indiana casinos. The regressions summarized in Table 5 also include a dummy variable for August 2007, the opening date for a new tribal casino in Michigan, only 10 miles north of the Blue Chip in Michigan City, Indiana. The impact of this event on the revenues and admissions are large and significant for the Blue Chip casino itself, but are not evident for other casinos in the market. The regressions for casinos in northwest Indiana all use the CEAI for Illinois and snowfall totals for Chicago (Midway). The regressions for Indiana casinos also include two Indiana-specific events: In August 2002 the Indiana Gaming Commission allowed continuous boarding. In two cases, major renovations were also associated with increased admissions and revenues: in August 2008 for the Horseshoe casino in Hammond and in February 2006 for the Blue Chip casino in Michigan City.

Southern Illinois Market

The Harrah's casino in Metropolis Illinois faces nearby competitors in two states: Casino Aztar in Evansville, Indiana, and the Lady Luck in Caruthersville, Missouri. Of all the nine Illinois casinos, the Metropolis casino shows the largest losses in Table 4. The coefficients on the *smokefree* dummy variable for Metropolis are reproduced in the first row of Table 6 for comparison with results for the Evansville and Caruthersville casinos.

In Table 6, the dummy variable for the Illinois smoking ban is associated with negative responses at each of the non-Illinois casinos, for both AGR and admissions. In the case of Caruthersville, both declines are statistically significant. These findings suggest that the regression model might not be capturing the effect of an overall slowdown in local market conditions, with the smoking ban dummy variable picking up some of that effect. Indeed, in the final row of Table 6, regressions for the sum of the two non-Illinois casinos display declines. In the case of the admissions regression, the downturn is clearly significant. If the dummy variable is overstating the revenue impact of the smoking ban for the Metropolis casino by over 6 percent, and overstating the impact on admissions by over 10 percent, that still leaves a relative decline of over 20 percent for AGR and about 8 percent for admissions—broadly consistent with the results for the Chicago market.

Quad Cities Market

In the northwest corner of Illinois, Jumer's Casino in Rock Island faces an array of competitors across the Mississippi river in Iowa. Table 7 compares the experience of Rock Island with its four nearest competitors.

The first row of Table 7 shows the coefficient estimates for Rock Island, which suggest losses of about 10 percent for revenue (statistically significant) and 5 percent for admissions (not

significant). In terms of revenue impact, estimates for the four casinos across the river in Iowa stand in sharp contrast: The smoking ban dummy variable picks up revenue increases of nearly 23 percent for Catfish Bend and 12 percent for Isle of Capri in Bettendorf. For the four Iowa casinos combined, the regression model shows a significant increase of nearly 15 percent. In the same sense that estimates from out-of-state casinos in the southern Illinois market might indicate smaller revenue impacts than directly measured by the *Smokefree* variable in the Metropolis regression, the estimates for the Iowa market show that the Rock Island casinos lagged its competitors by more than the smoking ban dummy variable would suggest. A 10 percent decline in Rock Island revenue compared with a 14 percent increase in Iowa casino revenue overall places the relative performance for Rock Island roughly 24 percent below its Iowa competitors.

For the regressions using total admissions, two of the four Iowa casinos show statistically significant effects associated with the smoking ban dummy variable. Despite the large increase in revenue at Catfish Bend, admissions were down by about 7 percent. In contrast, admissions at the casino in Bettendorf show a statistically significant increase of 6 percent associated with the smoking ban. For the regression using admission totals for the four Iowa casinos combined, the coefficient is positive but not statistically significant.

St. Louis Market

The final market to consider is the St. Louis area market. This market includes two casinos on the Illinois side of the Mississippi river: the Argosy in Alton and the Casino Queen in East St. Louis. The regressions in Table 4 show that these two venues experienced losses of over 25 percent in revenue and between 15 and 20 percent declines in attendance. However, the situation in the St. Louis market is complicated by the opening of a new casino and hotel in St. Louis city, the Lumiere Place Casino, which opened in mid-December 2007. The timing of its

opening – coinciding so closely to the implementation of the Illinois smoking ban – makes it nearly impossible to disentangle the effects with certainty. Nevertheless, careful analysis can yield some findings that are at least suggestive.

Table 8 presents results for the three other casinos on the Missouri side of the border, without taking any explicit account of the opening of Lumiere Place. Two of the three show statistically significant declines in revenue: Ameristar Casino in St. Charles registered a decline of nearly 12 percent, and the President Casino (located less than a mile from the new casino) shows a revenue loss of nearly 20 percent associated with the smoking ban. On the other hand, the regression for Harrah's in Maryland Heights shows a small, positive point-estimate for the smoking ban dummy (although it is not statistically significant). The fourth and fifth rows in Table 8 compare the sums of the three Missouri casinos' revenue and attendance figures with those using the sum of the two Illinois casinos. The Missouri total shows a revenue decline of about 10 percent, with the two Illinois casinos showing a loss of more than 26 percent. For admissions, the Illinois casinos were down by over 16 percent, as compared with less than 8 percent for the three Missouri casinos.

The final two rows of Table 8 indicate the impact that Lumiere Place had on revenue and admissions for the St. Louis market as a whole. Not including Lumiere's revenue, AGR in the St. Louis market was down by 14 percent as a result of the smoking ban. When Lumiere's revenue is included, the coefficient on the smoking ban dummy is slightly positive but not significant. For admissions, a negative coefficient for the total without including Lumiere is significant, but when Lumiere's attendance is added to the total, the coefficient is positive and significant. We can conclude that overall, casino revenue in the St. Louis market was consistent with no unusual

aggregate changes in revenue in 2008, but with an increase in overall casino attendance that is likely associated with the novelty of a new casino.

If we assume (somewhat simplistically) that the opening of Lumiere Place had the same impact on all other casinos in the market, the relatively poorer performance of the Illinois casinos still leaves room for the conclusion of a significant impact of the smoking ban. However, it is unlikely that the opening of a new competitor affected all other casinos in the market identically. Indeed, evidence from the Chicago market suggests that geographic proximity is an important determinant of competitive impact.

The results in Table 8 are consistent with that hypothesis as well. The President casino in downtown St. Louis – less than 0.5 miles from the new casino – showed large losses in 2008 for both revenue and admissions. On the other hand, evidence for effects on the other two casinos in Missouri is mixed: These casinos are both about 21.5 miles from the new Lumiere Place. We might expect, therefore, that the Casino Queen in East St. Louis – about 1.7 miles driving distance from Lumiere Place – lost more business to its new competitor than did the casino in Alton, Illinois (which is, coincidentally, about 21.5 miles from Lumiere Place).

A comparison of Missouri and Illinois totals in Table 8 provides some indication of the magnitude of the smoking ban's effect relative to the effect of new competition in the market. The 2008 dummy variable is associated with revenue declines at the three Missouri casinos of only 10 percent, compared with 26 percent for the two Illinois casinos. For admissions, the comparison is -16 percent for the Illinois casinos versus -8 percent for the Missouri casinos.

Despite the difficulty of estimating specific values for the effect of the smoking ban on each of the two Illinois casinos in the St. Louis market, the results of this exercise are generally consistent with the findings from other markets: The smoking ban was associated with

significant revenue declines and smaller but still significant declines in admissions at Illinois casinos. For the St. Louis market, it may be difficult to be precise about the magnitudes, but the evidence is qualitatively consistent with outcomes in other markets around the state.

Interpreting the Regional Market Estimates

The exercise of estimating the impact of the Illinois smoke-free law on individual casinos and comparing those estimates with the experience of nearby out-of-state competitors can be interpreted as a robustness check on our results for total statewide revenue and attendance. To the extent that local economic conditions or other exogenous factors affect our measurement of the smoking ban's effect, some adjustment to our raw estimates might be in order.

Table 9 summarizes our estimates for the smoking ban's impact on AGR and attendance figures: first, in terms of the unadjusted estimated coefficients on the smokefree dummy variable and second with an adjustment for the estimates found for out-of-state casinos in the relevant geographic market. That is, we calculate the market-adjusted effect by taking the difference between the estimated coefficient for each individual casino and the coefficient found for the out-of-state casinos in the same market. So, for example, the adjusted coefficient for Harrah's in Metropolis (from Table 6) is $-0.3344 - (-0.0666) = -0.2678$, or -23.5 percent. This "difference in differences" calculation provides an alternative set of estimates for the statewide impact of the smoking ban.²⁹

The results for the Chicago-area market are the most straightforward to interpret. Each of the four Illinois casinos in the Chicago area suffered revenue losses of more than 20 percent. The corresponding estimates for competing casinos in Indiana show only small changes that are not generally significant. Similarly, our estimates of the smoking ban's impact on total

²⁹ The specific coefficients used for these comparisons are those reported in Table 5, line 5 (Chicago); Table 6, line 4 (Southern Illinois); Table 7, line 6 (Quad Cities); and Table 8, line 4 (St. Louis).

attendance at Chicago area casinos shows a downturn of more than 13 percent, while the coefficient estimates for Indiana casinos in that market shows a downturn of only 3 percent. In terms of relative performance, total attendance at the Illinois casinos was down 9 percent compared with out-of-state competitors.

In the southern Illinois market, we found downturns in both revenue and attendance that were among the largest in the state. However, we also found that the *smokefree* dummy variable picked up negative effects for casinos in Indiana and Missouri as well. This suggests the possibility that there is some additional factor missing from the analysis or that our regression specification is not fully accounting for the impact of the economic downturn on casinos in this market. Specifically, our estimates show revenue at the Metropolis casino was down by 28 percent while revenue at out-of-state casinos was down by 6 percent. Hence, in terms of relative performance, we might temper our estimate of revenue losses to be about 22 percent. A similar comparison for admissions indicates that the 19 percent loss at the Illinois casino, considered alongside a 10 percent decline in attendance at out-of-state casinos, yields a measure of relative performance of approximately -9 percent.

In the Iowa market, we found significant positive effects associated with the *smokefree* dummy variable. This might indicate that the casinos on the Iowa side of the river benefited from the patronage of customers who chose not to attend the casino in Rock Island after the smoking ban; or it might indicate that there was a general upturn in demand within this particular market, but that the Rock Island casino did not share in the increase. Whatever the interpretation, the revenue decline of over 10 percent in Illinois contrasts with a revenue increase of more than 14 percent in Iowa, yielding a measure of relative performance amounting to -25 percent. In this market, coefficient estimates for the admissions regressions were not generally

significant, but a comparison of coefficient point estimates yields a measure of relative performance equal to nearly -8 percent.

Finally, in the St. Louis market, one factor influencing revenue that is difficult to disentangle from the smoking ban is the opening of a new casino in downtown St. Louis. This factor most certainly has an impact on the magnitude of our coefficient estimates. As a whole, the three pre-existing casinos on the Missouri side of the river suffered revenue declines of about 10 percent after January 2008, compared with declines of over 26 percent in the Illinois casinos in this market. The difference-in-differences effect is about -16 percent. For total admissions, the Illinois casinos were down 16 percent and the three Missouri casinos were down by over 7 percent, leaving a relative difference of nearly -9 percent.

When the coefficients for Illinois casinos are adjusted for market conditions measured for nearby out-of-state competitors, the results become more uniform across the state. In terms of relative performance, revenue was down by approximately 20 percent and total admissions were down by about 10 percent. These estimates are consistent with the results in Tables 2 and 3 for statewide totals. In fact, summing over the results for each of the nine casinos provides alternative estimates that are quite close to the results reported in Table 2 and 3 (22.1 percent for revenue and 12.3 for admissions). For the unadjusted coefficients, total revenue losses come to 21.8 percent with attendance declines of 13 percent. With the difference-in-differences adjustment for market conditions, revenue is calculated to have fallen by 20.4 percent, with admissions down 9.1 percent. These lower figures are primarily attributable to adjustments made to account for local economic conditions in the Southern Illinois market and the St. Louis market.

Impact on Casino Tax Revenue

Given the estimates reported above, the evidence suggests that the Illinois smoking ban has been associated with declining attendance and falling revenue at Illinois riverboat casinos. For policymakers, a key question that arises from this analysis involves the impact on tax revenue.

The state of Illinois imposes both a per capita admission tax and a proportionate wagering tax on riverboat casinos. The admissions tax is set at \$3 per person for patrons of Casino Rock Island and \$2 per person for the other eight casinos. From each admission, \$1 goes to the host community where a riverboat gaming operation is located and the remainder goes to the state.

The wagering tax is set on a graduated scale, as a percent of AGR. The tax rates are reported in Table 10.³⁰ Each local government that serves as a host community for a casino licensee receives a share in an amount equal to 5 percent of AGR, with the remainder of the progressive tax revenue going to the state.

Using our estimated effects on revenue and admissions at the Illinois casinos, Tables 11A and 11B show the casino tax revenue impact of the smoking ban for both state and local governments. In Table 11A, using the unadjusted estimated coefficients reported in Table 4, we find total tax revenue declines of \$208 million. Of this total, the state lost \$195.5 million, while local communities collectively suffered revenue losses of \$12.4 million. Table 11B uses the market-adjusted coefficients. Tax revenue losses are slightly smaller using this calculation: Total revenues were down by \$194.8 million, with the state's share of that loss \$183.7 million and the local communities' share equal to approximately \$11.1 million.³¹

³⁰ The present tax structure has been in effect since July 1, 2005 (Illinois Gaming Board, *Annual Report, 2008*).

³¹ These figures represent only the loss in gaming tax revenue and admissions tax revenue. Total tax revenue losses to the state and local governments may be less if consumers substitute away from casino gambling into other taxable activities.

Summary and Conclusions

A growing number of state and local government have passed laws that ban smoking in public places, including casinos. Prohibiting smoking in casinos – if such smoking bans reduce casino revenue - serves as an opposing public policy to the legalization of casino gaming as a mean of generating revenue. These opposing policies, along with health-related aspects of smoking, are the primary points of debate in policy discussions regarding smoking bans and, as a result, have attracted the attention of researchers interested in estimating the potential revenue effects of smoking bans.

Our work extends and improves upon previous studies that have explored the revenue effects of smoking bans in two key ways. First, we consider the effect of the smoking ban on both revenue and attendance to provide new insight into the intensity of wagering and casino patronage after the smoking ban. Second, and more importantly, we conduct a natural experiment by comparing the performance of casinos in a smoking-ban state with out-of-state casinos with no smoking ban that all share a common casino market. This natural experiment provides for a more effective test of the impact of smoking bans than simply analyzing casinos directly impacted by the smoking ban and, we argue, should be considered in future research on the economic effects of smoking bans.

Our results indicate that Illinois casinos suffered losses of more than 20 percent – well over \$400 million – in total during the first year of the Smoke Free Illinois Act. Some of this loss appears to be associated with casino patrons gambling less when they do attend the casinos, and part of the loss is also evident in declining attendance. We find that the impact of the smoking ban on total admissions amounts to around 10 percent, with our point estimates indicating a downturn in the range of 9 to 13 percent. These estimates imply total casino tax revenue was lower by roughly \$200 million.

The economic effects of the Smoke Free Illinois Act—specifically with regard to casino revenue and government tax receipts—represent only part of the Act’s overall impact. In a full analysis, these effects need to be considered alongside costs and benefits, including the public health benefits of the legislation.

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Appendix: Data Description and Description of Dummy Variables

Data Description

The sample period for the analysis runs from January 1997 through December 2008. Monthly data for adjusted gross receipts (AGR) and total admissions were obtained from information on the websites of the various state gaming commissions, as detailed below:

Illinois: Data for 1997 through 2008 were available in Annual Reports of the Illinois Gaming Board: <http://www.igb.state.il.us/annualreport/>.

Indiana: Data for total admissions and AGR were obtained from monthly reports of the Indiana Gaming Commission: <http://www.in.gov/igc/2363.htm>. AGR has been reported directly since July 2003. For July 2002 through June 2003, total revenue is measured as the sum of revenues reported for table games and slot machines. Prior to July 2002 revenues were calculated by multiplying the total wagering tax by 5.0. (Until July 2002, Indiana imposed a fixed 20% tax on adjusted gross revenues).

Iowa: Revenue and admissions data were obtained from monthly reports of the Iowa Racing and Gaming Commission: <http://www.state.ia.us/irgc/>.

Missouri: Revenue and admissions data were obtained from monthly reports of the Missouri Gaming Commission: http://www.mgc.dps.mo.gov/rb_fin_nav/mo_fin_report_nav.htm.

Other Variables:

- Indexes of coincident economic activity for Illinois, Indiana, Iowa, and Missouri were obtained from the Federal Reserve Bank of Philadelphia.
- Monthly snowfall totals, along with measures of “normal” snowfall, were collected from various webpages associated with the National Oceanic and Atmospheric Administration (NOAA).
- Dummy variables representing one-time intercept shifts as well as “pulse” dummies for transitory events are defined in Table A1.

Description of Dummy Variables

Intercept Shift Dummies

SMOKEFREE: Illinois smoking ban. Value=1 for 2008:01 through 2008:12 and zero otherwise.

July 99: Beginning of open boarding for Illinois casinos.

Aug 02: Beginning of open boarding for Indiana casinos.

July 03: Tax increase for Illinois casinos, reportedly associated with policy changes (supply shift).

July 03: Indiana casinos get approval to stay open 24 hours per day.

Sep-Nov 99: Beginning of open boarding for Missouri casinos. St. Louis area casinos began open boarding in September, with the rest of the state following in November. Dummy variable coded as having a value of 0.5 for 1999:09 and 1999:10, 1.0 for 1999:11 and all subsequent periods (zero otherwise).

May03: Empress – Joliet, new barge completed.

Oct 01: Harrah's – Joliet, riverboats replaced with floating barges.

Feb 02: Hollywood – Aurora opens new dockside casino.

Jun 02: Hollywood – Aurora opens phase two of dockside casino.

Sep 05: Par-A-Dice – Peoria renovation completed August 23.

Sep 01: Harrah's – Metropolis opens new riverboat.

Aug 07: Casino Queen – E. St. Louis opens new land-based casino.

Aug 07: New casino in SW Michigan opens, competition for casinos in the Chicago market (esp. those in Indiana).

Aug 08: Horseshoe – Hammond opens new riverboat.

Feb 06: Blue Chip – Michigan City opens new riverboat.

Mar 07: In Evansville, Indiana, new casino owners announce layoffs, leading to a public dispute with the mayor.

Jun 07: Catfish Bend opens new land-based casino. Isle of Capri in Bettendorf, Iowa, opens new hotel tower.

Nov 07: Catfish Bend closes old riverboat casino.

Jul 08: Wild Rose – Clinton, Iowa, opens new land-based casino.

Pulse Dummies

Apr-May 2001: Flooding on the Mississippi River closes some of the Iowa casinos.

Jan 2005: Low water forces Metropolis casino to close for several days.

Aug 2005: Flooding forces Metropolis casino to close for several days.

Apr 2008: Flooding closes Iowa casinos along the Mississippi.

Jun 2008: Flooding closes Rhythm City Casino in Davenport, Iowa.

Apr 1998: Barges collide with the President casino, forcing its closing.

May 2002: Flooding forces the closing of the President casino for several days.

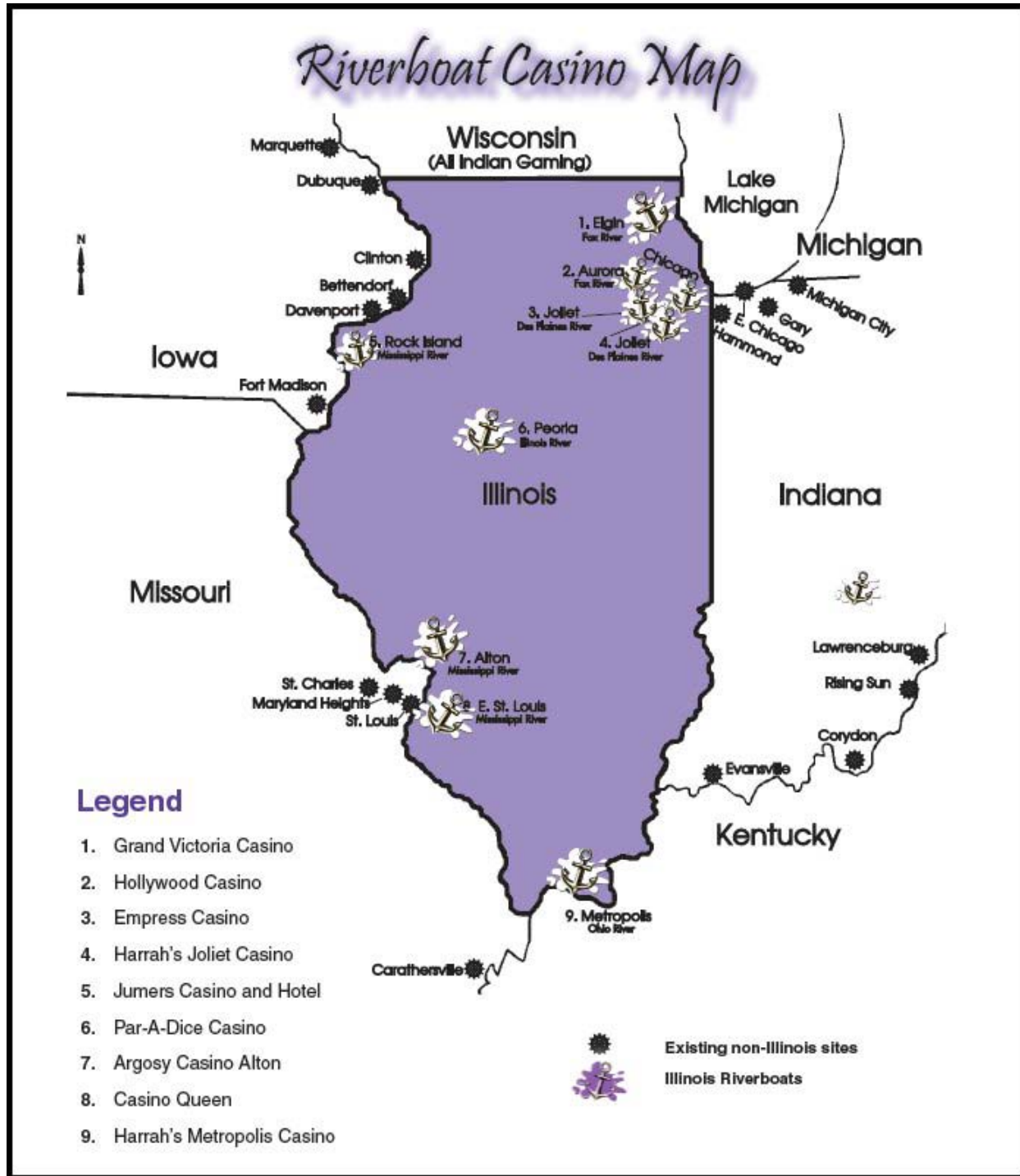
Apr 2008: Flooding forces the closing of the President casino for several days.

Jun 2008: Flooding forces the closing of the President casino for several days.

Jul 2008: Flooding forces the closing of the President casino for several days.

Sep 2008: Flooding forces the closing of the President casino for several days

Figure 1:



Source: Illinois Gaming Board, 2008 Annual Report

Figure 2:
Adjusted Gross Revenues for Illinois Casinos and Nearby States

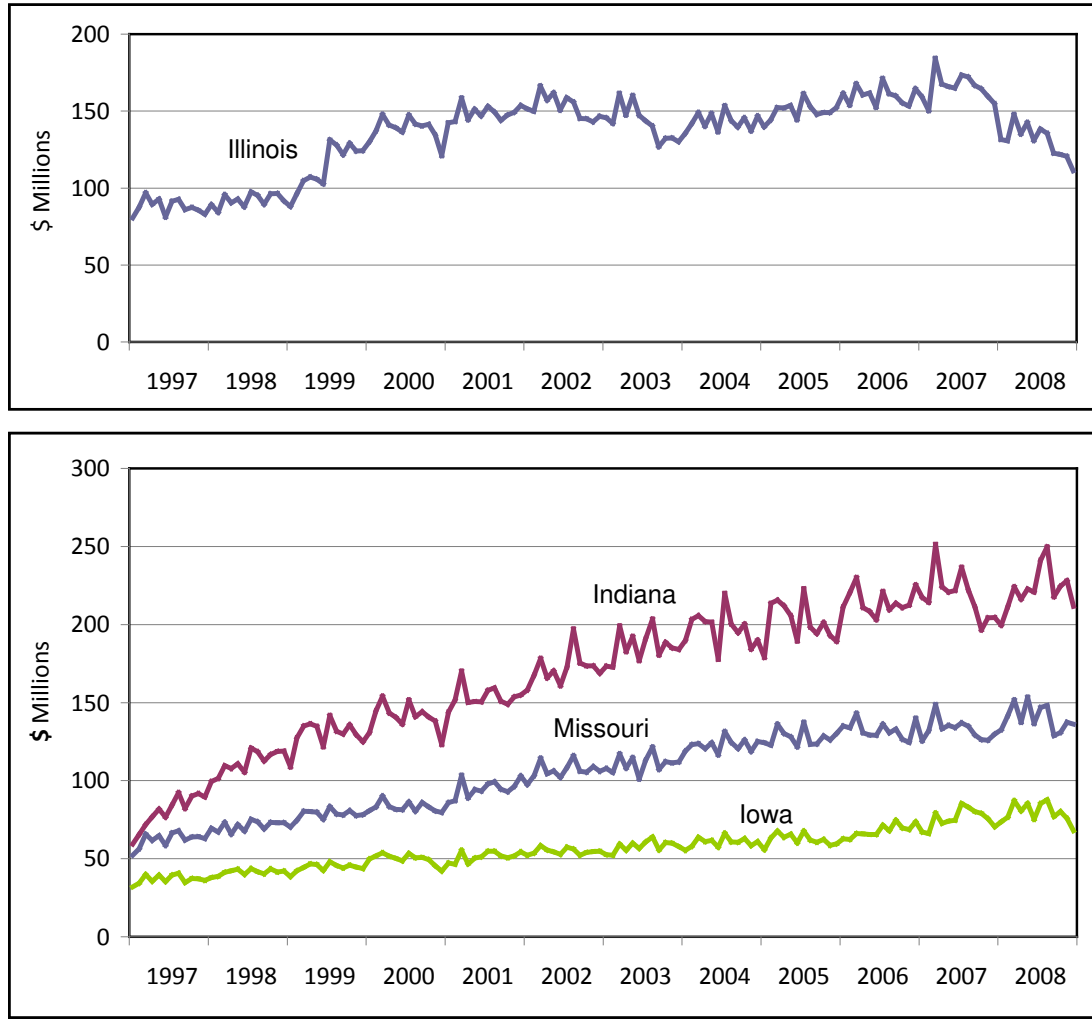


Figure 3:

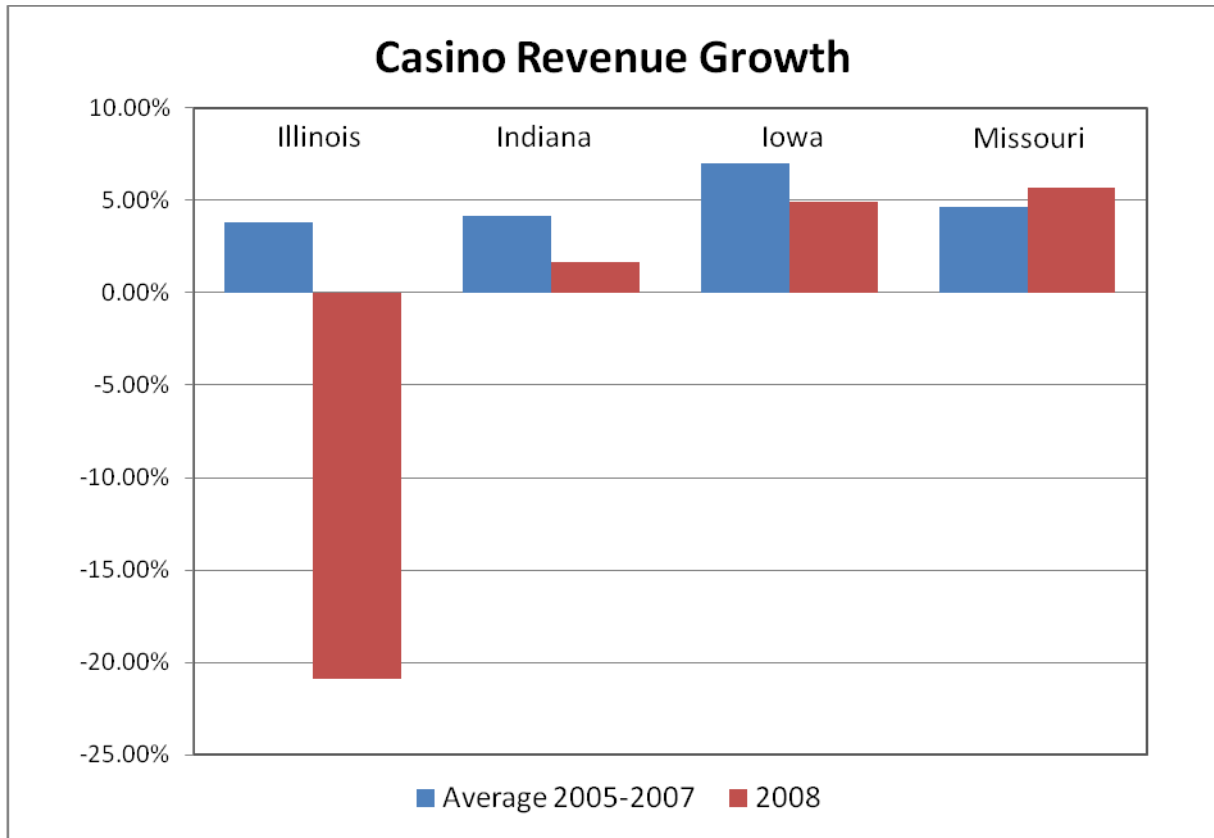


Table 1:
Illinois Riverboat Casinos 2008

City	Casino Operator	License Date	Gaming Space (Sq. Ft.)	2008 Admissions	2008 AGR
Alton	Argosy	Oct. 1991	23,000	1,182,856	\$90,689,307
Peoria	Par-A-Dice	Feb. 1992	26,116	1,350,245	\$116,726,216
Rock Island	Jumer's	May 1992	42,000	668,993	\$34,282,665
Joliet	Empress	Jul. 1992	50,000	1,678,360	\$183,930,419
Metropolis	Harrah's	Feb. 1993	30,985	1,076,085	\$126,501,001
Joliet	Harrah's	Aug. 1993	39,000	2,570,878	\$297,674,723
Aurora	Hollywood	Jul. 1993	41,384	1,627,759	\$220,000,676
East St. Louis	Casino Queen	Jul. 1993	40,000	2,296,919	\$160,194,391
Elgin	Grand Victoria	Oct. 1994	29,850	2,184,959	\$338,727,854

Source: Illinois Gaming Board, *2008 Annual Report*. AGR is adjusted gross revenue, defined as player wagers less winnings.

Table 2: State-Level Regressions for Adjusted Gross Receipts (AGR)

	Illinois	Indiana	Iowa	Missouri
	[-22.1%]	[0.0%]	[2.2%]	[1.9%]
SMOKEFREE [†]	-0.2503 *** (0.0258)	0.0001 (0.0642)	0.0215 (0.0309)	0.0189 (0.0172)
Constant	14.5001 *** (1.0418)	11.5890 *** (2.6638)	13.8715 *** (1.2486)	20.0078 *** (0.8550)
Trend	0.6239 *** (0.1116)	1.1901 *** (0.1843)	0.4625 *** (0.1057)	1.1288 *** (0.0704)
Squared Trend	-0.1860 ** (0.0737)	-0.4852 *** (0.1166)	-0.0294 (0.0594)	-0.4361 *** (0.0343)
CEAI	0.7566 *** (0.2108)	1.3712 ** (0.5487)	0.7257 *** (0.2582)	-0.4442 ** (0.1776)
Snow	-0.0049 *** (0.0010)	-0.0046 *** (0.0010)	-0.0038 *** (0.0006)	-0.0023 (0.0019)
July 99	0.2080 *** (0.0297)	-0.0008 (0.0417)	0.0377 (0.0257)	-0.0019 (0.0148)
July 03	-0.1263 *** (0.0180)	-0.0608 ** (0.0261)	-0.0233 (0.0219)	0.0114 (0.0181)
Aug 02		0.0922 *** (0.0352)		
Apr-May 2001			-0.0972 *** (0.0144)	
Sep-Nov 99				0.0446 ** (0.0196)
AR(1)	0.4548 *** (0.1028)	0.6364 *** (0.0927)	0.4262 *** (0.1088)	0.0863 (0.0943)
Adj R-Squared	0.9787	0.9801	0.9703	0.9837

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses.

[†]Figures in brackets [] are percentage changes associated with SMOKEFREE.

Table 3: State-Level Regressions for Total Admissions

	Illinois	Indiana	Iowa	Missouri
SMOKEFREE [†]	[-12.3%] -0.1309 *** (0.0263)	[- 5.1%] -0.0521 (0.0319)	[- 3.0%] -0.0303 (0.0422)	[3.8%] 0.0370 (0.0275)
Constant	11.7670 *** (0.7558)	7.4486 *** (2.7001)	8.6545 *** (1.8473)	15.6725 *** (1.2109)
Trend	-0.2120 *** (0.0584)	0.5652 *** (0.2080)	-0.4491 *** (0.1615)	0.3729 *** (0.1119)
Trend Squared	0.1374 *** (0.0426)	-0.3214 *** (0.1054)	0.3466 *** (0.0858)	-0.2243 *** (0.0555)
CEAI	0.5603 *** (0.1557)	1.4840 *** (0.5603)	1.0655 *** (0.3827)	-0.1468 (0.2519)
Snow	-0.0066 *** (0.0009)	-0.0059 *** (0.0011)	-0.0045 *** (0.0006)	-0.0028 (0.0017)
July 99	-0.2713 *** (0.0177)	0.0397 (0.0396)	0.0485 (0.0399)	0.0717 *** (0.0255)
July 03	-0.1929 *** (0.0145)	-0.0161 (0.0185)	-0.0408 (0.0271)	0.0623 ** (0.0266)
Aug 02		-0.4833 *** (0.0380)		
Apr-May 2001			-0.1149 *** (0.0172)	
Sep-Nov 99				0.0596 ** (0.0273)
AR(1)	0.3860 *** (0.0848)	0.7379 *** (0.0695)	0.5623 *** (0.0966)	0.3997 *** (0.1048)
Adj R-Squared	0.9776	0.9625	0.8699	0.8987

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses.
[†]Figures in brackets [] are percentage changes associated with SMOKEFREE.

Table 4: Regression Results for Individual Illinois Casinos

Coefficient Estimate for SMOKEFREE		
[Percent Change]		
	AGR	Admissions
Par-A-Dice, East Peoria	[-9.4%] -0.0990 *** (0.0143)	[5.9%] 0.0570 *** (0.0166)
<i>Chicago Area</i>		
Empress, Joliet	[-21.0%] -0.2360 *** (0.0336)	[-22.9%] -0.2598 *** (0.0574)
Harrah's, Joliet	[-21.9%] -0.2471 *** (0.0254)	[-16.7%] -0.1830 *** (0.0583)
Hollywood, Aurora	[-20.6%] -0.2305 *** (0.0525)	[-10.1%] -0.1069 ** (0.0431)
Grand Victoria, Elgin	[-21.3%] -0.2395 *** (0.0270)	[- 2.8%] -0.0282 (0.0230)
<i>Southern Illinois</i>		
Harrah's, Metropolis	[-28.4%] -0.3344 *** (0.0267)	[-18.8%] -0.2082 *** (0.0454)
<i>Quad Cities</i>		
Jumer's, Rock Island	[-10.6%] -0.1115 *** (0.0312)	[- 5.4%] -0.0551 (0.0400)
<i>St. Louis</i>		
Argosy, Alton	[-25.7%] -0.2969 *** (0.0309)	[-14.7%] -0.1590 *** (0.0389)
Casino Queen, East St. Louis	[-26.7%] -0.3104 *** (0.0191)	[-17.6%] -0.1936 *** (0.0454)

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses. The full regression results are available at:

<http://research.stlouisfed.org/econ/garrett/2009-027appendix.pdf>.

Table 5: Regression Results for Casinos in Northwest Indiana

Coefficient Estimate for SMOKEFREE		
	[Percent Change]	
	AGR	Admissions
Horseshoe, Hammond	[- 1.5%] -0.0156 (0.0401)	[- 6.9%] -0.0711 (0.0470)
Ameristar, East Chicago	[2.9%] 0.0288 (0.0384)	[- 0.5%] -0.0049 (0.0481)
Majestic Star (I & II), Gary	[- 2.0%] -0.0236 (0.0254)	[- 3.3%] -0.0335 (0.0254)
Blue Chip, Michigan City	[- 8.8%] -0.0919 ** (0.0358)	[-10.6%] -0.1123 *** (0.0312)
<i>Indiana Total</i>	[0.4%] 0.0044 (0.0193)	[- 3.0%] -0.0306 * (0.0184)
<i>Illinois Total</i>	[-20.2%] -0.2257 *** (0.0170)	[-13.1%] -0.1408 *** (0.0326)

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses. The full regression results are available at:

<http://research.stlouisfed.org/econ/garrett/2009-027appendix.pdf>.

Table 6: Regression Results for the Southern Illinois Market

Coefficient Estimate for SMOKEFREE [Percent Change]		
	AGR	Admissions
Harrah's, Metropolis (IL)	[-28.4%] -0.3344 *** (0.0267)	[-18.8%] -0.2082 *** (0.0454)
Aztar, Evansville (IN)	[- 5.0%] -0.0514 (0.0400)	[- 7.5%] -0.0776 ** (0.0362)
Lady Luck, Caruthersville (MO)	[-11.4%] -0.1205 *** (0.0381)	[-16.3%] -0.1779 *** (0.0426)
<i>Non-Illinois Total</i>	[- 6.4%] -0.0666 * (0.0343)	[-10.5%] -0.1104 *** (0.0342)

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses. The full regression results are available at:

<http://research.stlouisfed.org/econ/garrett/2009-027appendix.pdf>.

Table 7: Regression Results for the Quad City Market

Coefficient Estimate for SMOKEFREE		
[Percent Change]		
	AGR	Admissions
Jumer's, Rock Island (IL)	[- 10.6%] -0.1115 *** (0.0312)	[- 5.4%] -0.0551 (0.0400)
Catfish Bend, Burlington	[22.6%] 0.2040 *** (0.0388)	[- 6.9%] -0.0710 ** (0.0345)
Rhythm City, Davenport	[1.9%] 0.0188 (0.0533)	[- 4.4%] -0.0446 (0.0497)
Isle of Capri, Bettendorf	[12.0%] 0.0193 *** (0.0408)	[6.3%] 0.0611 *** (0.0196)
Wild Rose, Clinton	[- 0.3%] -0.0028 (0.0213)	[- 2.8%] -0.0286 (0.0218)
<i>Iowa (4) Total</i>	[14.6%] 0.1359 *** (0.0311)	[2.4%] 0.0240 (0.0308)

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses. The full regression results are available at:

<http://research.stlouisfed.org/econ/garrett/2009-027appendix.pdf>.

Table 8: Summary of Regression Results for the St. Louis Market

Coefficient Estimate for SMOKEFREE [Percent Change]		
	AGR	Admissions
Harrah’s, Maryland Heights	[0.7%] 0.0073 (0.0580)	[- 0.0%] -0.0003 (0.0576)
Ameristar, St. Charles	[-11.9%] -0.1272 *** (0.0413)	[- 5.9%] -0.0609 * (0.0347)
President, St. Louis	[-19.2%] -0.2131 *** (0.0348)	[-19.0%] -0.2111 *** (0.0670)
<i>Missouri Total</i>	[-10.3%] -0.1082 *** (0.0303)	[- 7.7%] -0.0799 *** (0.0252)
<i>Illinois Total</i>	[-26.2%] -0.3040 *** (0.0210)	[-16.4%] -0.1791 *** (0.0341)
Market Total without Lumiere	[-13.7%] -0.1479 *** (0.0211)	[- 7.7%] -0.0805 *** (0.0187)
Market Total incl. Lumiere	[0.5%] 0.0054 (0.0180)	[13.2%] 0.1241 *** (0.0406)

Note: *, **, and *** denote significance at 10%, 5%, and 1%, respectively. Standard errors are in parentheses. The full regression results are available at:

<http://research.stlouisfed.org/econ/garrett/2009-027appendix.pdf>.

Table 9: Revenue and Attendance Estimates by Illinois Casino

	Revenue Estimates				Attendance Estimates			
	Unadjusted Coefficients		Adjusted for Market		Unadjusted Coefficients		Adjusted for Market	
	Percent	Dollars	Percent	Dollars	Percent	Admissions	Percent	Admissions
Par-A-Dice – East Peoria	-9.4	-12,133,325	-9.4	-12,133,325	5.9	74,637	5.9	74,637
Empress – Joliet	-21.0	-48,513,528	-21.4	-49,307,311	-22.9	-493,720	-20.5	-442,055
Harrah’s – Joliet	-21.9	-83,329,697	-22.2	-84,626,219	-16.7	-524,428	-14.1	-443,240
Hollywood – Aurora	-20.6	-57,096,219	-20.9	-58,067,362	-10.1	-185,369	-7.3	-134,317
Grand Victoria – Elgin	-21.3	-90,787,691	-21.6	-92,261,403	-2.8	-61,871	0.2	5,343
Harrah’s – Metropolis	-28.4	-50,141,728	-23.5	-41,445,767	-18.8	-249,807	-9.3	-123,811
Jumer’s – Rock Island	-10.6	-3,614,480	-21.9	-7,505,450	-5.4	-33,187	-7.6	-47,045
Argosy – Alton	-25.7	-31,333,127	-17.2	-20,978,374	-14.7	-204,238	-7.6	-105,640
Casino Queen – E. St. Louis	-26.7	-58,241,949	-18.3	-39,960,631	-17.6	-490,604	-10.7	-299,519
Total for Illinois	-21.8	-435,191,745	-20.4	-406,285,841	-13.0	-2,168,587	-9.1	-1,515,648
<i>Estimates from Statewide Regression</i>	-22.1	-443,669,617			-12.3	-2,045,376		

Note: Estimates for unadjusted coefficients are based on the results reported in Table 4. Estimates for the “relative to market” columns use the differences in the smoking ban coefficient for the casino and the smoking ban coefficient for each casino’s respective out-of-state market, as reported in Tables 5 through 8.

Table 10: Illinois Wagering Tax 2008

Adjusted Gross Revenue (Millions of dollars)	Tax Rate (Percent)
0 - 25	15.0
25 - 50	22.5
50 - 75	27.5
75 - 100	32.5
100 - 150	37.5
150 - 200	45.0
>200	50.0

Source: Illinois Gaming Board, 2008 Annual Report.

Table 11A: Tax Revenue Impact Using Estimated Coefficients

Illinois Casino	Gaming Tax Revenue (\$) Gain (+) or Loss (-)		Admission Tax Revenue (\$) Gain (+) or Loss (-)		Total Tax Revenue (\$) Gain (+) or Loss (-)	
	To State	To Local	To State	To Local	To State	To Local
Par-A-Dice	-4,322,497	-227,500	74,637	74,637	-4,247,860	-152,863
Empress	-22,199,958	-1,168,419	-493,720	-493,720	-22,693,678	-1,662,139
Harrah's	-39,581,606	-2,083,242	-524,428	-524,428	-40,106,034	-2,607,670
Hollywood	-27,120,704	-1,427,405	-185,369	-185,369	-27,306,073	-1,612,774
Elgin	-43,124,153	-2,269,692	-61,871	-61,871	-43,186,024	-2,331,563
Metropolis	-19,744,745	-1,039,197	-249,807	-249,807	-19,994,552	-1,289,004
Rock Island	-772,595	-40,663	-33,186	-66,373	-805,781	-107,036
Argosy Alton	-10,718,724	-564,143	-204,238	-204,238	-10,922,962	-768,381
Casino Queen	-25,766,848	-1,356,150	-490,604	-490,604	-26,257,452	-1,846,754
Total	-193,351,830	-10,176,412	-2,168,587	-2,201,774	-195,520,416	-12,378,184
Total by Tax	-203,528,241		-4,370,360		-207,898,600	

Note: Predicted values from Table 4 were used to compute AGR and admissions with and without a smoking ban. The AGR tax rates (Table 10) were then used to compute the revenue gain or loss from the smoking ban. Per Illinois law, we allocated 95 percent of the gain or loss in AGR tax revenue to the state and 5 percent to the home dock community. There is a \$2 admissions tax, half of which goes to the state and half to the home dock. The exception is Rock Island where there is a \$3 admissions tax, with \$1 going to the state and \$2 to the home dock.

Table 11B: Tax Revenue Impact Using Coefficients Adjusted for Market

Illinois Casino	Gaming Tax Revenue (\$) Gain (+) or Loss (-)		Admission Tax Revenue (\$) Gain (+) or Loss (-)		Total Tax Revenue (\$) Gain (+) or Loss (-)	
	To State	To Local	To State	To Local	To State	To Local
Par-A-Dice	-4,322,497	-227,500	74,637	74,637	-4,247,860	-152,863
Empress	-22,539,300	-1,186,279	-442,055	-442,055	-22,981,355	-1,628,334
Harrah's	-40,197,454	-2,115,655	-443,240	-443,240	-40,640,694	-2,558,895
Hollywood	-27,581,997	-1,451,684	-134,317	-134,317	-27,716,314	-1,586,001
Elgin	-43,824,167	-2,306,535	5,343	5,343	-43,818,824	-2,301,192
Metropolis	-16,646,809	-876,148	-123,811	-123,811	-16,770,620	-999,959
Rock Island	-1,604,290	-84,436	-47,045	-94,091	-1,651,335	-178,527
Alton Belle	-7,473,546	-393,345	-105,640	-105,640	-7,579,186	-498,985
Casino Queen	-17,951,585	-944,820	-299,519	-299,519	-18,251,104	-1,244,339
Total	-182,141,643	-9,586,402	-1,515,648	-1,562,694	-183,657,292	-11,149,095
Total by Tax	-191,728,045		-3,078,343		-194,806,387	

Note: Predicted values from Table 4 were used to compute AGR and admissions with and without a smoking ban. The predicted values for 2008 were then adjusted using the differences in the smoking ban coefficient for the casino and the smoking ban coefficient for each casino's respective out-of-state market (from Tables 5–8). The AGR tax rates (Table 10) were then used to compute the revenue gain or loss from the smoking ban. Per Illinois law, we allocated 95 percent of the gain or loss in AGR tax revenue to the state and 5 percent to the home dock community. There is a \$2 admissions tax, half of which goes to the state and half to the home dock. The exception is Rock Island where there is a \$3 admissions tax, with \$1 going to the state and \$2 to the home dock.

Exhibit E



GAMING INDUSTRY ANALYSIS:

Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue

Prepared for Casino Association of New Jersey
November 3, 2021



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Executive Summary

The Casino Association of New Jersey (“Client”), which represents the seven casino operators (and all nine casinos) in Atlantic City, engaged Spectrum Gaming Group (“Spectrum,” “we” or “our”) to independently analyze the potential effect a possible smoking ban would have, collectively, on the Atlantic City casino industry’s gross gaming revenue (“GGR”) and the resulting State of New Jersey (“State”) gaming taxes.

It is beyond the scope of this study to consider other impacts or issues that may be associated with smoking or a smoking ban. Further, Spectrum offers no opinion or recommendation whether smoking should be allowed on casino floors.

New Jersey has earned an A from the American Lung Association for its clean-air practices, which include prohibiting smoking in all workplaces, as well as in restaurants, schools, child-care facilities, retail stores and bars (with the exception of cigar bars and lounges), and notably the state has penalty and enforcement provisions in place. One glaring exception to the state’s widespread anti-smoking policy is the Atlantic City casino industry, whose members are allowed under a local ordinance to allow smoking in up to 25% of the casino floor space, and the American Lung Association duly notes that exception and has urged that it be eliminated.

Spectrum’s analysis recognizes that this exception allows for a scenario in which Atlantic City casinos become a more attractive recreational outlet for smokers. Smoking restrictions cover nearly every public entertainment option, a reality that in turn makes Atlantic City casinos a more prominent oasis for smokers.

The calculus through which adults select their entertainment options is broad and complex, ranging from convenience to cost to various other preferences. The ability to smoke in an indoor public setting may be a factor for adults who cannot indulge in smoking at movies, bars, restaurants or shopping outlets.

While the level of that preference cannot be definitively determined, its existence can reasonably be presumed as a factor that accounts for the demographic differences among casino visitors. To put that another way, if smoking were banned at casinos in New Jersey, Pennsylvania and Connecticut, the demographics among casino visitors would likely adhere more closely to the demographic mean. The appeal of casinos to smokers would likely diminish under such a scenario.

The presence of that appeal would clearly account for the longstanding differential between the level of smokers in the general population (13% in New Jersey, 14% nationally) and their significantly greater representation amongst casino visitors, a differential that has been identified in demographic studies.

With that in mind, Spectrum first estimated the prevalence and value of casino smokers, based on an earlier visitor profile study and on current data provided by casino operators. We found that smokers account for a higher percentage of casino patrons than they do in the general adult population, and smokers spend significantly more than non-smokers while gambling on a per-capita basis. As such,

- Spectrum estimates that 21% of Atlantic City casino players are smokers
- Spectrum applied a 25% premium to smokers' gambling expenditure value to the casinos in our low case and a 50% premium in our high case

Starting with those assumptions, Spectrum developed a range of projected GGR impact based on our research and analysis, which included the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other related empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time. Smoking prevalence rates have declined significantly since those studies were conducted.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.
 - We spoke with the property or finance heads of seven of the nine casinos. They provided us with proprietary performance data regarding smoking areas vs. non-smoking areas, on the condition that neither they nor their properties be disclosed.

A critical assumption in our analysis is that Pennsylvania casinos would continue to allow smoking, per the commonwealth's pre-Covid-19 policy.¹

Spectrum developed a range of GGR impacts that is necessarily broad, recognizing that certain factors are unknowable at this time but would be significant were a smoking ban to be enacted in Atlantic City casinos. Such factors include:

- The intensity of the marketing and promotional response by Pennsylvania casino operators, who could target dissatisfied Atlantic City casino smokers with direct marketing programs and broader advertising programs.
- The facility response by Atlantic City casino operators. Outdoor gaming areas are common at casinos in other jurisdictions in which smoking is prohibited. Some smoking areas are rather lavish and comfortable while others appear to be less accommodating. The quality and convenience of such outdoor gaming areas at Atlantic City casinos would clearly vary by property, and would involve capital investment and additional operating costs due to the inefficiencies of having separate gaming areas.
- The quality of the marketing response by Atlantic City casino operators.
 - Reaching patrons who smoke to inform them about the new policy and any new facilities that would be developed to accommodate smoking.

¹ During the Covid-19 pandemic, some Pennsylvania casinos have at least temporarily prohibited smoking, either by choice or by local health ordinance.

- Reaching adults who currently do not visit Atlantic City casinos – or those who visit less frequently or for less time – because they find the smoky casino floors to be unappealing to inform them about their entirely smoke-free casino floors.
- The amount of time between the enactment and implementation of the casino smoking ban. The longer the gap, the more time casino operators would have to:
 - Develop quality outdoor gaming areas
 - Communicate their plans to patrons who currently smoke
 - Develop marketing programs to attract more non-smokers.

Spectrum projects that a smoking ban in Atlantic City casinos would have the following effects on revenue in Year 1:²

- A smoking ban would result in a GGR decline of between 5.0% and 11.9% among patrons who smoke.
- Non-smokers attracted to the smokefree air may increase their play by 1.0% to 1.5% (in GGR)
- On a *net* basis, a smoking ban would cause a GGR decline of between 4.2% and 10.9%
- A smoking ban would cause a decline in the casinos' non-gaming revenue of 3.0% in the low case and 6.5% in the high case
- Using 2019 (pre-Covid-19) data as a basis, we estimate a smoking ban would lead to declines in State of New Jersey gaming-tax receipts of between \$10.7 million and \$25.7 million to the Casino Revenue Fund and between \$1.7 million and \$4.0 million to the Casino Reinvestment Development Authority
 - Declines in total taxes of between \$17.2 million and \$44 million
- Reductions in revenue as described above could result in a net loss of between 1,021 and 2,512 jobs at the casino properties, based on comparisons to 2019 (pre-pandemic) levels. It is critical to note that such reductions in employment assume that the casinos would be at full employment as they were in 2019; at this time, most casinos are short-staffed, consistent with businesses across the country during the pandemic, and/or have purposely reduced their staffing levels; it to be determined whether those modified staffing levels will be permanent.

² Estimating GGR changes beyond Year 1 is dependent on a host of factors – including the casino operators' reactions to the smoking ban – that cannot be reasonably quantified at this time.

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Introduction

The Casino Association of New Jersey (“Client”), which represents the seven casino operators (and all nine casinos) in Atlantic City, engaged Spectrum Gaming Group (“Spectrum,” “we” or “our”) to undertake an independent analysis of the effect a possible smoking ban would have, collectively, on the casinos’ gross gaming revenue (“GGR”) and the resulting State of New Jersey (“State”) gaming taxes.

It is beyond the scope of this study to consider other impacts that may be associated with a casino smoking ban. Further, Spectrum offers no opinion or recommendation whether smoking should be allowed on casino floors.

GGR is the amount that the casinos retain after all winning wagers have been paid. The casinos pay the State a combined gaming tax of 9.25% on their GGR, which is divided as follows:

- 8.00% deposited into the Casino Revenue Fund, which benefits programs for senior and disabled New Jerseyans; and
- 1.25% deposited into the Casino Reinvestment Development Authority, which funds economic and community development programs in Atlantic City.

A. Smoking in Atlantic Casinos

Patrons have been allowed to smoke on the gaming floors of Atlantic City casinos since the commencement of gaming there in 1978, with notable exceptions and events that include:

- The New Jersey Smoke-Free Air Act of 2006 prohibited smoking in workplaces and indoor public places throughout the State – except for certain specifically exempted establishments, including casinos.
- In February 2007, the City of Atlantic City passed an ordinance restricting smoking on a casino floor to 25% of the gaming area, with required separate, designated smoking and non-smoking areas.
- Effective October 15, 2008, the City passed another ordinance that required casinos to be entirely smokefree. However, less than two weeks later the City passed a new ordinance in which casinos could revert to the previous 25% smoking, effective November 16, 2008. This meant the casinos were smokefree for one month.³
- In April 2012, Revel opened as the first Atlantic City casino property to be entirely smokefree. The property closed in September 2014.⁴
- On July 2, 2020, casinos were allowed to reopen after being shuttered for 15 months due to the Covid-19 pandemic – but smoking was prohibited. Three months later, as NJ.com

³ “Atlantic City, NJ,” Global Advisors on Smokefree Policy. <http://www.njgasp.org/smokefree-gaming/atlantic-city-nj/> (accessed August 31, 2021)

⁴ The property reopened under new ownership, and a new name – Ocean Casino Resort – in June 2018 and has the same smoking policy as other Atlantic City casinos.

reported, “[Governor Phil] Murphy was originally set to allow smoking to return there when statewide indoor dining resumed in September. But he reversed course after backlash from health experts who said it was too much of a risk because smoke may help Covid-19 spread.”⁵

- The State lifted the temporary, Covid-19-related ban on July 4, 2021. Governor Murphy said at the time he would be receptive to making the smoking ban permanent.⁶

The competition for casino patrons in the Northeast/Mid-Atlantic region is fierce, with 32 casinos operating within a 150-mile radius of Philadelphia. Those casinos generated total GGR of \$11.8 billion for the 12-month period ending August 2021, including \$8.5 billion from live slots and table games.⁷

Figure 1 provides the casino smoking policies in Northeast states with casinos. Among the primary competitors to Atlantic City, Pennsylvania permits smoking on 50% of its casino floors, although the highest-grossing casino in that state, Parx, has opted to remain smokefree⁸ since the state allowed a resumption of smoking on casino floors in June 2021. The two Philadelphia casinos, Rivers and Live, are smokefree due to the city’s indoor mask mandate. The state-regulated casinos in Delaware, Maryland and New York are smokefree; the tribal casinos in Connecticut and New York permit smoking. Many casinos where smoking is prohibited indoors do have covered outdoor gaming areas where smoking is permitted.

Figure 1: Northeast states’ indoor casino-floor smoking policies

State	Casino Smoking Policy*
Connecticut	Smoking permitted in the casinos, which are operated by sovereign, Native American entities
Delaware	Smoking prohibited as of November 2002
Maine	Smoking prohibited since opening of first casino in 2005
Maryland	Smoking prohibited since commencement of casino gaming in 2010
Massachusetts	Smoking prohibited since commencement of casino gaming in 2015
New Jersey	Smoking permitted on 25% of casino floor
New York	Smoking prohibited at state-regulated casinos, allowed in Native American casinos
Pennsylvania	Smoking permitted on 50% of casino floor
Rhode Island	Smoking permitted in designated areas; both casinos are currently smokefree by choice
West Virginia	Smoking restrictions vary by county; two of the five casinos are smokefree

Source: Spectrum Gaming Group research. *Casino smoking policies may have temporarily changed in certain jurisdictions due to health requirements related to Covid-19.

It is against this background that the Atlantic City casino operators seek to understand the impacts that a permanent smoking ban would have on their gaming revenues.

⁵ Brent Johnson, “Smoking ban in Atlantic City casinos due to Covid ends Sunday. Murphy wants permanent ban.” NJ.com, July 2, 2021. <https://www.nj.com/coronavirus/2021/06/smoking-ban-in-atlantic-city-casinos-due-to-covid-ends-sunday-murphy-wants-permanent-ban.html>

⁶ Ibid.

⁷ Spectrumetrix Mid-Atlantic Gaming Analysis.

⁸ As of the cover date of this report.

B. Smoking Trends Nationally

According to the most recent data provided by the Centers for Disease Control and Prevention,⁹ 14% of US adults in 2019 smoked cigarettes every day or on some days. The cigarette smoking prevalence varies by demographic group, as shown in Figure 2.

Figure 2: US adult cigarette-smoking prevalence rates, selected demographic groups, 2019

Male	15.3%
Female	12.7%
Ages 18-24	8.0%
Ages 25-44	16.7%
Ages 45-64	17.0%
Ages 65+	8.2%
White, non-Hispanic	15.5%
Black, non-Hispanic	14.9%
Asian, non-Hispanic	7.2%
Hispanic	8.8%
Northeast Region	12.8%
New Jersey	13.1%
Pennsylvania	17.0%
New York	12.8%
Delaware	16.5%
No diploma	21.6%
General Education Development	35.3%
High School diploma	19.6%
Some college	17.7%
Associate degree	14.0%
Undergraduate degree	6.9%
Graduate degree	4.0%
Less than \$35,000 income	21.4%
\$35,000 – \$74,999	15.7%
\$75,000 - \$99,999	11.4%
\$100,000+	7.1%

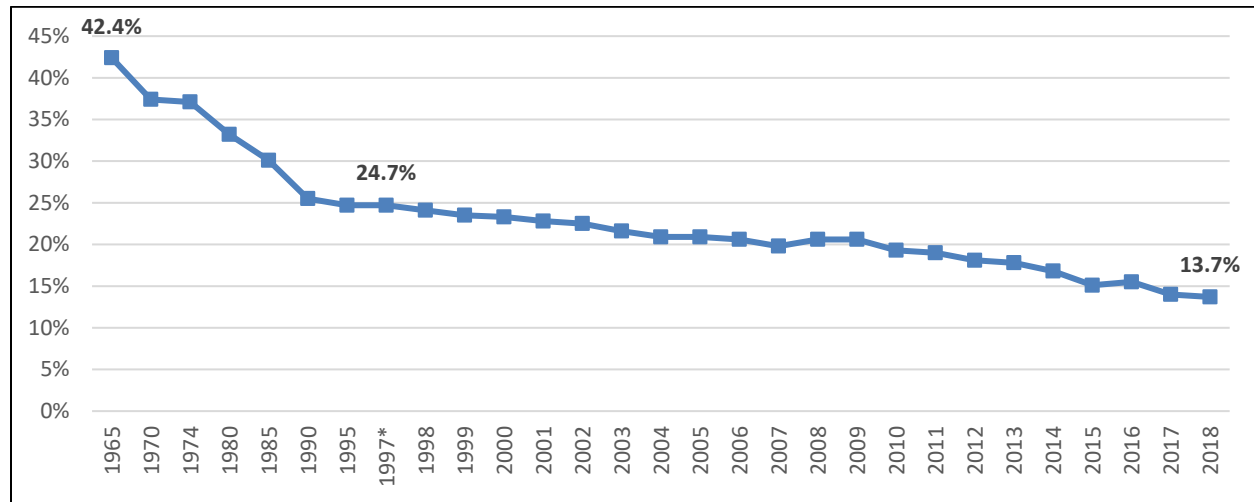
Source: Centers for Disease Control and Prevention

The prevalence of adult cigarette smoking has steadily declined through the years, according to the American Lung Association, and it declined by 44.5% during the 20-year period ending in 2018, as shown in Figure 3.¹⁰

⁹ Monica E. Cornelius, PhD; Teresa W. Wang, PhD; Ahmed Jamal, MBBS; Caitlin G. Loretan, MPH; Linda J. Neff, PhD, “Tobacco Product Use Among Adults — United States, 2019,” *Morbidity and Mortality Weekly Report*, Centers for Disease and Prevention, November 20, 2020; based on National Health Interview Survey, United States, 2019. https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a4.htm?s_cid=mm6946a4_w#F1_down

¹⁰ “Trends in Cigarette Smoking Rates,” American Lung Association. <https://www.lung.org/research/trends-in-lung-disease/tobacco-trends-brief/overall-tobacco-trends> (accessed August 31, 2021)

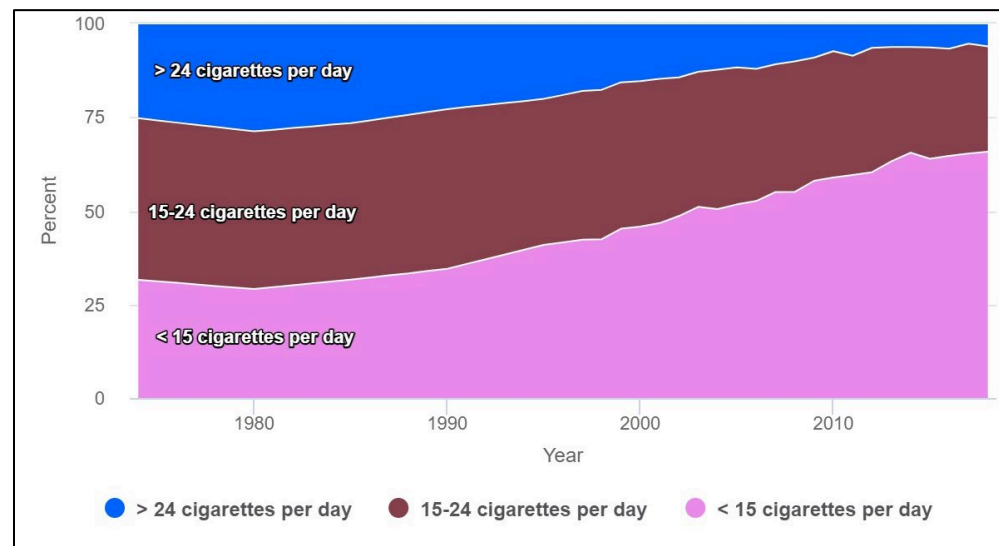
Figure 3: US adult cigarette-smoking prevalence rates, 1965-2018



Source: American Lung Association, via the Centers for Disease Control and Prevention, National Center for Health Statistics. National Health Interview Survey 1965-2018. Analysis for years 1997-2018 by the American Lung Association Research Team using SPSS software. *Due to the redesign of the NHIS survey in 1997, comparisons with data from prior years must be conducted with caution.

Among smokers, the number of cigarettes they smoke per day has been decreasing, as shown in Figure 4.

Figure 4: Average number of cigarettes smoked per day, among smokers, 1974-2018



Source: American Lung Association of analysis of Centers for Disease Control data, 1974-2018

C. Methodology

Spectrum recognizes that the topic of indoor cigarette smoking is controversial, especially as it pertains to the casino industry. In New Jersey and Pennsylvania, casinos were specifically exempted from statewide indoor workplace smoking bans. The issue typically pits the health and comfort of patrons and employees – and the advocacy groups that support them – against the casinos’ desire to maximize revenues and the state governments’ desire to maximize the concomitant gaming-tax receipts.

As noted above, this study is limited to the impacts that a permanent smoking ban on Atlantic City floors would have on gross gaming revenue. As detailed in Chapter IV of this report, Spectrum projected a range of potential GGR impact based our research and analysis, which included the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other related empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time. As seen above, smoking prevalence rates have declined significantly since those studies were conducted.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.
 - We spoke with the property or finance heads seven of the nine casinos. They provided us with proprietary performance data regarding smoking areas vs. non-smoking areas, on the condition that neither they nor their properties be disclosed.

D. About Spectrum Gaming Group

This report was prepared by Spectrum Gaming Group, an independent research and professional services firm founded in 1993 that serves private- and public-sector clients worldwide. Our principals have backgrounds in operations, economic analysis, law enforcement, regulation and journalism.

Spectrum holds no beneficial interest in any casino operating companies or gaming equipment manufacturers or suppliers. We employ only senior-level executives and associates who have earned reputations for honesty, integrity and the highest standards of professional conduct. Our work is never influenced by the interests of past or potential clients.

Each Spectrum project is customized to our client's specific requirements and developed from the ground up. Our findings, conclusions and recommendations are based solely on our research, analysis and experience. Our mandate is not to tell clients what they want to hear; we tell them what they need to know. We will not accept, and have never accepted, engagements that seek a preferred result.

Our clients in 48 countries on six continents have included government entities of all types and gaming companies (national and international) of all sizes, both public and private. In addition, our principals have testified or presented before the following governmental bodies:

- Brazil Chamber of Deputies
- British Columbia Lottery Corporation
- California Assembly Governmental Organization Committee
- Connecticut Public Safety and Security Committee
- Florida House Select Committee on Gaming
- Florida Senate Gaming Committee
- Georgia House Study Committee on the Preservation of the HOPE Scholarship Program
- Georgia Joint Committee on Economic Development and Tourism
- Illinois Gaming Board
- Illinois House Executive Committee

- Indiana Gaming Study Commission
- Indiana Horse Racing Commission
- International Tribunal, The Hague
- Iowa Racing and Gaming Commission
- Louisiana House and Senate Joint Criminal Justice Committee
- Massachusetts Gaming Commission
- Massachusetts Joint Committee on Bonding, Capital Expenditures, and State Assets
- Michigan Senate Regulatory Reform Committee
- National Gambling Impact Study Commission
- New Hampshire Gaming Study Commission
- New Jersey Assembly Regulatory Oversight and Gaming Committee
- New Jersey Assembly Tourism and Gaming Committee
- New Jersey Senate Legislative Oversight Committee
- New Jersey Senate Wagering, Tourism & Historic Preservation Committee
- New York Senate Racing, Gaming and Wagering Committee
- New York State Economic Development Council
- North Dakota Taxation Committee
- Ohio House Economic Development Committee
- Ohio Senate Oversight Committee
- Pennsylvania Gaming Control Board
- Pennsylvania House Gaming Oversight Committee
- Puerto Rico Racing Board
- US House Congressional Gaming Caucus
- US Senate Indian Affairs Committee
- US Senate Permanent Subcommittee on Investigations
- US Senate Select Committee on Indian Gaming
- US Senate Subcommittee on Organized Crime
- Washington State Gambling Commission
- West Virginia Joint Standing Committee on Finance
- World Bank, Washington, DC

Disclaimer

Spectrum has made every reasonable effort to ensure that the data and information contained in this study reflect the most accurate and timely information possible. The data are believed to be generally reliable. This study is based on estimates, assumptions, and other information developed by Spectrum from its independent research effort, general knowledge of the gaming industry, and consultations with the Client and its representatives. Spectrum shall not be responsible for any inaccuracies in reporting by the Client or its agents and representatives, or any other data source used in preparing or presenting this study. The data presented in this study were collected through the cover date of this report. Spectrum has not undertaken any effort to update this information since this time.

Some significant factors that are unquantifiable and unpredictable – including, but not limited to, economic, governmental, managerial and regulatory changes; and acts of nature – are qualitative by nature and cannot be readily used in any quantitative projections. No warranty or representation is made by Spectrum that any of the projected values or results contained in this study will actually be achieved. We shall not be responsible for any deviations in the project’s actual performance from any predictions, estimates, or conclusions contained in this study.

Possession of this study does not carry with it the right of publication thereof, or the right to use the name of Spectrum in any manner without first obtaining the prior written consent of Spectrum. This study may not be used in conjunction with any public or private offering of securities or other similar purpose where it may be relied upon to any degree by any person other than the Client, without first obtaining the prior written consent of Spectrum. This study may not be used for any purpose other than that for which it is prepared or for which prior written consent has first been obtained from Spectrum. This study is qualified in its entirety by, and should be considered in light of, these limitations, conditions and considerations.

I. Impacts of Casino Smoking Bans in Other Jurisdictions

Several jurisdictions over the last 20 years have implemented permanent casino smoking bans well after their gaming industries had been established. Although the results appear to show a decline in gross gaming revenue post-implementation, there were other factors that contributed to declines, as discussed below.

A. Delaware

On November 27, 2002, the Delaware Clean Indoor Air Act took effect, prohibiting smoking at the state's three racetrack casinos (Dover Downs, Harrington Raceway and Delaware Park), which at the time were limited to video lottery terminals ("VLTs"). The impact on VLT revenue was significant in the first year of the smoking ban, as shown in Figure 5 below.

Figure 5: Delaware VLT GGR, 2000-2006

	2000	2001	2002	2003	2004	2005	2006
VLTs at Year End	5,151	5,277	5,430	5,683	6,435	6,581	7,360
Revenue (M)	\$485.1	\$526.6	\$565.9	\$502.0	\$553.3	\$579.4	\$651.7
Avg. Daily Win/Unit	\$257	\$273	\$286	\$242	\$235	\$241	\$243

Source: Delaware Lottery, UNLV Gaming Research Center

The smoking ban impact became noticeable in 2003. In addition, Hurricane Isabel in September 2003 caused minor disruptions in the state. VLT revenues fell by nearly \$64 million, or 11.3% for the year. At the time, the casinos in Atlantic City presented the only other Mid-Atlantic casino competition. After the first year of the smoking ban, revenues rebounded to nearly the same level as 2002, the year prior to the ban. By 2005, two years later, VLT revenues exceeded the 2002 level by \$13 million.

Throughout this period the operators continued to expand and add gaming positions, as the legislature approved extending casino operating hours and allowed additional machines at each track. Other legislative changes included permitting the casinos to extend credit to players, and removing the \$100 betting limit. Dover Downs began construction of an 11,000-square-foot addition to accommodate the new games.

While the smoking ban reduced VLT revenue in Delaware for a short period, legislative initiatives, capital investment by the casinos, and the lack of other competition meant that the dip in GGR was short-lived.

B. Illinois

The Smoke Free Illinois Act banned smoking in public places, including casinos. The act took effect January 1, 2008. In 2008, casino revenue at Illinois casinos declined dramatically, but why? The Illinois Gaming Board ("IGB") Annual Report discussed the results:

There are two factors underlying the reductions in this year's gaming revenues. The first is the smoking ban implemented by the Smoke Free Illinois Act (Public Act 95-0017), effective January 1, 2008. According to the casino industry, implementation of this Act has caused the AGR [adjusted gross receipts] per admission

to fall. This is because habitual smokers take smoking breaks, during which time they do not engage in gaming activity. The second factor is the downturn in the Illinois and national economies. As a discretionary form of spending, gaming expenditures are especially prone to reductions during hard economic times. The relative importance of the above two factors has not yet been quantified with certainty.¹¹

Illinois casino gamblers also may have left Illinois casinos for casinos in neighboring states that permit smoking. Notably, Quad Cities, Saint Louis, and Chicago gaming markets straddle state lines. The Peoria market, however, is not near a state line and thus can serve as a benchmark for the gaming markets that include another state. As can be seen in Figure 6 below, Illinois as a whole experienced a 20.9% year-over-year decline in GGR in 2008. Revenues at the Peoria casino declined by 12.1%, which seems to indicate that proximity of smoking casinos increases the likelihood of switching.

Figure 6: Annual percentage change in selected Illinois casino markets

Market Portion	2007 vs 06	2008 vs 07	2009 vs 08	2010 vs 09	2011 vs 10	2012 vs 11	Total % Ch
IL Properties Chicago Market	2.6%	-21.7%	-14.1%	-4.0%	13.9%	16.1%	-12.5%
IL Properties St. Louis Market	6.3%	-19.2%	-9.3%	-9.8%	-2.5%	-0.3%	-31.7%
IL Property Quad City Market	-8.6%	-4.1%	105.6%	12.6%	8.1%	2.3%	145.7%
Peoria Market	1.4%	-12.1%	-1.5%	0.2%	0.2%	0.7%	-11.2%
ALL Illinois Markets	3.1%	-20.9%	-8.9%	-3.9%	7.6%	10.9%	-14.8%
Non IL Portion of Markets	-2.5%	1.7%	0.6%	2.5%	-1.9%	-1.1%	-0.7%

Source: Deutsche Bank

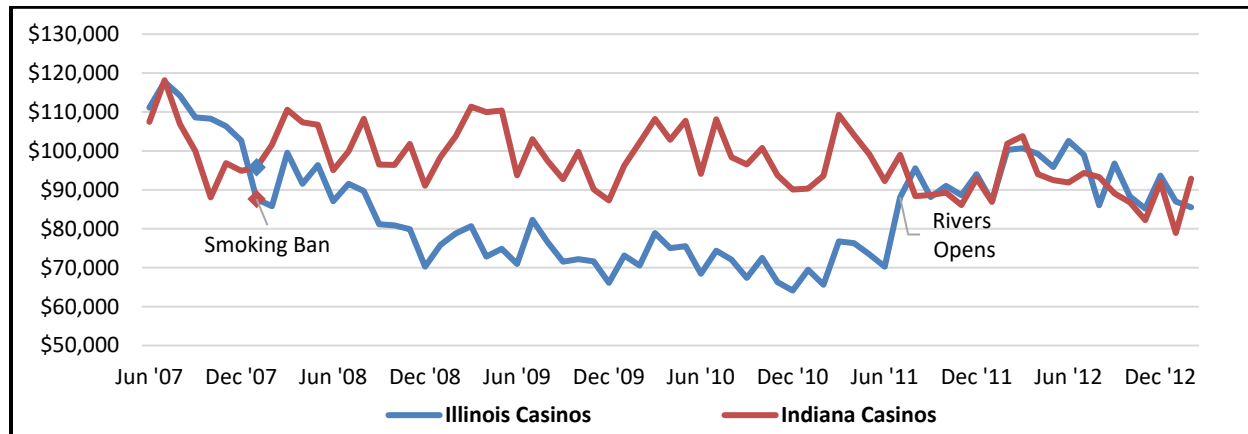
The performance was not uniform across the state or the markets. Several factors contribute to the varied results. Below we discuss these factors and review each sub-market.

1. Chicagoland

At the time of the implementation of the Illinois smoking ban in 2008, the Chicagoland casino market included nine riverboat casinos: four in Illinois (two in Joliet, one in Elgin, and one in Aurora) and five in Indiana (one in Hammond, one in East Chicago, two in Gary, and one in Michigan City). In 2008, the Illinois casinos experienced a significant decline in GGR while the casinos in Indiana saw increased revenue.

¹¹ Illinois Gaming Board Annual Report 2008. <https://www.igb.illinois.gov/AnnualReport.aspx>

Figure 7: Chicagoland casino market monthly GGR by state, June 2007-December 2012



Source: Deutsche Bank, Spectrum Gaming Group

The imbalance of GGR and the GGR trend are evident in Figure 7: The Illinois GGR share declined while the Indiana share increased.

In 2011, a tenth casino, Rivers Casino Des Plaines, opened in the Chicagoland market. Rivers is the only casino in Illinois’ Cook County. It is located five miles from Chicago O’Hare International Airport and easily accessible from the city of Chicago and its suburbs via interstate. Once the Rivers casino opened, the revenue balance shifted back to Illinois favor, despite the fact that Rivers, like all the other Illinois casinos, was a non-smoking property.

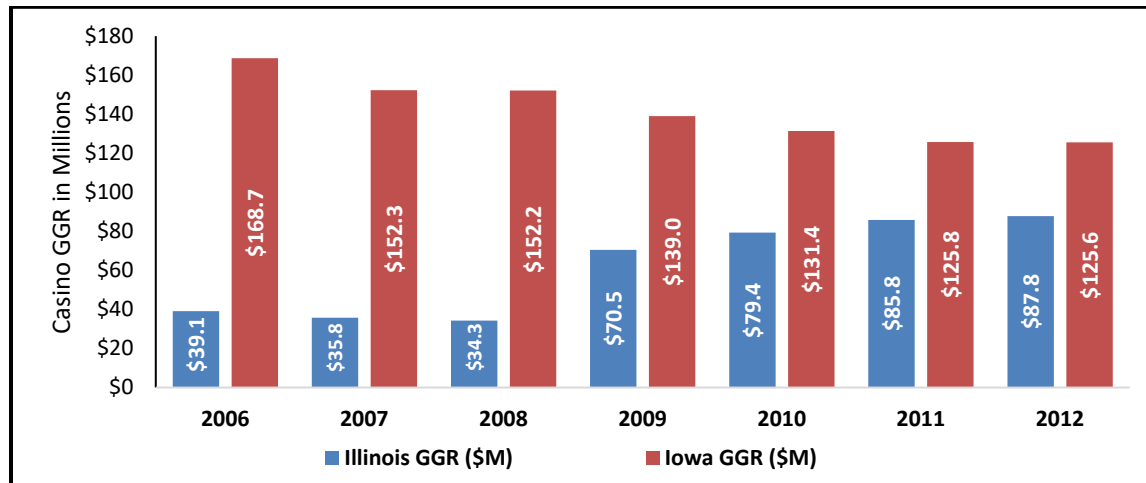
While it appears the smoking ban had a negative impact on GGR at the Chicagoland casinos in Illinois, the opening of a new, modern casino expanded the market and, from a market-wide perspective, limited the impact of the smoking ban.

2. Quad Cities

The Quad Cities gaming market includes Bettendorf and Davenport in Iowa and Moline and Rock Island in Illinois. For many years, the market was stable. Early on, there were three casinos in the market: two in Iowa and one in Illinois. The market is ideal for studying the impact of differing state regulations.

In December 2008, Jumer’s Rock Island casino in Illinois opened a new casino and hotel complex. This investment coincided with a surge in revenue at the property. Figure 8 below depicts the Quad Cities GGR by state from 2006 to 2012.

Figure 8: Quad Cities casino GGR by state, 2006-2012



Source: H2 Gaming Capital

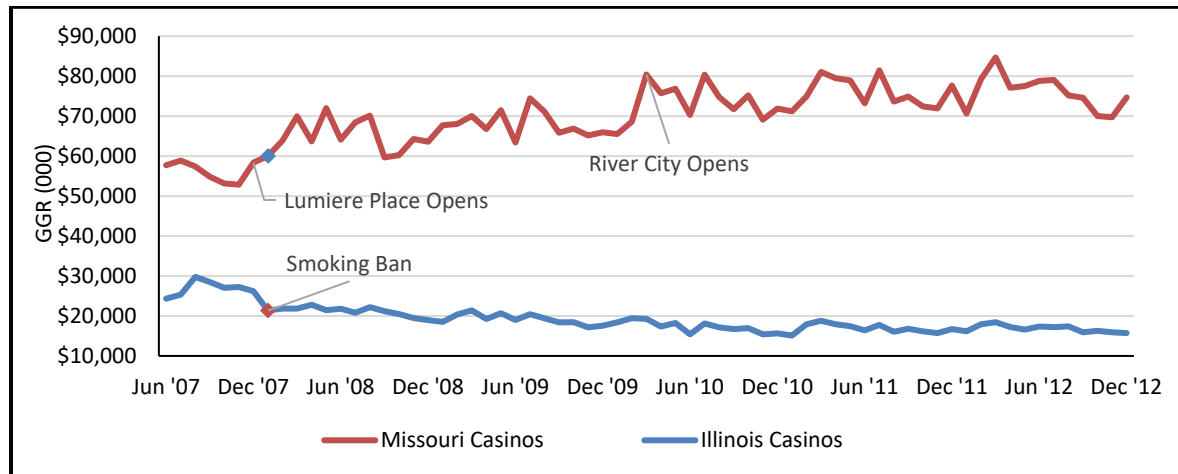
From the data presented above, it appears that the smoking ban had minimal impact on gaming revenues at the Jumer’s Rock Island casino in Illinois. Of more interest is that when the property was enhanced and updated after the smoking ban was implemented, casino revenues increased. The share of gaming revenue in Illinois grew despite – or perhaps because of – the smoking ban. Non-smoking patrons may have chosen the new, modern smokefree casino as a preferred alternative to less-appealing, first-generation casino boats in Iowa. We cannot know the motivations of the patrons, just the impact on GGR. It is notable that some players chose the new casino over casinos where smoking is permitted.

3. St. Louis

In 2006, there were four casinos in the St. Louis gaming market: two in Illinois (one in Alton, one in East St. Louis) and two in Missouri (one in St. Charles, one in Maryland Heights). In December 2007 – two weeks before the Illinois smoking ban took effect – the \$507 million Lumiere Place casino hotel opened in downtown St. Louis, giving the market a fifth casino. Later, in March 2010, River City casino opened south of downtown St. Louis, adding a sixth casino to the market.

Figure 9 shows the GGR performance of the St. Louis market, with key events indicated.

Figure 9: St. Louis area casino GGR by state, June 2007-December 2012



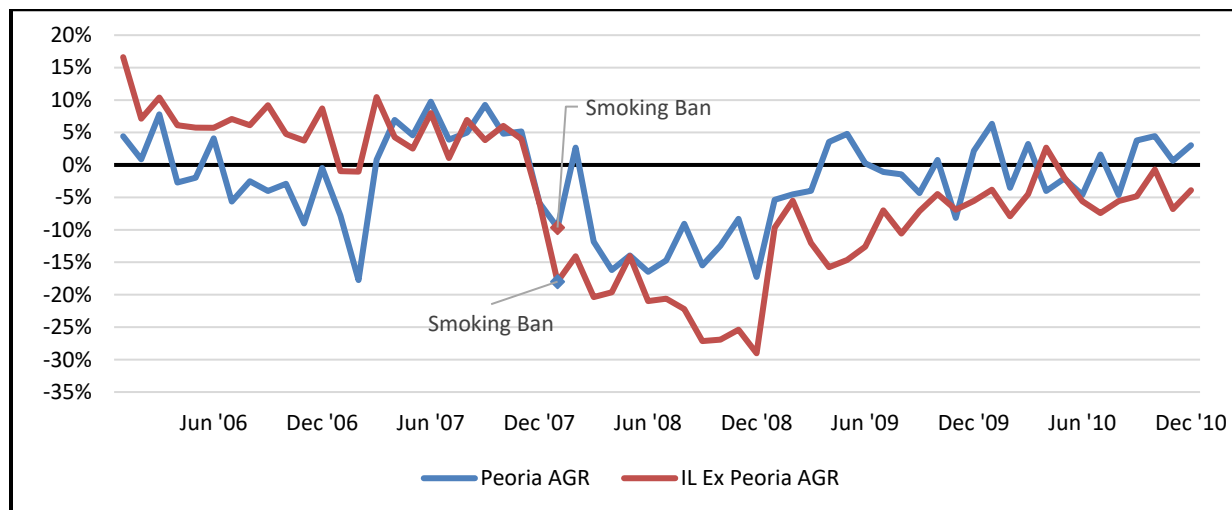
Source: Deutsche Bank

There is no real means to separate the impact of the smoking ban on Illinois casino revenue in the St. Louis market from the impact a new casino would have on offering a better product. There is clearly a jump in revenue on the Missouri side of the river, and a 10% decline in GGR at the Illinois casinos in the market. Spectrum cannot determine how much of the shift in revenues and growth of the market is due to a new casino and how much is due to the Illinois smoking ban.

4. Peoria

The Peoria gaming market is entirely within Illinois. The Par-A-Dice casino has been operating there since 1992, with no new casino entrants in the area. The closest casino competition is in the Quad Cities market, approximately 75 miles northwest of Peoria, and a casino in Burlington, IA. Because of its relative isolation, Spectrum believes the Peoria market provides a good benchmark to evaluate the impact of a smoking ban in a market without being affected by competing casinos where smoking is allowed.

Figure 10: Year-over-year AGR percentage change in Peoria and all Illinois excluding Peoria, 2006-2010

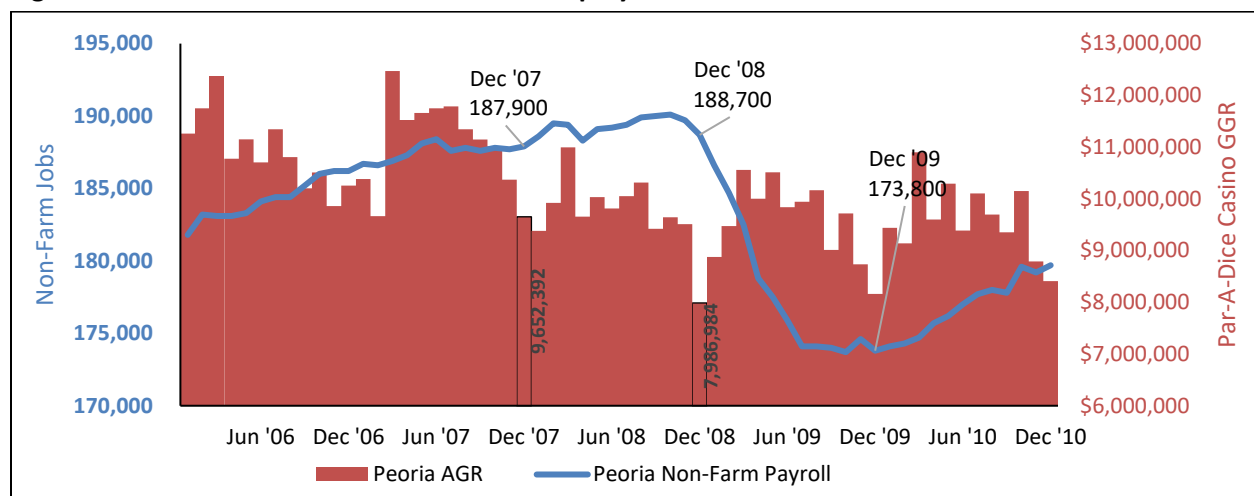


Source: Illinois Gaming Board. **Note:** AGR = adjusted gross receipts, essentially the same as gross gaming revenue.

Protected by distance from casinos where smoking was permitted, adjusted gross receipts, (“AGR”) at the Peoria casino declined but by less than the rest of the state. Figure 10 above presents the monthly year-over-year percentage change in AGR for five years. It can be argued that without smoking casinos for competition, local casino patrons had no choice but to visit the Peoria property. As a result, there was less of a swing to other states as was seen in other markets.

Another factor mentioned by the IGB in its annual report for 2008 was the recession that began that year. Figure 11 below presents total non-farm employees in the Peoria metropolitan statistical area (“MSA”) by month. It is clear that while employment fell dramatically in the MSA in 2009, there was a slight rise in payroll employment in calendar year 2008. This gives an indication that perhaps the smoking ban in Peoria Illinois was more of a cause of the revenue decline than the recession.

Figure 11: Peoria casino GGR and non-farm employment in Peoria 2006-2010



Source: St. Louis Federal Reserve

C. New Orleans

The New Orleans casino market includes four casinos in Louisiana and the casinos in the nearby Mississippi Gulf Coast cities of Bay St. Louis, Biloxi and Gulfport. Two of the Louisiana casinos, Harrah’s New Orleans and Fair Grounds Race Course & Slots, are located in Orleans parish. Two other casinos, Boomtown and Treasure Chest, are located in Jefferson Parish. Fair Grounds Race Course offers only slots whereas the other properties offer tables and slots. Because we are trying to measure the impact of smoking on play, we have focused on slot revenue for the Louisiana casinos for comparison purposes. The Mississippi Gulf Coast casinos are a longer drive from the New Orleans metro area but they permit smoking. In April 2015, Orleans Parish imposed a smoking ban on casinos.

The smoking ban appears to have benefitted nearby Treasure Chest in Kenner and Boomtown in Harvey at the expense of the Orleans Parish properties. In the following 24 months, the slot win at Harrah’s declined more than \$45 million and the slot win declined \$3.9 million at Fair Grounds; slot win increased at Boomtown and Treasure Chest in Jefferson Parish by a nearly \$11 million combined in this same timeframe. Revenue grew at the Mississippi Gulf Coast casinos. The Mississippi Gaming Commission

releases GGR data in total without breaking out slot and table revenue. We used the total GGR for the Mississippi casinos.

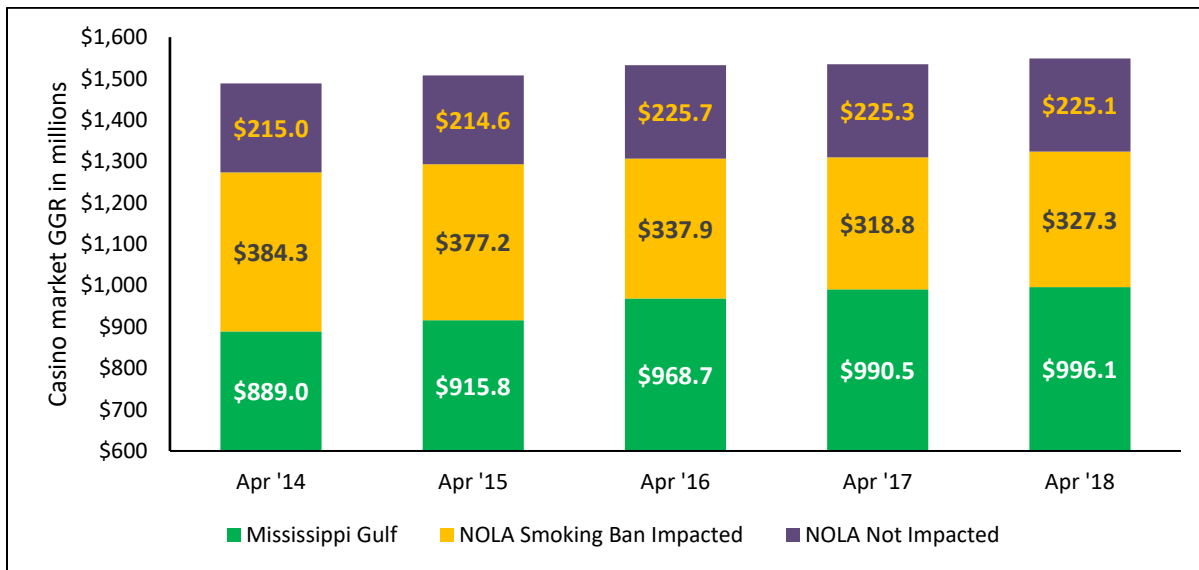
Figure 12: New Orleans market slot revenue LTM, April 2014-April 2018

LTM Slot Revenue (M)	April 2014	April 2015	April 2016	April 2017	April 2018	% Change, 2014-2018
Boomtown Harvey Slots	\$116.3	\$114.1	\$119.7	\$118.3	\$116.9	0.5%
Treasure Chest Slots	\$98.7	\$100.5	\$106.0	\$107.0	\$108.2	9.7%
Fair Grounds Slots	\$46.0	\$45.9	\$42.0	\$41.9	\$41.9	-8.9%
Harrah's New Orleans Slots	\$338.3	\$331.3	\$295.9	\$277.0	\$285.4	-15.6%
Coastal MS- All GGR	\$889.0	\$915.8	\$968.7	\$990.5	\$996.1	12.0%
Total	\$1,488.3	\$1,507.6	\$1,532.3	\$1,534.7	\$1,548.6	4.0%

Source: Spectrumetrix

Another factor is the continued investment and improvement of the Mississippi Gulf Coast casinos. As the coast casinos rebuilt after Hurricane Katrina, some moved to the landside of US Route 90, affording them with modern facilities that patrons may find more appealing than the older Louisiana riverboats. We have grouped the casinos into three segments: NOLA smoking-ban-impacted (Harrah’s and Fair Grounds), NOLA not-smoking-ban-impacted (Boomtown and Treasure Chest), and Mississippi Gulf Coast. The chart below presents the slot win from each segment of the market in the years immediately before and after the smoking ban.

Figure 13: New Orleans market LTM slot and Mississippi GGR win by segment, 2014-2018



Source: Spectrumetrix

The Louisiana Gaming Control Board (“LGCB”) annual report includes estimates of the percentage of visitation from over 150 miles away by casino, total casino visits and revenue for each casino.¹² We have used these estimates to develop estimates of local visitation and revenue, as a means to assess the

¹² Louisiana Gaming Control Board Annual reports, 2014-2019. http://lgcb.dps.louisiana.gov/annual_reports.html

impact of a smoking ban on casino visitation patterns from local patrons where the cost of switching from a non-smoking to a smoking casino is minimal. The data in Figure 14 show that local casino visitation and revenue decreased in both the smoking and non-smoking properties, which may mean that Louisiana lost casino players and their gaming revenues to Mississippi.

Figure 14: Estimated local annual visits and slot win in New Orleans market Louisiana casinos

Estimated Local Visits	2014	2015	2016	2017	2018	2019	% Change from 2014
Smoking Casinos	2,023,000	1,929,000	1,989,000	1,873,000	1,699,000	1,680,000	-17.0%
Non-smoking Casinos	3,744,000	3,617,000	3,534,000	3,250,000	3,125,000	3,150,000	-15.9%
Total Est. Local Visits	5,767,000	5,546,000	5,523,000	5,123,000	4,824,000	4,830,000	-16.2%
Estimated Local Revenue (000)							
Smoking Casinos	\$190,210	\$179,060	\$185,360	\$183,770	\$180,810	\$179,830	-5.5%
Non-smoking Casinos	\$249,990	\$235,990	\$218,270	\$210,560	\$215,590	\$218,590	-12.6%
Total Est. Local Rev	\$440,200	\$415,050	\$403,630	\$394,330	\$396,400	\$398,420	-9.5%

Sources: Spectrumetrix, Louisiana Gaming Control Board

II. Summaries of Casino-Smoking Studies

Different organizations over the last three decades have studied various aspects related to cigarette smoking in casinos. The studies have been conducted by academic institutions, consulting firms, advocacy groups, and others. Following are Spectrum’s synopses of studies that are most relevant to this report; i.e., those that relate to gaming revenues and smoking prevalence. Many other studies focus on the health aspects of smoking in casinos, but they are not included here because of the narrow scope of this report. We believe the synopses help to provide context for the discussion and analysis throughout this report. The synopses are presented in chronological order of the reports’ publication dates.

2005: *Smoking Ban Economic Effect Analysis*¹³

Prepared by: PricewaterhouseCoopers

Scope of Study: In light of a proposed smoking ban in Delaware, PricewaterhouseCoopers LLP (“PwC”) was hired to perform a preliminary analysis of the effect of the smoking ban on Delaware’s three gaming facilities and, among other things, estimate the effect of a smoking ban on the Atlantic City casino market’s gaming revenues.

Key Findings: PwC estimated the two-year cumulative effect on Delaware’s adjusted gaming revenues would be -19.12%. It estimated the two-year cumulative effect on the adjusted gaming revenues for Delaware’s Dover Downs would be -20.40%. It further estimated that if a smoking ban were to be effected in Atlantic City, the two-year cumulative effect on the adjusted gaming revenues for Atlantic City would be -20.40%.

Limitations: The study was done 16 years ago, and the numbers are projections rather than actual results. The study made certain assumptions, including that approximately 50% of the Delaware gaming market’s customers are smokers and that the relative gaming spend of smokers is approximately 10% higher than non-smokers.

2005: *Smoke-free law did not affect revenue from gaming in Delaware*¹⁴

Prepared by: L.L. Mandel, B.C. Alamar, and S.A. Glantz (published in *Tobacco Control*)

Scope of Study: The study attempted to determine the effect of the Delaware smoke-free law on gaming revenue. The Delaware Clean Indoor Air Act took effect on November 27, 2002. It made virtually all of Delaware’s public places and workplaces smoke-free, including the state’s three racinos.

¹³ “Smoking Ban Economic Effect Analysis,” PricewaterhouseCoopers, November 17, 2005. http://www.njgasp.org/wp-content/uploads/2014/05/i_economics_PWC-full-report.pdf

¹⁴ L.L. Mandel, B.C. Alamar, and S.A. Glantz, “Smoke-free law did not affect revenue from gaming in Delaware,” *Tobacco Control*, 2005. <https://tobaccocontrol.bmj.com/content/tobaccocontrol/14/1/10.full.pdf>

The publication says that while previous studies had examined the effects of smoke-free laws and ordinances on the hospitality industry and charitable bingo, this was the first study to examine the effects of a state-wide smoke-free law on gaming revenue.

Key Findings: “The linear regression showed that the smoke-free law was associated with no effect on total revenue or average revenue per machine.”

Note: *Tobacco Control* later published a correction to this study. It said the article contained inaccurate results because of a data entry error. The correction stated that “(t)he analysis based on the corrected data confirms the results of the published paper, that the smoke-free law had no affect [*sic*] on revenue from gaming in Delaware.”

Limitations: The study was published in 2005. Unlike most studies synopsized in this chapter, this paper did not note any limitations of the study.

2006: *Smoke-free law did affect revenue from gaming in Delaware*¹⁵

Prepared by: M.R. Pakko (published in *Tobacco Control*)

Scope of Study: Pakko examines the data and methodologies used in the study by Mandel, Alamar, and Glantz (see above) and concludes that their finding is questionable. “Using more general approaches to controlling for heteroskedasticity and seasonality in the data, I find that both total gaming revenues and revenues per VLT declined significantly after the implementation of the Delaware smoke-free law.” According to the Corporate Finance Institute, “Heteroskedasticity refers to situations where the variance of the residuals is unequal over a range of measured values. When running a regression analysis, heteroskedasticity results in an unequal scatter of the residuals (also known as the error term). When observing a plot of the residuals, a fan or cone shape indicates the presence of heteroskedasticity. In statistics, heteroskedasticity is seen as a problem because regressions involving ordinary least squares (OLS) assume that the residuals are drawn from a population with constant variance. If there is an unequal scatter of residuals, the population used in the regression contains unequal variance, and therefore the analysis results may be invalid.”¹⁶

Key Findings: The author finds that the smoke-free law in Delaware did affect revenue from gaming. “This finding is statistically significant and quite robust. The public health benefits of smoke-free laws should be weighed against these (and other, similar) economic costs.” The author also disagrees with the original study’s contention that only the seasonal effects of winter are relevant. The author finds that the results reveal significant seasonal variation.

¹⁵ M.R. Pakko, “Smoke-free law did affect revenue from gaming in Delaware,” as published in PubMed Central, US National Library of Medicine, National Institutes of Health, 2006.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563623/>

¹⁶ “What is Heteroskedasticity,” Corporate Finance Institute.
<https://corporatefinanceinstitute.com/resources/knowledge/other/heteroskedasticity/> (accessed September 29, 2021)

In a separate summary, the author wrote: “After correcting for evident errors in that analysis, I find that the smoke-free law did affect revenues from gaming in Delaware. Total gaming revenues are estimated to have declined by at least \$6 million per month after the implementation of Delaware’s Clean Indoor Air Law. This represents a loss of over 12% relative to average monthly revenues in the year preceding the smoking ban.”¹⁷

Limitations: The disagreement between the two Delaware impact studies cited comes down to interpretation of statistics.

2006: *The Percentage of Gamblers Who Smoke: A Study of Nevada Casinos and other Gaming Venues*¹⁸

Prepared by: Dr. Chris A. Pritsos, University of Nevada Reno

Scope of Study: Authors attempted to determine actual percentage of gamblers in Nevada who smoke. Gaming industry officials and lobbyists say the percentage is upward of 70%, based on anecdotal information obtained in a survey of casino executives. Health organizations suggest the number is more in line with the national average of smokers, which at the time was 20.9%.

Key Findings: Authors say they observed 17,723 gamblers, of whom 1,335 were smoking. Because smokers don’t smoke constantly, the study used a methodology published in 1980 by Repace and Lowry to determine the number of smokers in a room. The results from the three tourist centers of Nevada they surveyed (Las Vegas, Reno/Sparks and Lake Tahoe) gave similar results for the percentage of smokers (21.5, 22.6 and 17.0 respectively). Observations of smaller casinos in rural communities showed higher smoker rates amongst gamblers of 36.5%, which, the authors wrote, most likely reflects the higher percentage of smokers in these communities and the fact that much of the gaming patronage is from locals. The percentage of gamblers who smoke at local grocery, drug and convenience stores that have slot machines in Nevada is also higher, with a rate of 42%.

Overall, the results of this study suggest that the percentage of smokers at tourist destination gaming establishments is reflective of the overall percentage of smokers in the population. The percentage of smokers at small rural or non-tourist dependent gaming establishments may better reflect the percentage of smokers in that local area/community than that of the overall US population.

Limitations: The study was published 15 years ago. Authors acknowledge that the methodology used to count smokers might overestimate the number of smokers (because it assumes all smokers are habitual smokers, when 19.2% of smokers do not smoke every day, according to a 2005 report in *Morbidity and Mortality Weekly*). The study was limited to gamblers on the casino floor. Players in the smoke-free poker rooms and people seated at bars in the casino were not included in the study. Authors

¹⁷ M.R. Pakko, “Smoke-free law did affect revenue from gaming in Delaware,” Semantic Scholar, 2006. <https://www.semanticscholar.org/paper/Smoke-free-law-did-affect-revenue-from-gaming-in-Pakko/d21c6fd10dfa735b89789da130a7f6a382aef5c9>

¹⁸ Dr. Chris A. Pritsos, “The Percentage of Gamblers Who Smoke: A Study of Nevada Casinos and other Gaming Venues,” University of Nevada Reno, 2014. <https://core.ac.uk/display/100466600>

acknowledge that the small number of gamblers observed at grocery stores, convenience stores and high-minimum table games (except in the Las Vegas Strip casinos) made the sample sizes in those subcategories too small to be meaningful.

2010: *The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois*¹⁹

Prepared by: Federal Reserve Bank of St. Louis

Scope of Study: This study explored the effects that the Illinois state smoking ban, which took effect at the beginning of 2008, had on Illinois casino revenue, casino attendance, and casino tax revenue. The study compared the performance of Illinois casinos with out-of-state casinos (where there was no smoking ban) that share a market with Illinois casinos.

Key Findings: The results indicated that Illinois casinos suffered losses of more than 20% – well over \$400 million – in total during the first year of the Smoke Free Illinois Act.

“Some of this loss appears to be associated with casino patrons gambling less when they do attend the casinos, and part of the loss is also evident in declining attendance. We find that the impact of the smoking ban on total admissions amounts to around 10%, with our point estimates indicating a downturn in the range of 9 to 13%. These estimates imply total casino tax revenue was lower by roughly \$200 million. The economic effects of the Smoke Free Illinois Act — specifically with regard to casino revenue and government tax receipts — represent only part of the Act’s overall impact. In a full analysis, these effects need to be considered alongside costs and benefits, including the public health benefits of the legislation.” The authors wrote that their findings “are consistent with the survey results of Petry and Oncken (2002), which suggests that smoking patrons visit casinos more often and wager more money. The results ... suggest that smoking patrons continued to visit the casinos, but perhaps did not visit as often, stay as long, or wager as much as they did before the ban.”

The study found that the one casino that seemed least affected by the smoking ban was the one that faces the least competition – the Par-A-Dice casino in Peoria. Its location in the center of the state sets it approximately 90 miles from the nearest competition.

Limitations: The study was limited to casinos in Illinois and certain surrounding states. Also, the authors acknowledge that the timing of the Illinois smoking ban coincided with a general economic downturn in Illinois and the nation as a whole. That makes it hard to assess how much a decline in casino revenue was caused by the economic downturn and how much was caused by the smoking ban, although the authors “attempted to statistically disentangle the factors underlying the decline in Illinois casino revenue.”

¹⁹ Thomas A. Garrett, and Michael R. Pakko, “The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois,” Federal Reserve Bank of St. Louis, March 2010. <https://doi.org/10.20955/wp.2009.027>

2011: Consumer Attitudes and Visit Intentions Relative to a Voluntary Smoking Ban in a Single Casino Resort with a Dense Competitive Set²⁰

Prepared by: Gregory T. Bradley and Cherylynn Becker, University of Southern Mississippi (published in Academy of Health Care Management Journal)

Scope of Study: The study was conducted to assess the feasibility of implementing a voluntary smoking ban at a major casino resort in an established regional gaming market in the southeastern United States. While, according to the most recent statistics, the smoking incidence rate across the country is 18.4%, the population under study has one of the highest regional smoking rates in the country at 22.4% (Centers for Disease Control, 2010). As such, the primary objectives of this research were to assess smoking rates among gamblers within the prescribed population, and, subsequently, to determine how the hypothetical implementation of a voluntary smoking ban at a single property in this competitively dense market would affect the attitudes and behaviors of gamblers with regard to modifying their casino choice and visitation frequency.

Key Findings: Based on data collected for a large-scale research study, it was found that there was a substantial difference between smokers and non-smokers in attitudes, perceptions, and behavioral intent regarding the elimination of smoking at their favorite casino or another casino in the market.

- Gamblers reported a smoking rate that was actually lower (18.4%) than the smoking rate in the defined population (22.4%). However, it should be noted that the authors did not distinguish between frequent and infrequent visitors to casinos. The only requirement for participation in the study was to have gambled in that market.
- Smokers expressed a strong likelihood of migrating to a smoking casino if their favorite casino were to institute a voluntary smoking ban. This finding, of course, was not at all surprising based on the aforementioned literature. However, the relative strength of the response should send a message to casino operators that a careful evaluation of the smoking habits of their core customer base is critical prior to instituting a voluntary smoking ban.
- Non-smoking gamblers expressed a strong likelihood of migrating to a non-smoking casino if a competitive casino were to institute a voluntary smoking ban. The strength of this likelihood was as robust as the likelihood of smoker migration in a smoke-free environment.
- Non-smoking gamblers expressed a strong likelihood to visit a non-smoking casino more often than their current favorite casino.
- It was found that air quality in casinos was significantly more important to non-smokers than to smokers.

²⁰ Gregory T. Bradley and Cherylynn Becker, "Consumer Attitudes and Visit Intentions Relative to a Voluntary Smoking Ban in a Single Casino Resort with a Dense Competitive Set," Academy of Health Care Management Journal, Volume 7, Number 2, 2011.

https://www.bradleyresearchgroup.com/uploads/1/3/4/0/134099823/bradley_and_becker_-_ahcmj_smoking_research.pdf

- Non-smokers with a non-smoking spouse or significant other were more likely than non-smokers with a smoking spouse or significant other to indicate the intent to migrate to a non-smoking casino.

Limitations: The authors acknowledge that a potential limitation in this study surrounds the issue of unqualified generalizability. The sampling area was purposive, while the data extraction method within the selected areas was stratified and random. Moreover, participants were selected based on whether they had gambled in the subject casino market. In this inquiry, frequency of visitation or estimated gaming budget was not weighted based on volume. Hence, customers with a low lifetime gaming worth were equally as influential in the study as visitors with a high lifetime gaming worth.

2012: Tribal casinos in California: the last vestige of indoor smoking²¹

Prepared by: BMC Public Health

Scope of Study: Native American casinos were exempt from California’s ban on smoking in public places. The authors analyzed results from the 2008 California Tobacco Survey to research the smoking status of casino patrons, their avoidance of secondhand smoke while visiting, and their views on a hypothetical smoking ban in the Native American casinos.

Key Findings: The data indicate that a ban on smoking in tribal casinos would increase casino visitation, possibly resulting in greater revenue and greater customer satisfaction. If casinos became smokefree, then it is anticipated that they would be visited by a significantly larger number of Californians, including both past casino patrons and those who otherwise would not have visited a casino.

According to the study, “The prevalence of cigarette smoking was considerably higher in casino patrons (17.6%) compared to non-patrons (10.4%), but, not nearly as high as the 50% estimate reported by gaming lobbyists.” Adjusting for demographic variables, current smokers were approximately twice as likely to have visited an Indian casino compared to “never smokers.”

A majority of casino patrons, 60.8%, attempted to avoid secondhand smoke by moving around the casino. This varied considerably by smoking status as reported by 71.8% of the never smokers, 64.5% of the former smokers, and 20.4% of current smokers.

A total of 42.7% of casino patrons indicated that they would extend their stay if smoking were prohibited; another 48.8% reported that their stay would not be affected by such a ban; and the remaining 8.5%, predominately smokers, reported a shortened stay if there were such a ban.

In a separate question asked among all participants (not just casino patrons), 24.3% expressed a greater interest in visiting a casino if smoking were prohibited, 6.3% expressed a diminished interest, and 69.4% expressed indifference.

The authors conclude that, “Similar to the smoking bans in restaurants and bars in California, a smoking ban in tribal casinos is unlikely to affect casino businesses negatively.”

²¹ Timberlake et al.: Tribal casinos in California: the last vestige of indoor smoking. BMC Public Health, February 25, 2012. <https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-12-144>

Limitations: The study was published in 2012, based on results of a 2008 survey. It was based on a survey of people in California, where smoking prevalence is lower than the overall smoking prevalence in the United States (e.g., 15.2% vs. 20.9%, respectively, in 2005, according to the Centers for Disease Control). Part of the study was based on a hypothetical smoking ban in Native American casinos, the details of which could be perceived differently by various respondents. According to the study itself, “[t]he primary weakness of this study was the lack of information on the last visited casino and residential addresses of participants; thus, a crude estimation was based on number of slot machines and proximity of a casino to a participant’s geocoded centroid. Further, most study participants were sampled in regions in California where casinos are sparse, an additional complication to our estimation. However, our assertion that proximity was a prime determinant of the last visited casino was warranted, given the significant association between casino visitation and residence in a casino-populated region. ... Our study was also hampered by a use of a cross-sectional design; use of different methods in ascertaining a casino’s non-smoking section (i.e. visit vs. telephone call); lack of data on actual smoking in a casino; and location where exposure to smoke occurred (e.g., slot machines vs. card tables).”

Spectrum Update: According to a 2019 article in the *San Francisco Chronicle*, only three of California’s 69 tribal casinos were smokefree.²²

2014: Casinos, Smoking Bans, and Revenues: A Survey of Casino Gamblers in Illinois²³

Prepared by: Clyde W. Barrow and David R. Borges of the Center for Policy Analysis at the University of Massachusetts Dartmouth (published in *Gaming Law Review and Economics*)

Scope of Study: The American Lung Association of the Upper Midwest approached the Center for Policy Analysis and commissioned a poll of Illinois casino gamblers – similar to the New England Gaming Behavior Survey, which is also conducted by the Center for Policy Analysis – to determine whether the smoking ban that became effective January 1, 2008, was a significant factor in the subsequent downturn in gross gaming revenues at Illinois’ riverboat casinos.

In the 2011 New England survey, “We found that contrary to conventional industry wisdom, among gamblers who had actually visited a casino or racino in the last twelve months, 53% said they are more likely to visit a casino where smoking is prohibited on the gaming floor, while 32% said it does not matter, and only 15% said they would be less likely to visit a casino where smoking is prohibited on the gaming floor. ... Moreover, 47% of the respondents who had not visited a casino or racino in the last twelve

²² Michael Cabanatuan, *San Francisco Chronicle*, December 27, 2019. “Tribal casinos remain last refuge for California smokers, at least for now. <https://www.sfchronicle.com/bayarea/article/Smoking-allowed-Tribal-casinos-remain-last-14922820.php#:~:text=Because%20the%20California%20tribes%20are,casinos%20are%20entirely%20smoke%2Dfree.&text=Tribal%20casinos%20make%20bold%20play%20to%20control%20sports%20betting>

²³ Clyde W. Barrow and David R. Borges, “Casinos, Smoking Bans, and Revenues: A Survey of Casino Gamblers in Illinois,” *Gaming Law Review and Economics*, August 19, 2014. <https://www.liebertpub.com/doi/abs/10.1089/glre.2014.1865?journalCode=glre>

months said they would be more likely to visit a smoke-free casino, which signals the potential availability of a large untapped market cache of casino patrons.”

Key Findings: The survey found that 45% of Illinois’s casino gamblers report that they are more likely to visit a casino where smoking is prohibited on the gaming floor, 31% say it does not matter, and only 24% state they are less likely to visit a casino where smoking is prohibited on the gaming floor.

“In other words, more than three-quarters (76%) of Illinois’s casino gamblers report that they either prefer, or are indifferent, to smoking prohibitions on the gaming floor.”

Industry officials who are against smoking bans in casinos “typically argue that if 21% of the casinos’ customer base are unhappy with smoking prohibitions, that is sufficient to account for the documented decline in the state’s gross gaming revenues. They typically point to New Jersey and Colorado as supporting examples, in conjunction with Illinois. The Center for Policy Analysis’ Illinois survey actually found that more than one-third (36%) of casino gamblers who smoke report that they, too, either prefer a smoking prohibition on the gaming floor (13%) or that it does not matter to them (23%).

The survey also found that smokers do not constitute a disproportionate percentage of casino gamblers in comparison to smoking prevalence in the state’s general adult population—20% of adults aged 21+ who gamble at casinos were self-identified smokers, as compared to 21% of the general adult population aged 18+.

According to the authors, Illinois has one of the highest prevalence rates for smoking in the United States, with 21.3% of the adult population reporting that they were current cigarette smokers (2007-2008).

Limitations: The study was limited to people of one state. The survey had a margin of error of +/- 4.9% at the 95% confidence interval, according to the authors.

2015: Six Months after Implementation of a Smoke-Free Ordinance: Harrah’s New Orleans²⁴

Prepared by: Mississippi State University

Scope of Study: Authors examined statistics from Harrah’s New Orleans casino before and after a smoke-free ordinance to see what such a law might mean to Mississippi casinos.

Key Findings: Authors state that although year-over-year revenue was more volatile during the six months after the no-smoking ordinance, the average decrease did not differ substantially for the six months before (-7.0%) and six months after the ordinance (-6.5%). Furthermore, year-over-year revenue for the Louisiana riverboat casinos – which were not affected by the smoking ordinance – did not increase after the implementation of the smoke-free ordinance in April, providing no support for concerns that gamblers would turn to these casinos in order to smoke and play. Admissions data showed that Harrah’s experienced decreased admissions each month (compared with the same month a year earlier) for the six months prior to the smoking ordinance. However, after the smoking ordinance took effect, the downward

²⁴ “Six Months after Implementation of a Smoke-Free Ordinance: Harrah’s New Orleans” Mississippi State University, 2015. https://mstobaccodata.org/wp-content/uploads/2015/08/Harrahs_factsheet.pdf

trend ended and increased year-over-year admissions continued for the first six months after the ordinance.

Limitations: The study is not scientific. Six months is not enough time to evaluate the impact of the smoke-free ordinance on business. There is no discussion of what other factors might have affected the GGR and admissions figures either before or after the ordinance took effect.

2019: Attitudes Toward Smoke-Free Casino Policies Among US Adults, 2017²⁵

Prepared by: Michael A. Tynan, Teresa W. Wang, Kristy L. Marynak, Pamela Lemos, and Stephen D. Babb (published in *Public Health Reports*)

Scope of Study: The authors examined attitudes toward smokefree casino policies among US adults. During June and July 2017, they used a web-based survey to ask a nationally representative sample of 4,107 adults aged 18+ about their attitudes toward smoke-free casinos.

To assess attitudes toward smoke-free casino policies, respondents were asked, “Do you favor or oppose smoke-free policies that prohibit smoking tobacco in all areas of a casino?” Response options included “strongly favor,” “somewhat favor,” “somewhat oppose,” and “strongly oppose.” Adults who responded “strongly favor” or “somewhat favor” were considered to favor smoke-free casino policies

Key Findings: Among 4,048 respondents aged 18+, a weighted 75.0% favored smokefree casino policies, including respondents who visited casinos about once per year (74.1%), several times per year (75.3%), and at least once per month (74.2%).

Although the sociodemographic characteristics of respondents who favored smokefree casino policies varied, the majority in each group, except current smokers (45.4%), supported smokefree policies. Allowing smoking inside casinos involuntarily exposes casino employees and visitors to SHS, a known and preventable health risk. Further assessment of public knowledge and attitudes toward smokefree casinos at state and local levels may help inform tobacco control policy, planning, and practice

Overall, 75.0% of US adults favored (55.1% strongly favored and 20.0% somewhat favored), 13.6% somewhat opposed, and 11.4% strongly opposed smoke-free casinos. Favorability was 71.5% among men and 78.3% among women.

By age, favorability ranged from 71.7% among adults aged 25-44 to 81.6% among adults aged 65+; by race/ethnicity, from 66.4% among non-Hispanic black adults to 80.4% among non-Hispanic other adults; by education level, from 63.4% among adults who did not graduate from high school to 81.7% among adults with a college degree; by income, from 66.7% among adults with <\$30 000 in annual household income to 80.8% among adults with >\$150 000 in annual household income; and by US Census region, from 72.4% in the South to 77.4% in the West. Smoke-free casinos were favored by 75.1% of adults

²⁵ Michael A. Tynan, Teresa W. Wang, Kristy L. Marynak, Pamela Lemos, Stephen D. Babb, “Attitudes Toward Smoke-Free Casino Policies Among US Adults, 2017,” *Public Health Reports*, vol. 134, 3: pp. 234-240, March 21, 2019. <https://journals.sagepub.com/doi/full/10.1177/0033354919834581>

who reported going to casinos, with similar favorability among respondents who visited casinos about once a year (74.1%), several times a year (75.3%), and at least once a month (74.2%).

Favorability ranged from 65.5% among adults who visited casinos about once every two years to 80.6% among adults who visited casinos every three years or more.

By smoking status, favorability ranged from 45.4% among current cigarette smokers to 81.9% among never smokers and from 56.7% among current users of other noncigarette tobacco products to 77.2% among never users.

Limitations: According to the authors, the study had three limitations. First, the web-based survey does not recruit participants by using population-based probability samples, and, thus, the study may have limited generalizability. However, these data were weighted to be nationally representative, and previous tobacco-use estimates have been consistent with findings from other large national household surveys. Second, data were self-reported, which could result in misreporting of tobacco product use behaviors and frequency of casino visits. Finally, the cross-sectional design of the survey precluded establishing any causal relationships between the assessed covariates and attitudes toward smoke-free casino policies.

2019: Assessing the Economic Impact of Eliminating Secondhand Smoke in Northern Nevada Workplaces²⁶

Prepared by: Mehmet S. Tosun, Mark Nichols, and Ethan Grumstrup of University of Nevada Reno

Scope of Study: To study the possible effects of a smoking ban in Washoe County, NV, the authors studied three jurisdictions that had implemented a smoking ban: Illinois, Colorado, and New Orleans.

Key Findings: Illinois has 10 casinos statewide, most of which are located near the borders of other states. Those states also have casinos located near their borders that allow smoking. The authors theorized that the smoking ban's impact on Illinois casinos could be negative if Illinois gamblers who smoke travel to other states, or positive if non-smokers in Illinois or the surrounding states visit Illinois casinos.

Colorado has numerous, small commercial casinos located in three mountain resort communities. There are no other casinos within a five-hour drive of the commercial casinos, so the authors expected that any impact of a smoking ban would be minimized as smokers have few alternatives.

New Orleans has one casino and is a major tourist destination. It is also one of the few cities to implement a ban where there is no corresponding statewide ban.

Based on comparing several jurisdictions that implemented a smoking ban with others that did not, this analysis suggests that the impact of smoking bans ranges from having no impact to a substantial

²⁶ Mehmet S. Tosun, Mark Nichols, Ethan Grumstrup, "Assessing the Economic Impact of Eliminating Secondhand Smoke in Northern Nevada Workplaces," University of Nevada Reno, June 9, 2019.

https://www.smokefreetruckeemeadows.org/sites/default/files/2020-03/Economic%20Impact%20Assessment%20Presentation%2006_13_19.pdf

negative impact. There is no widespread evidence of a positive impact following a smoking ban. In the authors' analysis, the largest negative impact, at nearly 20%, is found in Illinois. Illinois faces substantial competition from casinos in nearby states where smoking is still permitted. Colorado, in contrast, shows no significant long-term impact from the smoking ban. Colorado is a jurisdiction where few competing casinos in surrounding areas exist and likely a more health-conscious state. The impact in New Orleans is less than Illinois and more than Colorado. These results suggest that providing a specific, precise estimate of the impact of a smoking ban on casino performance is fraught with danger.

Revenue in Illinois decreased dramatically following the implementation of the smoking ban. The authors note that revenue had been declining prior to the smoking ban and that the ban was implemented during the Great Recession. While taking those factors into account, the authors conclude that the smoking ban had a significant negative impact on casino revenue.

The change in Colorado is much less dramatic. While casino revenue in Colorado declined slightly following the smoking ban, it later stabilized. The authors concluded that the smoking ban in Colorado had no long-term impact on revenue.

The authors note "two important caveats" to this analysis. First, the economic impact estimates presented here are short-term rather than long-term estimates. The results suggest that there is likely to be a negative short-term impact on casino revenue and employment as a result of a smoking ban. The longer-term impact on casino revenue and employment is much more difficult to predict as economic conditions, smoking rates, and gambling opportunities (e.g. online and mobile gambling) will all change. Secondly, the economic impact estimates do not incorporate any health benefits resulting from a smoking ban. Improved worker productivity, and fewer sick days as well as improved health of non-smoking casino patrons are important considerations not factored into the estimates.

Limitations: Authors acknowledge that none of the other jurisdictions studied are a perfect match for Washoe County, Nevada. Study looked at overall economic impact, of which GGR was but one part.

2020: Expanding smoke-free communities: attitudes and beliefs surrounding smoke-free casinos and bars in Washoe County, Nevada²⁷

Prepared by: Eric Crosbie et al, University of Nevada Reno (published in *Journal of Hospital Management and Health Policy*)

Scope of Study: A team of University of Nevada Reno researchers surveyed residents of Washoe County to determine their feelings toward a law that would prohibit smoking in all Washoe County casinos (and also bars). Washoe County is the second-most-populous county in Nevada. Reno is the county seat.

Key Findings: The web-based survey found that 60% of Washoe County residents (and 74% of non-smokers) indicated they would favor a law prohibiting tobacco smoking in all casinos in Washoe County. Only 24% of residents (and 15% of non-smokers) oppose the prohibition of tobacco smoking in

²⁷ Eric Crosbie et al, "Expanding smoke-free communities: attitudes and beliefs surrounding smoke-free casinos and bars in Washoe County, Nevada," *Journal of Hospital Management and Health Policy*, September 2020.

<https://jhmhp.amegroups.com/article/view/6326/html>

casinos. 77% of residents dislike smelling like smoke after visiting a casino or bar and 65% agree that smoke bothers them in these establishments. A majority of residents would both be more likely to visit a casino and bar and also find them more enjoyable if they were completely smoke-free. 79% of residents believe customers should be able to breathe smoke-free air while only 21% believe businesses should be able to decide.

According to the authors, in 2006, a statewide survey showed that 52.9% of Nevadans were in favor of casinos being exempted from the Nevada Clean Indoor Air Act, which was approved by Nevada voters in 2006. That act prohibited smoking in most public places.

Limitations: The study was limited to residents of one Nevada County. According to the authors, “(a)lthough the focus groups were primarily used to construct and develop the survey, the demographics of focus group participants were not representative of the population of Washoe County as a whole. The usage of large panel surveys are supported in similar study designs but there is some skepticism of their usage in the field. The survey sample in this study was recruited through Qualtrics™, and cannot be considered a probability sample. The survey sample was demographically different from population level estimates with regard to race/ethnicity and gender. In addition to differences between our sample and the general population, it is possible that our sample also differs from populations of casino-patrons (e.g., visitors from California) and casino-employees.” Also, the study indicated that 97% of survey respondents had been to a casino in Washoe County. “The most common reasons cited by participants for visiting Washoe County casinos were dining (76% of participants), gaming (52%), and shows (26%).” There is no indication that the survey separated gamblers from residents who went to the casino just to visit a restaurant or go to a show.

III. Casinos and Smoking in Atlantic City: Policy, Perceptions and Performance

A. Consequences of New Jersey Tobacco Policies

Organizations focused on advancing anti-smoking policies give New Jersey mixed grades, ranging from A to F on various policy specifics. For example, New Jersey receives a failing grade from the American Lung Association for its funding of tobacco-control programs, in that the state has allocated \$7.8 million in FY 2021 for such programs, which is less than 10% of what the Centers for Disease Control recommend as best practices for such programs.²⁸ To put that funding in context, New Jersey generates approximately \$854.2 million annually from what the American Lung Association refers to as “tobacco-related revenue.”²⁹

By contrast, New Jersey has earned an A from the association for its clean-air practices, which include prohibiting smoking in all workplaces, as well as in restaurants, schools, child-care facilities, retail stores and bars (with the exception of cigar bars and lounges), and notably the state has penalty and enforcement provisions in place.³⁰

One glaring exception to the state’s widespread anti-smoking policy is the Atlantic City casino industry, whose members are allowed under a local ordinance to allow smoking in up to 25% of the casino floor space, and the American Lung Association duly notes that exception and has urged that it be eliminated. That exception allows for a scenario in which Atlantic City casinos become a more attractive recreational outlet for smokers.

As noted in Figure 2 of this report, Pennsylvania has a higher smoking prevalence than New Jersey: 17.0% to 13.1%. In 2008, the last year in which a reliable survey of Atlantic City visitors was conducted, smokers comprised 23.5% of the visitor base.³¹ That same year, the percentage of adults who smoked was 14.8% in New Jersey and 21.4% in Pennsylvania.³²

Although more current data on the percentage of casino visitors who smoke is not available, the data trends allow for a reasonable extrapolation that smoking is more prevalent among casino patrons than it is in the general population.

²⁸ “State of Tobacco Control 2021: New Jersey,” American Lung Association, <https://www.lung.org/research/sotc/state-grades/new-jersey> (accessed August 13, 2021)

²⁹ Ibid.

³⁰ Ibid.

³¹ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 140. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

³² Centers for Disease Control, “State-Specific Secondhand Smoke Exposure and Current Cigarette Smoking Among Adults --- United States, 2008.” <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5844a3.htm#tab2>

If anything, macro trends in anti-smoking policies since 2008 would support the conclusion that the gulf is even wider today, with smokers still likely comprising more than 20% of Atlantic City casino patronage. That assumption rests on the reality that the restrictions on smoking have materially expanded since 2008, now encompassing nearly every public entertainment option, a reality that in turn makes Atlantic City casinos a more prominent oasis for smokers.

The calculus through which adults select their entertainment options is broad and complex, ranging from convenience to cost to various other preferences. The ability to smoke in public may be a factor for adults who cannot indulge in smoking at movies, bars, restaurants or shopping outlets.

While the level of that preference cannot be definitively determined, its existence can reasonably be presumed as a factor that accounts for the demographic differences among casino visitors. To put that another way, if smoking were banned at casinos in New Jersey, Pennsylvania and Connecticut, the demographics among casino visitors would likely adhere more closely to the demographic mean. The appeal of casinos to smokers would likely diminish under such a scenario.

That consequence of New Jersey's smoking policy is clearly unintended, but is nonetheless real.

B. Estimating the Percentage of Gamblers Who are Smokers

Policies in New Jersey that were designed to limit smoking areas and expand smoke-free zones clearly have made smokers a more prominent segment of the gaming customer base than would otherwise be reflected in their share of the overall adult population.

Relying on the 2008 ratio of smokers who patronize casinos vs. smokers in the general population (23.5 to 14.8), we can reasonably assume a delta of at least 8 points, which would indicate that at least 21% of the adults who patronize Atlantic City casinos are smokers. The 21% estimate is in the range observed by casino employees interviewed by Spectrum for this report; management tended to estimate a higher percentage are smokers – around 25% – while casino-floor workers tended to estimate a lower percentage – around 15% to 20%.

Enacting a smoking ban would not translate into a loss of all or most of those adults. Rather, because it would put casino entertainment on a level playing field with all other forms of entertainment, gaming would lose its distinct appeal for smokers, meaning that the percentage of Atlantic City casino visitors who smoke would likely decline to about 13%, roughly equal to the ratio of smokers to the general adult population in New Jersey. The percentage of casino visitors who smoke could drop below that mean, however, if smoking options in other states were sufficiently convenient and attractive.

The competitive problem, indeed, becomes more acute for Atlantic City casinos when they are competing for patrons from those regions in which a smoking casino would be roughly equidistant, or even closer geographically for smokers. This includes significant population centers in Camden, Burlington, Mercer and other areas of southern New Jersey (making Pennsylvania casinos more attractive) as well as areas such as Bergen County or other sections of northern New Jersey that would be closer to casinos in Connecticut, as well as to casinos in eastern Pennsylvania. An independent junket operator told Spectrum that smokers still will play at a casino that is most convenient despite smoking restrictions, but

that if a smoking casino and a nonsmoking casino are equidistant – or even if the smoking casino is slightly farther away – they will choose the smoking casino.

C. The Value of Smokers vs. Non-Smokers

Although casinos know their customers well through player tracking and database analytics, they are not known to segment their players by smoker vs. non-smoker from a database perspective. Atlantic City casino operators do, however, track the performance of games in their smoking sections vs. their non-smoking sections. Spectrum interviewed property heads and/or finance heads at seven of the nine casinos, and each executive said that based on the comparative performance of those sections, smokers have a higher value than non-smokers. Six of them provided specific data points since the temporary smoking ban was lifted on July 4, 2021:

- One casino president told Spectrum that 43% its slot machines were in the designated smoking section.³³ Among those slots, those with video reels had an average daily win per unit (“WPU”) that was 33% above those in the non-smoking section, and those with spinning reels had a WPU that was 53% above those in non-smoking section.
- One casino president said the slot machines in its smoking section from July 4 through August performed at 91% above those in the non-smoking section on a WPU basis. This casino president further said that the table games in smoking pits performed 72% higher than those in the non-smoking pits on a WPU basis – with the high-limit games removed to ensure an apples-to-apples comparison.
- One casino president said that for August 2021, the WPU for all gaming devices in the smoking sections was 40% higher than those in the non-smoking sections. The general manager of a second casino gave an identical figure.
- One casino general manager said the slots in the smoking section were performing at more than three times the level of those in the non-smoking sections on a WPU basis.
- One casino general manager said that when the casino reopened smokefree in July 2020, the occupancy rate – i.e., the percentage of slot or table game seats that are filled at a given time – in the high-limit slot area was about 20% to 25% for the remainder of the summer, compared to “normal” rates of 40% to 50% when smoking was allowed. The general manager said since the ban was lifted, occupancy has risen to about 35%.
- One casino president said approximately 50% of its slot revenue was generated from the smoking section.

Spectrum recognizes that there may be issues regarding the number, quality and location of games in the smoking sections vs. the non-smoking sections in a given casino that could influence performance, such as placing high-limit tables and slots in smoking areas. However – and this is a critical point – Spectrum recognizes that casino managers are under continuous, intense pressure to achieve the highest profits possible and therefore have configured their casino floors to optimize GGR. In many cases, they have placed more than 25% of their gaming positions in the allotted 25% of the smoking space so as

³³ Atlantic City’s 25% smoking restriction is based on gaming space, not number of gaming units.

to maximize revenue. In other words, casino management has found – based on their trove of internal analytics – that smokers have a higher value than non-smokers.

The data provided by the casino executives is supported by the *Atlantic City Visitor Profile Study 2008* (the latest such Atlantic City visitor profile that assessed smoking habits). That survey found that,

[T]he median gambling budgets are higher for smokers (\$250 vs. \$200) and average spending figures for both gambling (\$655 vs. \$497) and total spending (\$981 vs. \$796) are higher among smokers than non-smokers, indicating that smokers of higher worth spend at a higher magnitude than non-smokers. Smokers gamble longer than non-smokers (mean 14.6 hours vs. 11.5 hours) ...³⁴

Anecdotally, casino floor employees interviewed by Spectrum for this report said that smokers tend to be more prevalent among premium table-games players than they do among regular players. The interviewed casino floor employees, all of whom are non-smokers, said that although they wish their respective casino floors were smokefree they believe gaming revenues would decline if smoking were prohibited.

1. Time on Device

Casino operators fear that a smoking ban would not only put them at a disadvantage to their competitors in Pennsylvania and Connecticut but also would result in lower GGR because of smoking breaks. A player’s desire or need to smoke would impel them to leave their seat at a slot machine or gaming table and walk outside to smoke. Such a break would result in a player having less time playing a slot machine or table game, or what is known as time on device (“TOD”). For example, if a player planned a two-hour casino session and took two 10-minute cigarette breaks (including walking time) during that period, the player’s TOD could potentially decline by 17%. Figure 15 below is an illustrative example of how two such smoking breaks could impact the casino’s win, or GGR, from that player.

Figure 15: Illustrative example of change in GGR due to smoking break

	Non-Smoker	Smoker
Minutes at Casino	120	120
Minutes Playing Slot Machine	120	100
Minutes Smoking Break	0	20
Bankroll	\$100	\$100
Average Bet	\$1.15	\$1.15
Slot Machine Hold	7.25%	7.25%
Bets/Spins per Minute	10	10
Total Coin-In	\$1,379	\$1,150
Total Number of Bets/Spins	1,199	1,000
Casino Win (GGR)	\$100.00	\$83.38

Source: Spectrum Gaming Group

³⁴ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 141. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

Some gamblers may have a fixed amount of time to play, which for a smoker could result in lower GGR for the casino due to the smoking breaks. In the above example, it also is possible the smoker would continue playing beyond the planned two-hour session and would also wind up losing \$100, but would need 140 minutes to lose the same amount. It is also possible that the smoker during the first or second break would cut his or her losses and leave the casino, thus losing less than the \$83.38 illustrated above.

IV. Projected GGR Impacts of a Smoking Ban in Atlantic City Casinos

In this chapter Spectrum projects a range of likely GGR impacts if smoking were to be banned on Atlantic City casino floors, based on the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other relevant empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.

A critical assumption in our analysis is that Pennsylvania's policy (pre-Covid-19) of allowing smoking on casino floors remains unchanged.

Spectrum's projected range of GGR impact is necessarily broad due to factors that are unknowable at this time but would be significant were a casino-floor smoking ban to be enacted in Atlantic City casinos. They include:

- The intensity of the marketing and promotional response by Pennsylvania casino operators, who could target dissatisfied Atlantic City casino smokers with direct marketing programs and broader advertising programs.
- The facility response by Atlantic City casino operators. Outdoor gaming areas are common at casinos in other jurisdictions where smoking is prohibited. Some such areas are rather lavish and comfortable while others are less accommodating. The quality and convenience of such outdoor gaming areas at Atlantic City casinos would no doubt vary by property, and would involve capital investment and additional operating costs related to the inefficiencies of having separate gaming areas.
- The quality of the marketing response by Atlantic City casino operators:
 - Reaching patrons who smoke to inform them about the new policy and any new facilities that would be developed to accommodate smoking.
 - Reaching adults who currently do not visit Atlantic City casinos – or those who visit less frequently or for less time – because they find the smoky casino floors to be unappealing to inform them about their entirely smoke-free casino floors.
- The amount of time between the enactment and implementation of the casino smoking ban. The longer the gap, the more time casino operators would have to develop quality outdoor gaming areas, to communicate their plans to patrons who currently smoke, and to develop marketing programs to attract more non-smokers.

A. Considering the Experience of Smokefree Casinos after Reopening

Every casino in the United States closed at the height of the Covid-19 pandemic in spring 2020. They began reopening in late spring 2020 and into fall 2020, with patrons required to wear facemasks to help stop the spread of Covid-19. Almost all state-regulated casinos that previously allowed smoking were required to reopen smokefree, as smoking inside would require a player to remove his or her facemask.

Spectrum considered whether the Covid-19-caused smokefree period resulted in a “new normal” for casinos and their patrons, and thus the results of this reopening period could be fairly compared to the results during pre-pandemic period. We determined that such comparisons are not fair because casinos may have benefited during the post-Covid-19 period from a confluence of exceptional circumstances, including:

- Being open at a time when most other indoor entertainment venues remained closed, such as movie theaters, amusement centers and performing-arts centers.^{35 36 37}
- Travel restrictions³⁸ that made drive-to casinos an attractive option for those seeking a leisure getaway.
- A combination of free time due to high unemployment³⁹ and supplemental unemployment benefits,^{40 41} meaning there were more people than usual with time and money to spend and fewer leisure options in which to expend such. (People also had more free time due to working from home/spending less time in the community. For example, “Time spent traveling, such as commuting to work or driving to a store, declined by 26 minutes from an average of 1.2 hours per day in 2019 to 47 minutes per day in 2020. The share of individuals who spent time traveling on a given day declined 17 percentage points in 2020, from 84% in 2019 to 67% in

³⁵ Irina Ivanova and Thom Craver, “Closed due to coronavirus: List of activities and state shutdowns over Covid-19 outbreak concerns,” CBS News, <https://www.cbsnews.com/news/closed-due-to-coronavirus-list-of-activities-and-state-shutdowns-over-covid-19-outbreak-concerns/>

³⁶ Alison Durkee, “State-By-State Guide To Coronavirus Restrictions: Los Angeles Bans Outdoor Dining, Nevada Restricts Capacity,” *Forbes*, November 23, 2020. <https://www.forbes.com/sites/alisondurkee/2020/09/17/state-by-state-reopening-guidelines-coronavirus/?sh=20bdec55533b>

³⁷ Anastasia Tsioulcas, “America’s Independent Music Venues Could Close Soon Due To Coronavirus,” NPR, June 9, 2020. <https://www.npr.org/sections/coronavirus-live-updates/2020/06/09/873196748/americas-independent-music-venues-could-close-soon-due-to-coronavirus>

³⁸ Patrick Clarke, “A Timeline of Covid-19 Travel Restrictions Throughout 2020,” *Travel Pulse*, December 24, 2020. <https://www.travelpulse.com/gallery/impacting-travel/a-timeline-of-covid-19-travel-restrictions-throughout-2020.html>

³⁹ Unemployment Rates During the Covid-19, Congressional Research Service, August 20, 2021. <https://sgp.fas.org/crs/misc/R46554.pdf>

⁴⁰ Unemployment Insurance Relief During Covid-19 Outbreak,” US Department of Labor. <https://www.dol.gov/coronavirus/unemployment-insurance> (accessed September 13, 2021)

⁴¹ “How will the expansion of unemployment benefits in response to the Covid-19 pandemic be recorded in the NIPAs?,” Bureau of Economic Analysis, April 29, 2021. <https://www.bea.gov/help/fag/1415>

2020. Those who spent time traveling on a given day did so for a shorter duration [1.5 hours in 2019, compared with 1.2 hours in 2020]).⁴²

The US casino industry in general rebounded well after reopening, with some jurisdictions reporting that gaming revenues surpassed pre-pandemic levels after a matter of months. However, the results in Atlantic City and Pennsylvania do not support that being at least temporarily smokefree benefited the casinos. Figure 16 shows the results for the first full three months and seven months⁴³ of slot and table games GGR after the casinos reopened smokefree vs. the same prior-year periods when the regular smoking policies were in place.

Figure 16: Comparison of Atlantic City and Pennsylvania GGR for 3-month and 7-month periods

	GGR for 3 months ending ...		Change
	October 2019	October 2020	
NJ Slots	\$515.0	\$421.0	-18.3%
NJ Tables	\$191.7	\$154.3	-19.5%
PA Slots	\$738.5	\$591.0	-20.0%
PA Tables	\$206.7	\$187.3	-9.4%
	GGR for 7 months ending ...		Change
	February 2020	February 2021	
NJ Slots	\$1,119.1	\$842.3	-24.7%
NJ Tables	\$420.9	\$329.4	-21.7%
PA Slots	\$1,505.2	\$1,049.3	-30.3%
PA Tables	\$492.0	\$359.3	-27.0%

Source: Spectrumetrix US Gross Gaming Revenue Analysis, based on data from state regulatory agencies. GGR includes promotional credit play where reported.

It is not possible to quantify how being smokefree may have impacted the GGR declines shown above, but it is evident that being smokefree did not cause their revenues to increase.

B. Estimated Range of Impacts to Atlantic City Casino GGR

A smoking ban in Atlantic City casinos has the potential to negatively impact gross gaming revenue due to a reduction in play by smokers from three primary causes:

- Defection: Some smokers will instead choose to play in out-of-state casinos where smoking is permitted, principally those casinos in eastern Pennsylvania but also the two tribal casinos in Connecticut.
- Reduced visitation: Atlantic City casinos are smoker-friendly – they are the only significant public places in New Jersey where smokers can legally smoke indoors,⁴⁴ and thus a higher

⁴² “American Time Use Survey Summary,” Bureau of Labor Statistics, July 22, 2021. <https://www.bls.gov/news.release/atus.nr0.htm>

⁴³ Valid 12-month comparisons cannot be made, as casinos closed in March 2020 and reopened in July 2021.

⁴⁴ In New Jersey, indoor smoking is permitted only in casinos, registered cigar bars, tobacco outlets whose primary activity is the sale of tobacco products, and up to 20% of guest rooms in lodging establishments. See: State of New Jersey, Department of Health, “Tobacco Control.” <https://www.nj.gov/health/fhs/tobacco/regulations/> (accessed September 27, 2021)

percentage of their patrons are smokers than in the general public.⁴⁵ If casinos can no longer accommodate smokers indoors, they will no longer be special havens for smokers; they will be like any other indoor entertainment option, and thus some smokers are likely to shift some of their discretionary spending to other forms of entertainment.

- Less time on device: As discussed above (section III.C.1 of this report), smokers will take breaks from their gambling. Some will lose the same amount of money by extending their stay to account for the breaks, but some with time constraints will lose less money.

Conversely, a smoking ban in Atlantic City casinos has the potential to positively impact gross gaming revenue from non-smokers who are attracted to the cleaner air in the casinos:

- Attracting new, non-smoking players: Some patrons who dislike the smoky air in casinos may be attracted to the cleaner air, including some who currently patronize the smokefree casinos in Delaware or New York.
- Extending the playing time of current non-smokers: Some current casino patrons who may leave early after having “had their fill” of smoky air may extend their playing time.

Based on our research and analysis for this report, Spectrum developed a range of potential impacts that accounted for all of these factors. First, we made certain assumptions about the prevalence and value of casino smokers.

1. Estimated Percentage of Casino Gamblers who are Smokers

As with all estimates, the foundational assumptions are essential to understand. Using data from the Centers for Disease Control and Prevention (“CDC”) on smoking by state, building on the smoking data from the *2008 Atlantic City Visitor Profile*, and receiving data from Atlantic City casino executives regarding the residency of their customers, we developed an estimate of smoking prevalence by Atlantic City casino patrons. In Figure 17 below, we estimate that 40% of visitors to Atlantic City are from New Jersey. Of those casino visitors, 19.7% are smokers, meaning that just under 8% of all visitors are smokers from New Jersey. In total we estimate that approximately 21% of casino patrons in Atlantic City are smokers.

Figure 17: Estimated smoker participation at Atlantic City casinos, by state

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors
New Jersey	40.0%	13.1%	19.7%	7.86%
New York	24.0%	12.8%	19.2%	4.61%
Pennsylvania	20.0%	17.0%	25.5%	5.10%
Maryland	3.0%	12.5%	18.8%	0.56%
Other States	13.0%	14.0%	21.0%	2.73%
Atlantic City Market	100.0%			20.86%

Source: Centers for Disease Control and Prevention, Spectrum Gaming Group

⁴⁵ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 140. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

2. Estimated Value of Smokers

The next step is developing an estimate of the value of smokers to the casinos. Casino executives and casino floor employees have stated that smokers are of higher value than non-smokers. Evidence for this can be found in the relative value of the average daily win per unit (“WPU”) at slot machines in smoking and non-smoking sections of the Atlantic City casinos, as noted earlier in this report. The WPU of slots in smoking sections ranges from 33% higher to 91% higher when compared with the non-smoking sections. One executive noted that GGR from table games in the smoking section are 72% higher than from the same games with the same limits and rules in the non-smoking section.

The *Atlantic City Visitor Profile 2008* (the latest such study that surveyed smoking habits in the city) found that smokers spent 32% more than non-smokers on gambling (\$655 per visit vs. \$497 per visit).⁴⁶

We designated this phenomenon the “smoker premium,” and developed two estimates of the value of smokers to the Atlantic City casinos. We used a 50% smoker premium and a 25% smoker premium to establish our range of value. Due to the disruptions of Covid-19, we used 2019 GGR data as the basis for our revenue numbers.

Figure 18: High case estimate of smoker GGR at Atlantic City casinos

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smokers % of GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	50%	\$316,743,119	29.5%
New York	24.0%	\$644,769,708	12.8%	19.2%	50%	\$185,693,676	28.8%
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	50%	\$205,520,345	38.3%
Maryland	3.0%	\$80,596,214	12.5%	18.8%	50%	\$22,667,685	28.1%
Other States	13.0%	\$349,250,259	14.0%	21.0%	50%	\$110,013,832	31.5%
GGR 2019	100.0%	\$2,686,540,452				\$840,638,656	31.3%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Using this set of assumptions, Spectrum estimates the yearly estimated value of smokers to the casinos to be \$840 million in the high case. The estimated value of the non-smokers in this case is \$1,846 million.

Using the same modeling but with a 25% smoker premium results in the estimated value of smokers to the casinos to be \$700 million in the low case, as shown in Figure 19. The estimated value of the non-smokers in this case is \$1,986 million. Spectrum estimates that smokers account for approximately 21% of casino visits, but between 26.1% and 31.3% of casino win.

⁴⁶ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 141. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

Figure 19: Low case estimate of smoker GGR at Atlantic City casinos

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smokers % of GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	25%	\$263,952,599	24.6%
New York	24.0%	\$644,769,708	12.8%	19.2%	25%	\$154,744,730	24.0%
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	25%	\$171,266,954	31.9%
Maryland	3.0%	\$80,596,214	12.5%	18.8%	25%	\$18,889,738	23.4%
Other States	13.0%	\$349,250,259	14.0%	21.0%	25%	\$91,678,193	26.3%
GGR 2019	100.0%	\$2,686,540,452				\$700,532,214	26.1%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

3. Estimated Range of GGR Change from Reduction of Play by Smokers

Having established two estimates for the value of smokers to the Atlantic City casinos, the question turns on how smokers would behave if a smoking ban were implemented. If all smokers chose not to visit the casinos, the analysis in Figure 18 and Figure 19 estimates a GGR decline of \$804 to \$965 million. Evidence from other states indicate that there will not be total abandonment of casinos by smokers. Again, we estimated a range of how much reduction in play would result from a smoking ban based on the state and the level of competition in the home state of the casino players. Players in New Jersey and Pennsylvania are close to casinos that permit smoking. New York casino players have to travel farther to visit a casino with smoking, and in Maryland all of the nearby casinos are smokefree. We have further assumed that the visitors from the other 47 states have chosen to visit Atlantic City without regard to smoking. As such we believe few will alter plans based on a change in smoking policy.

Spectrum has provided all of its estimates of GGR change for Year 1 of a smoking ban. Estimating GGR changes beyond Year 1 is dependent on a host of factors – including the casino operators’ reactions to the smoking ban – that cannot be reasonably quantified at this time. As noted in Chapter I of this report, the experience in other jurisdictions is that after the initial shock caused by a smoking ban, GGR begins to grow again.

Figure 20: High case estimate of casino GGR change from reduction in play by smokers, Year 1

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smoker Play Reduction	Estimated Annual Lost GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	50%	\$316,743,119	-50%	\$(158,371,560)
New York	24.0%	\$644,769,708	12.8%	19.2%	50%	\$185,693,676	-25%	\$(46,423,419)
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	50%	\$205,520,345	-50%	\$(102,760,172)
Maryland	3.0%	\$80,596,214	12.5%	18.8%	50%	\$22,667,685	-10%	\$(2,266,769)
Other States	13.0%	\$349,250,259	14.0%	21.0%	50%	\$110,013,832	-10%	\$(11,001,383)
GGR 2019	100.0%	\$2,686,540,452				\$840,638,656	Total	\$(320,823,303)
							% of Total	-11.9%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In the high case, Spectrum estimates that the Atlantic City casinos would see a Year 1 loss of 11.9% of GGR if a smoking ban were implemented. Some of this gaming activity would shift to other states where smoking is permitted. Some activity may be lost to other forms of leisure activity where smoking is also

banned such as in entertainment venues, restaurants, and movie theaters. And some casino gambling expenditures by the remaining smokers in Atlantic City casinos would be reduced due to smoking breaks, or shifted to online gaming. (It must be noted that casinos typically receive less than 10% of online GGR; their licensed online gaming operators receive the rest.)

Spectrum also developed a low estimate, using the same model but applying a 25% smoker premium and lower reductions in play by smokers.

Figure 21: Low case estimate of casino GGR change from reduction in play by smokers, Year 1

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smoker Play Reduction	Estimated Annual Lost GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	25%	\$263,952,599	-25%	\$(65,988,150)
New York	24.0%	\$644,769,708	12.8%	19.2%	25%	\$154,744,730	-13%	\$(19,343,091)
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	25%	\$171,266,954	-25%	\$(42,816,738)
Maryland	3.0%	\$80,596,214	12.5%	18.8%	25%	\$18,889,738	-5%	\$(944,487)
Other States	13.0%	\$349,250,259	14.0%	21.0%	25%	\$91,678,193	-5%	\$(4,583,910)
GGR 2019	100.0%	\$2,686,540,452				\$700,532,214	Total	\$(133,676,376)
							% of Total	-5.0%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In the low case estimate, smokers are worth \$700 million to the casinos, and non-smokers worth \$1,986 million.

Based on the assumptions stated, rates of smoking prevalence, and conversations with casino staff and executives in Atlantic City, Spectrum estimates the range of potential lost GGR from the implementation of a smoking ban to be between 5.0% and 11.9% of total GGR (based on 2019 results).

4. Estimated Range of GGR Change from Increase in Play by Non-Smokers

While a smoking ban could cause a reduction in play by smokers, it may cause an increase in play by non-smokers who are either extending their play or making additional visits because they would not be annoyed by cigarette smoke, or by new players who have shunned the casinos due to the smoky air. Spectrum believes the upside of attracting additional play from non-smokers in Atlantic City casinos is limited because the casinos operate in a mature market in which virtually every potential new customer has long been exposed to the opportunity to play casino games and because the casinos are already 75% smokefree, meaning the current casino environment, in Spectrum’s opinion, is not as off-putting to non-smokers as it is in some jurisdictions where the cigarette smoke is (or was) much more objectionable.

In Figure 20, we estimated the value of smokers to Atlantic City casinos at \$840 million and non-smokers at \$1,846 million. In Figure 22, we provide a high case estimate of the potential worth of non-smokers to Atlantic City if revenue from non-smokers were to increase their play by 1.5%, or by \$27.7 million.

Figure 22: High case estimate of casino GGR change from increased in play by non-smokers, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Non-Smokers	Increase in Non-Smoker Play	Value of Non-Smoker Increase	Value of Non-Smokers Post Ban
New Jersey	40.0%	\$1,074,616,181	\$757,873,062	1.5%	\$11,368,096	\$769,241,157
New York	24.0%	\$644,769,708	\$459,076,032	1.5%	\$6,886,140	\$465,962,173
Pennsylvania	20.0%	\$537,308,090	\$331,787,746	1.5%	\$4,976,816	\$336,764,562
Maryland	3.0%	\$80,596,214	\$57,928,528	1.5%	\$868,928	\$58,797,456
Other States	13.0%	\$349,250,259	\$239,236,427	1.5%	\$3,588,546	\$242,824,974
GGR 2019	100.0%	\$2,686,540,452	\$1,845,901,796	1.5%	\$27,688,527	\$1,873,590,322

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In Figure 23, we present a low case estimate if non-smokers were to increase their play by 1.0%, or by \$19.8 million.

Figure 23: Low case estimate of casino GGR change from increased in play by non-smokers, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Non-Smokers	Increase in Non-Smoker Play	Value of Non-Smoker Increase	Value of Non-Smokers Post Ban
New Jersey	40.0%	\$1,074,616,181	\$810,663,581	1.0%	\$8,106,636	\$818,770,217
New York	24.0%	\$644,769,708	\$490,024,978	1.0%	\$4,900,250	\$494,925,228
Pennsylvania	20.0%	\$537,308,090	\$366,041,137	1.0%	\$3,660,411	\$369,701,548
Maryland	3.0%	\$80,596,214	\$61,706,476	1.0%	\$617,065	\$62,323,541
Other States	13.0%	\$349,250,259	\$257,572,066	1.0%	\$2,575,721	\$260,147,786
GGR 2019	100.0%	\$2,686,540,452	\$1,986,008,238	1.0%	\$19,860,082	\$2,005,868,321

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

The potential increase in casino visitation and revenue may be a small factor in offsetting the estimated large revenue shifts from casino players who smoke, but we believe that it is a real phenomenon and needs to be considered in the overall revenue impacts.

5. Estimated Range of Net GGR Change from a Casino Smoking Ban

Based on the anticipated reduction in play from smokers and the potential increase in play from non-smokers, Spectrum estimates that the Atlantic City casinos would experience a Year 1 net GGR decline of between \$113.8 million and \$293.1 million, or a decline of between 4.2% and 10.9%, based on 2019 results and the assumptions detailed in this report.

Figure 24: High case estimate of net change in casino GGR from a casino smoking ban, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Smokers	Estimated Annual Lost Smoker GGR	Increase in Play by Non-Smokers	Net Change in GGR from Smoking Ban
New Jersey	40.0%	\$1,074,616,181	\$316,743,119	\$(158,371,560)	\$11,368,096	\$(147,003,464)
New York	24.0%	\$644,769,708	\$185,693,676	\$(46,423,419)	\$6,886,140	\$(39,537,279)
Pennsylvania	20.0%	\$537,308,090	\$205,520,345	\$(102,760,172)	\$4,976,816	\$(97,783,356)
Maryland	3.0%	\$80,596,214	\$22,667,685	\$(2,266,769)	\$868,928	\$(1,397,841)
Other States	13.0%	\$349,250,259	\$110,013,832	\$(11,001,383)	\$3,588,546	\$(7,412,837)
GGR 2019	100.0%	\$2,686,540,452	\$840,638,656	\$(320,823,303)	\$27,688,527	\$(293,134,776)
				-11.9%	1.0%	-10.9%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Figure 25: Low case estimate of net change in casino GGR from a casino smoking ban, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Smokers	Estimated Annual Lost Smoker GGR	Increase in Play by Non-Smokers	Net Change in GGR from Smoking Ban
New Jersey	40.0%	\$1,074,616,181	\$263,952,599	\$(65,988,150)	\$8,106,636	\$(57,881,514)
New York	24.0%	\$644,769,708	\$154,744,730	\$(19,343,091)	\$4,900,250	\$(14,442,841)
Pennsylvania	20.0%	\$537,308,090	\$171,266,954	\$(42,816,738)	\$3,660,411	\$(39,156,327)
Maryland	3.0%	\$80,596,214	\$18,889,738	\$(944,487)	\$617,065	\$(327,422)
Other States	13.0%	\$349,250,259	\$91,678,193	\$(4,583,910)	\$2,575,721	\$(2,008,189)
GGR 2019	100.0%		\$700,532,214	\$(133,676,376)	\$19,860,082	\$(113,816,294)
				-5.0%	0.7%	-4.2%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

6. Estimated Change in Non-Gaming Revenue

Each Atlantic City casino files a detailed quarterly report, which includes its performance in non-gaming areas such as food and beverage, entertainment, hotel, etc. By summing the non-gaming revenue from each property, it is possible to derive an estimate of non-gaming revenue for a given year. For the calendar year 2019, the total of the calendar year revenues is summarized in the figure below.

Figure 26: Atlantic City gaming and non-gaming revenue, 2019

Revenue Department	2019
Casino Win	\$2,686,541
Rooms	\$609,998
Food & Bev	\$578,057
Other	\$243,735
ALL Non-Gaming	\$1,431,790
Non-Gaming as % of Gaming	53.3%

Source: New Jersey Division of Gaming Enforcement

Earlier in the report we derived an estimate of the percentage of Atlantic City visitors who are smokers, and we proposed a factor for reduction in smoker visits under a smoking ban. By combining

these two assumptions with the detail of non-gaming revenue we can arrive at an estimate of the potential lost non-gaming revenue from the decrease in gaming participation by smokers.

Figure 27: Low case estimated non-gaming revenue loss from smoking ban

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors	Smoker Play Reduction	% of Lost Smoker Visits	Non-Smoker Visit Change	Non-Gaming Revenue Change
New Jersey	40.0%	13.1%	19.7%	7.86%	25%	-1.97%	0.37%	\$(22,857,668)
New York	24.0%	12.8%	19.2%	4.61%	13%	-0.58%	0.23%	\$(4,969,159)
Pennsylvania	20.0%	17.0%	25.5%	5.10%	25%	-1.28%	0.19%	\$(15,537,785)
Maryland	3.0%	12.5%	18.8%	0.56%	5%	-0.03%	0.03%	\$24,430
Other States	13.0%	14.0%	21.0%	2.73%	5%	-0.14%	0.13%	\$(143,881)
Atlantic City Market	100.0%			20.86%		Change in Non-Gaming		\$(43,484,063)
						% Change		-3.0%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Figure 28: High case estimated non-gaming revenue loss from smoking ban

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors	Smoker Play Reduction	% of Lost Smoker Visits	Non-smoker Visit Change	Non-Gaming Revenue Change
New Jersey	40.0%	13.1%	19.7%	7.86%	50%	-3.93%	0.55%	\$(48,353,839)
New York	24.0%	12.8%	19.2%	4.61%	25%	-1.15%	0.34%	\$(11,577,294)
Pennsylvania	20.0%	17.0%	25.5%	5.10%	50%	-2.55%	0.28%	\$(32,434,339)
Maryland	3.0%	12.5%	18.8%	0.56%	10%	-0.06%	0.04%	\$(164,701)
Other States	13.0%	14.0%	21.0%	2.73%	10%	-0.27%	0.19%	\$(1,193,018)
Atlantic City Market	100.0%			20.86%		Change in Non-Gaming		\$(93,723,190)
						% Change		-6.5%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In our high case we estimated that the Atlantic City casinos would lose approximately 6.5% of trips. The estimated 1.5% increase in non-smoker visitation offsets a portion of the loss of visitation from smokers, as it does with the GGR estimates. In the low case we estimated that 3% of all trips would be lost. Here too, the 1% increase in non-smoking visitation offsets a portion of the estimated lost revenue from smokers. As a result, we estimate that these are the amounts of non-gaming revenue that would be lost by the Atlantic City casinos. In the high case approximately \$93.7 million annually, and in the low case approximately \$43.5 million.

7. Estimated Change in Tax Receipts from a Casino Smoking Ban

Gaming and non-gaming revenue at the Atlantic City casino properties are subject to a variety of taxes. Figure 29 below presents the estimated change in tax revenues from each segment. Non-gaming revenue is reported by the New Jersey Division of Gaming Enforcement. The Division reports food and beverage as one number. Alcoholic beverages are subject to the Atlantic City Luxury Tax, which does not apply to food. We used an estimate of 40% of food and beverage sales to be alcohol, and applied the Luxury Tax accordingly. Depending on the severity of the revenue impacts of a smoking ban, Spectrum estimates the annual loss of total tax revenue as being between \$17.2 million and \$44.6 million.

Figure 29: Estimated tax impacts from a smoking ban, compared to 2019

Revenue Department (\$ in 000)		2019	Low Loss Estimate	High Loss Estimate
Casino Gross Gaming Revenue		\$2,686,541	\$2,552,864	\$2,365,717
Hotel Rooms		\$609,998	\$591,472	\$552,755
Food and Beverage (40% Bev)		\$578,057	\$560,501	\$523,811
Other revenue, Entertainment, Spa, Etc.		\$243,735	\$236,333	\$220,863
Tax Rate	Tax (\$ in 000)	Tax Revenue	Tax Revenue	Tax Revenue
8.000%	State of New Jersey Casino Revenue Fund	\$214,923	\$204,229	\$189,257
1.250%	State of New Jersey CRDA Obligation	\$33,582	\$31,911	\$29,571
9.000%	Luxury Tax – Rooms	\$54,900	\$53,232	\$49,748
3.625%	State Sales – Tax Rooms	\$22,112	\$21,441	\$20,037
1.000%	State Occupancy Fee	\$ 6,100	\$5,915	\$5,528
3.000%	Alcohol Beverage Luxury Tax	\$ 6,937	\$6,726	\$6,286
6.625%	State Sales Tax – Alcoholic Beverages	\$15,319	\$14,853	\$13,881
6.625%	State Sales– Tax Food	\$22,978	\$22,280	\$20,822
9.000%	Luxury Tax –Entertainment	\$21,936	\$21,270	\$19,878
3.625%	State Sales Tax – Entertainment	\$ 8,835	\$8,567	\$8,006
Total Tax		\$407,622	\$390,424	\$363,014
Change in Tax			\$(17,198)	\$(44,608)
% Change in Tax		0.0%	-4.2%	-10.9%

Sources: New Jersey State Treasurer, Spectrum Gaming Group

8. Potential Changes in Employment

A reduction in visitation and gaming revenue will likely result in a reduction in employment at the casinos. Spectrum examined employment at the casinos and developed a revenue-per-employee figure. In 2019, each casino job was supported by \$155,008 of total revenue. If we hold this factor constant and apply the estimated reductions in revenue from a smoking ban, we can derive an estimate of the potential job loss from a smoking ban. As can be seen in Figure 30 below, Spectrum estimates potential job losses from a smoking ban range from 1,021 to 2,512 depending on the severity of the impact on revenue. *It is critical to note that such reductions in employment assume that the casinos would be at full employment as they were in 2019; at this time, most casinos are short-staffed, consistent with businesses across the country during the pandemic, and/or have purposely reduced their staffing levels; it to be determined whether those modified staffing levels will be permanent.*

Figure 30: Potential change in employment, based on total revenue per employee

Revenue Department	2019	Low Loss Estimate	High Loss Estimate
Casino GGR (000)	\$ 2,686,541	\$ 2,572,725	\$ 2,393,406
Non-Gaming Revenue (000)	\$ 1,431,790	\$ 1,388,306	\$ 1,338,067
Total Revenue (000)	\$ 4,118,331	\$ 3,961,031	\$ 3,731,473
% Change Total Revenue	N/A	-3.8%	-9.4%
Total Jobs	26,741	25,720	24,229
Revenue per Job	\$154,008	\$154,008	\$154,008
Est. Change in No. Jobs	N/A	(1,021)	(2,512)

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

UAW REGION 9 OF THE UAW, and
C.E.A.S.E N.J.,

Plaintiffs,

v.

NEW JERSEY GOVERNOR PHILIP
MURPHY, and ACTING NEW JERSEY
HEALTH COMMISSIONER DR. KAILIN
BASTON,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: MERCER
COUNTY

DOCKET NO. MER-C-0026-24

CIVIL ACTION

**MEMORANDUM OF LAW IN SUPPORT OF PROPOSED INTERVENORS UNITE
HERE LOCAL 54, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
68, EASTERN ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS,
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT
COUNCIL 21, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 331,
AND ATLANTIC AND CAPE MAY COUNTY BUILDING & CONSTRUCTION
TRADES COUNCIL'S MOTION TO INTERVENE, DISMISS THE VERIFIED
COMPLAINT, AND IN OPPOSITION TO PLAINTIFFS' REQUEST FOR INJUNCTIVE
RELIEF**

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PRELIMINARY STATEMENT

Proposed Intervenors UNITE HERE Local 54 (“Local 54”), International Union of Operating Engineers, Local 68 (“IUOE Local 68”), Eastern Atlantic States Regional Council of Carpenters (“EASRCC”), International Union of Painters and Allied Trades, District Council 21 (“IUPAT District 21”), International Brotherhood of Teamsters, Local 331 (“Teamsters Local 331”), and the Atlantic and Cape May County Building & Construction Trades Council (“Trades Council”) (sometimes collectively, “Proposed Intervenors” or “Unions”) submit this memorandum of law in support of their motion to intervene in the Verified Complaint (“Complaint”) filed by Plaintiffs the International United Automobile, Aerospace, and Agricultural Implement Workers of America (“UAW”), Region 9 of the UAW (“UAW Region 9”) and C.E.A.S.E. N.J. (“Cease ”) (collectively, “Plaintiffs”) against Defendants New Jersey Governor Philip Murphy and Acting New Jersey Health Commissioner Dr. Kaitlin Baston (collectively, “Defendants”); and dismiss the Complaint or, in the alternative, denying Plaintiffs’ Order to Show Cause (“OTSC”), seeking a declaratory judgment and preliminary and permanent injunctive relief in connection with the New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-55, *et seq.* (“the Act”). Plaintiffs bring this lawsuit claiming to represent the purported interests of *all* casino workers in challenging the casino exemption under the Act, but failed to cooperate with *any* of the Proposed Intervenors as the duly designated collective bargaining representatives for the overwhelming majority of employees who would be impacted by any summary mandate from this Court changing the terms and conditions of their employment.

Plaintiffs presumptively claim to speak for all casino workers in Atlantic City, as opposed to the relatively small group of less than 800 workers represented by UAW Region 9 in three (3) Atlantic City casinos (Bally’s, Tropicana, and Caesar’s). Respectfully, in considering Plaintiffs’

constitutional challenge, the Court should consider the interests of “all” casino workers – and indeed, all workers whose rights to work under the currently existing terms and conditions of employment, bargained for by the bargaining representatives they selected, would be directly impacted by the requested relief. The Unions collectively currently represent:

- over 10,000 cocktails servers, bartenders, bar porters, EVS Attendants and Heavy Porters, who all work on the casino floor, as well as housekeepers, bellmen, food servers, dishwashers and cooks employed, under collectively bargained agreements, in all nine (9) of the currently operating Atlantic City casinos;
- over 600 full-time stationary engineers, electricians, HVAC mechanics, plumbers, kitchen mechanics, general maintenance mechanics, and groundskeepers employed, under collectively bargained agreements, in all nine of the Atlantic City casinos, and an additional 100 employees at other Atlantic City hospitality and entertainment venues, and energy and logistics suppliers, whose livelihoods depend on the continued viability of the casinos;
- over 250 full-time carpenters, upholsterers, and locksmiths employed, under collectively bargained agreements, in all nine of the Atlantic City casinos, and hundreds of other employees of construction contractors on construction/renovation projects at New Jersey casinos;
- 125 full-time painters and wall coverers employed, under collectively bargained agreements, in all nine of the Atlantic City casinos, as well as painters, drywall finishers and glaziers employed by construction contractors on construction/renovation projects at New Jersey casinos;

- Drivers, warehouse and logistics workers, and valets employed by the casinos, under collectively bargained agreements;
- 300 to 500 skilled construction workers, throughout the building trades, currently working on a daily basis, under collectively bargained agreements with Building Trades affiliates, in all of the Atlantic City casinos, with as many as 1,000 construction workers employed on casino projects in the off-season.

Since the inception of casino gambling, the Unions have been the collective bargaining representatives for over 12,000 employees in all nine of the currently operating Atlantic City casinos (Bally's, Borgata, Caesars, Golden Nugget, Hard Rock, Harrah's, Ocean, Resorts, and Tropicana), as well as the five casinos which have permanently ceased operations (Atlantic Club Casino, Atlantis Hotel and Casino, Sands, Showboat, and Trump Plaza). The Unions and their members have felt the sting of economic dislocation resulting from shuttered casinos and have bargained concessions to maintain jobs during periods of economic slowdowns in the industry. The Unions are responsible for protecting workers' rights, including advancing their constituent members' economic, health, and safety concerns, and responding to those members' priorities as employees in the casino industry.

In balancing those interests, the Unions are quite rightly concerned that a complete smoking ban could endanger their members' jobs, and their associated health, welfare, and retirement benefits. The economic headwinds facing the Unions' hardworking members have not abated since 2006; if anything, their implications are even more dire today. A slow recovery from the impact of COVID-19 and the increase in regional competition and online gambling pose ongoing challenges for New Jersey's casino industry; compounding this by the devastating

potential economic impact of a complete smoking ban could further jeopardize the livelihoods of over 12,000 casino workers whose interests are not represented by Plaintiffs.

The Proposed Intervenors understand that a smoking ban is a very challenging issue, where their members' jobs and many of those in the regional economy are directly tied to the success of the casino industry in Atlantic City. The jobs provided under the Unions' collective bargaining agreements with the nine casinos are among the best in the entire region, for those without a college degree. For the past two decades, there have been annual decreases in the number of these jobs available in the industry, due to increased competition from surrounding states, as well as online gaming that has pulled away patrons, who once regularly visited Atlantic City. The revenue numbers for the casinos and the derisive chant of "greedy casinos" are deceiving in that online gaming and sports wagering have obfuscated the continuing decline in spending and attendance at brick-and-mortar casinos, the locations which provide employment to the Unions' members.

A resolution of the issue of a smoking ban, in light of the importance of the casino industry to the Unions' members' economic viability, requires a balancing of interests of the Unions, the industry, the State and Atlantic City, and the public at large. Up to this point, the Proposed Intervenors' concerns and efforts to find a resolution have been – at best, minimized and at worst, dismissed – by the Plaintiffs, who will not bear the burdens of the consequences the region will face if a full ban is imposed by the Order sought by Plaintiffs. As will be discussed, Proposed Intervenors possess unique industry insight and knowledge regarding the bargaining history over the terms and conditions of their members' employment, as well as the viability of various health and safety measures. Plaintiffs have already shown that they are unable – or unwilling – to protect these workers' interests in avoiding economic displacement that would occur if a complete smoking ban went into effect. Plaintiffs categorically dismiss any balancing of economic

considerations as pandering to the greedy casinos. While Plaintiffs' views are reductionist and focused on a single issue, the Proposed Intervenor Unions seek to protect their members' rights by providing a comprehensive picture of both the legal issues and the potentially broad consequences of the relief sought. Because the Court's resolution of this case may hinder the Unions' ability to protect their members' interests, which are not being adequately protected by the parties to this litigation, Proposed Intervenors are entitled to intervene in this matter as of right.

Atlantic City continues to have one of the highest unemployment rates in this State. Its residents and employees should not have to face any self-inflicted economic injuries as it confronts lingering inflation and downward economic trends. While neighboring Pennsylvania continues to allow smoking in their casinos, a complete ban here in New Jersey would drive many profitable and loyal customers back across the Delaware River. At the same time, New York City is on the cusp of establishing multiple casinos that will attract many New Jersey customers. The industry and its workers are on the verge of another challenging decade ahead. The Proposed Intervenors' position is that a balanced resolution should be sought in the collective bargaining and legislative processes, rather than through litigation in which only one side prevails, and everyone risks ultimately losing job security and the wages and benefits needed to support their families and their communities.

Even accepting Plaintiffs' version of events, Plaintiffs fail to state a cognizable claim for relief, much less meet the stringent standards to justify the extraordinary relief requested. Simply put, there is no legal support for Plaintiff's constitutional arguments in the text of New Jersey Constitution or New Jersey's history and traditions, to say nothing of the text of the Act itself. Critically, Plaintiffs also ignore the Unions' role in negotiation and administration of the applicable collective bargaining agreements with the casinos, including their respective provisions regarding

working conditions and health and safety and their balancing the interests of their members, as protected by Article 1, Paragraph 19 of the New Jersey State Constitution. Accordingly, the Complaint should be dismissed, and the relief sought therein denied in its entirety.

FACTUAL BACKGROUND¹ & PROCEDURAL HISTORY

Proposed Intervenors rely upon the facts as set forth in the accompanying certification. *See* Certification of Raymond G. Heineman, Esq. (“Heineman Cert.”). In 2006, the Act was passed, prohibiting smoking in most indoor public places or workplaces, and in any area inside or on the grounds of a public or nonpublic elementary or secondary school. N.J.S.A. 26:3D-58. As relevant here, the Act contains a few narrowly tailored exemptions: (1) cigar bars and cigar lounges; (2) tobacco retail establishments; (3) tobacco testing businesses; (4) private homes, residences and automobiles; (5) the area within the perimeter of casinos and casino simulcasting facilities (“Casino Exemption”); (6) approved research facilities, *see* N.J.S.A. 26:3D-59, and certain (7) guest rooms in hotels, motels, or lodging establishments, *see* N.J.S.A. 26:3D-60.

Longstanding economic considerations have informed the development of the gaming industry in New Jersey, and more specifically, the regulation of casinos in Atlantic City. *See* Casino Control Act, N.J.S.A. 5:12-1, *et seq.* The Legislature has made public policy decisions regarding Atlantic City’s redevelopment to “provide meaningful and permanent contribution to the economic viability of the resort, convention, and tourist industry of New Jersey.” N.J.S.A. 5:12-1(b)(13). One of those public policy questions was whether to adopt a complete smoking ban at the Atlantic City casinos. In considering a smoking ban, the Legislature recognized that the impact of a smoking ban on New Jersey’s gaming industry could be substantial. Available research

¹ These “facts” are taken from Plaintiffs’ Complaint and matters of public record.

at the time examining the effect of a smoking ban on nearby Delaware’s gaming industry provided a cautionary tale.² Following the implementation of a smoke-free law in Delaware, revenues were found to have declined significantly, relative to the availability of alternative gaming venues in the region. Three of the studied gaming venues saw revenues decrease by an estimated \$94 million per year, corresponding to a decrease in state revenues of an estimated \$33 million per year.³ The New Jersey Casino Control Commission Chair at the time recognized that casinos in New Jersey are “the economic engine that drives much of the industry in southern New Jersey.”⁴ Casino revenues in New Jersey topped \$5 billion in 2005; the \$401.5 million tax revenue was dedicated to support programs for the aged and disabled. *Id.*; see N.J.S.A. 5:12-145(c).

Subsequent studies provide context for discussion and analysis of smoking bans. After the Illinois state smoking ban took effect in 2008, estimates suggest that revenue and admissions at Illinois casinos declined by more than 20% (about \$400 million) and 12%, respectively.⁵ A 2021 study estimated that a smoking ban in Atlantic City casinos would result in: decline in New Jersey gaming-tax receipts of between \$10.7 million and \$25.7 million to the Casino Revenue Fund, and between \$1.7 million and \$4 million to the Casino Reinvestment Development Authority; decline in total taxes of between \$17.2 million and \$44 million; decline in non-gaming revenue of between 3% and 6.5%; and potential job losses of between 1,021 and 2,512.⁶

² Pakko, M.R., 2005; No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues, Federal Reserve Bank of St. Louis Working Paper 2005-054, at <https://doi.org/10.20955/wp.2005.054>, Heineman Cert., Exhibit B, thereof.

³ *Id.* at p. 9, thereof.

⁴ New Jersey Casino Control Commission, Casino Revenues Pass \$5 Billion Mark, January 10, 2006, at https://www.nj.gov/lps/ge/docs/Financials/PressRel2005/dec_05.pdf, Heineman Cert., Exhibit C, thereof.

⁵ Thomas A. Garrett, and Michael R. Pakko, “The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois,” Federal Reserve Bank of St. Louis, March 2010, at <https://doi.org/10.20955/wp.2009.027>, Heineman Cert., Exhibit D, thereof.

⁶ Spectrum Gaming Group, Gaming Industry Analysis: Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue, November 3, 2021, at <https://www.spectrumgaming.com/wp-content/uploads/2022/02/spectrum-report-for-canj-released-february-2022.pdf>, Heineman Cert., Exhibit E, thereof.

In order to inform its members and the public, Local 54 prepared an economic and policy analysis, published on April 1, 2024, “Policy Implications of a Total Smoking Ban in Atlantic City Casinos”. Local 54’s analysis⁷ provides the perspective of Local 54 and its membership on the economic challenges facing its members in an era of heightened competition in the casino industry, and of the projected impact of a complete smoking ban. As noted in the report, a total smoking ban would place thousands of jobs at risk, endangering the wages, health and welfare benefits and retirement benefits of Local 54 members and their families. With alternatives for smoking casino patrons in Pennsylvania, New York, and Connecticut, Local 54 projects a loss of 3,000 jobs in Atlantic City, with the imposition of a smoking ban. The economic impact of smoking bans on revenue and employment in the industry have figured importantly in the current balance of interests obtained in the legislative process. As recounted in Local 54’s report, in 2008, when the Atlantic City Council imposed a total smoking ban, casino revenues fell by 19.8%, within the first week. The decline in revenues led to the enactment of the current 25% limitation on smoking areas on the casino floors.

On or about April 5, 2024, Plaintiffs filed the Complaint and OTSC, seeking declaratory and injunctive relief in connection with the Casino Exemption. Plaintiffs allege that they are a labor organization ambiguously claiming to represent over 3,000 workers in casinos in Atlantic City, New Jersey, and a grass roots anti-smoking organization. Complaint ¶¶ 2 – 4. According to the Complaint, “[r]equiring casino workers to work in smoke-filled casinos violates their Constitutional right to safety.” *Id.* at ¶ 20. Plaintiffs also allege that the Casino Exemption is

⁷ UNITEHERE! Local 54, Policy Implications of a Total Smoking Ban in Atlantic City Casinos., Heineman Cert, Exhibit A, thereof.

unconstitutional special legislation, *id.* at ¶¶ 23 – 31, and violates their casino workers’ right to equal protection. *Id.* at ¶¶ 32 – 36.

On or about April 9, 2024, the Court entered a case management order that: State Defendants shall file and serve their response to the OTSC and Complaint by April 29, 2024; Plaintiffs shall file and serve their reply to the State Defendants’ opposition by May 6, 2024; and that the parties shall appear for a hearing on the OTSC on May 13, 2024. *See* April 9, 2024 Order. In lieu of a responsive pleading, Proposed Intervenors file with their motion to intervene this motion to dismiss the Complaint and opposition to Plaintiffs’ OTSC.

ARGUMENT

POINT I

PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT ON BEHALF OF THEIR CONSTITUENT MEMBERS

A. LEGAL STANDARD

Rule 4:33-1 governs intervention as of right. To satisfy the rule, a moving party must

(1) claim “an interest relating to the property or transaction which is the subject of the transaction,” (2) show [that the movant] is “so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest,” (3) demonstrate that the “[movant’s] interest” is not “adequately represented by existing parties,” and (4) make a “timely” application to intervene.

[*Am. Civil Liberties Union of N.J., Inc. v. Cty. of Hudson*, 352 N.J. Super. 44, 67 (App. Div. 2002) (quoting *Meehan v. K.D. Partners, L.P.*, 317 N.J. Super. 563, 568 (App. Div. 1998)).]

"As the rule is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied." *Meehan*, 317 N.J. Super. at 568. *Rule* 4:33-1 tracks the language of Fed. R. Civ. P. 24(a)(2) verbatim. *Allstate N.J. Ins. Co. v. Neurology Pain Assocs.*,

418 N.J. Super. 246, 254 (App. Div. 2011). “[T]he polestar for evaluating a claim for intervention is always whether the proposed intervenor’s interest is direct or remote.” *Kleissler v. U.S. Forest Service*, 157 F.3d 964, 972 (3d Cir. 1998). An intervenor’s interest in the litigation need not be a legal one so long as the party “will be practically disadvantaged by the disposition of the action.” *Id.* at 970 (citation omitted). “[T]he core concepts contained in *Rule* 4:33-1 governing intervention as of right – the movant must have an ‘interest’ in the ‘subject of the action,’ which may be ‘impair[ed] or impede[d]’ without intervention – find equal voice in our standing jurisprudence.” *N.J. Dep’t of Envtl. Prot. v. Exxon Mobil Corp.*, 453 N.J. Super. 272, 290 (App. Div. 2018) (citing *In re Camden Cty.*, 170 N.J. 439, 449 (2002) (to have standing, “a party must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision.”)).

On the other hand, *Rule* 4:33-2 permits intervention “[u]pon timely application . . . if the claim or defense and the main action have a question of law or fact in common.” The rule must be “liberally construed . . . with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties[.]” *ACLU*, 352 N.J. Super. at 70, “and whether intervention will eliminate the need for subsequent litigation.” *Zirger v. Gen. Accident Ins. Co.*, 144 N.J. 327, 341 (1996) (citation omitted). The decision to grant or deny permissive intervention “vests considerable discretion in the trial court.” *Evesham Township Zoning Board of Adjustment v. Evesham Township Council*, 86 N.J. 295, 299 (1981). Intervention as of right or by permission of the court is premised upon the proposed intervenor

demonstrating that he or she has standing either in the action in chief – which essentially compels a court to grant a timely motion for intervention as of right pursuant to *Rule* 4:33-1, unless the intervenor’s interests are otherwise adequately protected – or to bring an independent action – in which the putative intervenor’s

‘claim or defense’ involves a question of ‘law or fact’ common to the pending action, *R. 4:33-2*.

[*N.J. Dep't of Env'tl. Prot.*, 453 N.J. Super. At 291.]

As the Unions meet the intervention requirements under both subsections of the rule, their motion to intervene should be granted.

B. PROPOSED INTERVENORS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO RULE 4:33-1

Here, Proposed Intervenors’ motion is timely, having been filed before any responsive pleadings or opposition to the OTSC were filed or simultaneously with such submissions, and before the Court hearing oral argument on Plaintiffs’ applications. As such, permitting Proposed Intervenors to intervene at this juncture will neither unduly delay the adjudication of this litigation nor prejudice the rights of the existing parties. *Atlantic Employers Ins. Co. v. Tots & Toddlers Pre-School Day Care Ctr.*, 239 N.J. Super. 276, 280 (App. Div. 1990) (quotation omitted).

Second, the Proposed Intervenors have a sufficient interest in this matter. *R. 4:33-1* simply requires the movant to claim “‘an interest’ relating to the property or transaction which is the subject of the action.” *Atlantic Employers Ins. Co.*, 239 N.J. Super. at 280. In *Atlantic Employers*, the court held that plaintiffs in tort actions had sufficient interests in the terms of their defendants’ insurance policy to intervene as of right in a declaratory judgment action brought by the insurance company against the defendants. *Id.* In *Meehan*, 317 N.J. Super. at 571, the court held that a property owner’s interest in the development of an adjacent parcel was sufficient to warrant intervention as of right in an action in lieu of prerogative writs challenging the grant of a use variance. In cases of great public interest, any “‘slight’ additional private interest will be sufficient to afford standing.” *SMB Assocs. v. Dept. of Environmental Protection*, 264 N.J. Super. 38, 46

(App. Div. 1993) (quoting *Elizabeth Federal Savings & Loan Assn. v. Howell*, 24 N.J. 488, 499 (1957)); see also *In re Tax Credit Application of Pennrose Props., Inc.*, 346 N.J. Super. 479, 482 (App. Div. 2002) (“While we find that the standing issue is certainly debatable, we prefer, given the public interest in a matter such as this, to resolve the issue on its substantive merits.”). Here, the interests of the Proposed Intervenors are compelling and clearly adequate when measured by the normative standards applied in *Atlantic Employers* and *Meehan*.

Proposed Intervenors and their affiliated local unions are responsible for the representation of over 12,000 casino workers, and the negotiation and administration of collective bargaining agreements with the casinos, including their respective provisions regarding working conditions and health and safety. “[C]onsideration of the subject matter has a significant bearing on the [Proposed Intervenors’] ability to protect [their] interests.” *ACLU*, 352 N.J. Super. at 68. It is not catastrophizing to consider the economic impact of Plaintiffs’ requested relief – the viability of the employer casinos directly impacts Proposed Intervenors’ members’ continued employment. Likewise, there is no straightforward way the Proposed Intervenors could remedy the effects of a successful challenge to the Act, except through being a party to this litigation or proceeding with additional litigation. And in the meantime, their hardworking members would be stuck in limbo, waiting out temporary layoffs, or worse, struggling with permanent job loss should this Court grant the relief requested without counterbalancing the concerns and interests of the Proposed Intervenors and their constituent member. Finally, should the Court find that the Unions lack standing to intervene in this action, then the Court would likewise have to find that the Plaintiffs lack standing to bring this action, and dismiss this matter in its entirety. In that regard, the Court should take note that Plaintiffs only represent workers in three (3) casinos and that most, if not all

of their members are casual/seasonal employees, whereas the Proposed Intervenors represent the overwhelming majority of unionized full-time and part-time employees.

Moreover, the Proposed Intervenors' interests and their constituent members' interests cannot be and will not be adequately protected by Plaintiffs, as made clear in the submissions to this Court. *See Builders League of S. Jersey, Inc. v. Gloucester Cty. Utils. Auth.*, 386 N.J. Super. 462, 469 (App. Div. 2006) (holding that existing party adequately represented proposed intervenors' interests where their positions were essentially identical); *see also People of State of Calif. v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986) (considering "whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; whether the present party is capable and willing to make such arguments; and whether the intervenor would offer any necessary elements to the proceedings that other parties would neglect"). Neither Plaintiffs nor the State Defendants are privy to the character and extent of bargaining history between Proposed Intervenors and their affiliated local unions and the various casino employers. Nor do Plaintiffs claim to have independently acquired information regarding the different safety protocols implemented by the casino employers, or any specific proposals regarding improved air quality and filtration, or their efficacy. It would be pretty presumptuous to speak on behalf of all casino workers without having consulted them or their respective Unions, but that is precisely what Plaintiffs and their relatively small segment of casino workers attempt to do here.

Whether intervention as of right should be granted may be determined by evaluating the extent to which a grant "of the motion will unduly delay or prejudice the rights of the original parties." *Atlantic Employers*, 239 N.J. Super. at 280 (quotation omitted). As noted by Plaintiffs, the Act was enacted in 2006; granting Proposed Intervenors' motion at this early stage of these

proceedings cannot prejudice the existing parties. Moreover, no Answers have been filed and discovery has not commenced. Should this matter proceed further, Proposed Intervenors are ready to expeditiously proceed. As Proposed Intervenors have satisfied all four prongs of the R. 4:33-1 test, they are entitled to intervene in this action as a matter of right.

C. **ALTERNATIVELY, PROPOSED INTERVENORS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO RULE 4:33-2**

Alternatively, Proposed Intervenors should be permitted to intervene pursuant to R. 4:33-2. *Atlantic Employers*, 239 N.J. Super. at 280. The rule permits intervention at the trial court's discretion if the applicant's "claim or defense and the main action have a question of law or fact in common." R. 4:33-2.

The factors to be considered by the trial court, which should ordinarily be liberal in its grant of the motion, are the promptness of the application, whether or not the granting thereof will result in further undue delay, whether or not the granting thereof will eliminate the probability of subsequent litigation, and the extent to which the grant thereof may further complicate litigation which is already complex.

[*ACLU*, 352 N.J. Super at 70 (citations omitted).]

As discussed above, permitting Proposed Intervenors to intervene would not unduly expand, complicate, and delay the litigation. Rather, it would provide crucial elements and perspectives to these proceedings that the existing parties would neglect.

POINT II

THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

A. LEGAL STANDARD

Pursuant to Rule 4:6-2(e), a Complaint may be dismissed by the Court if it fails to state a claim upon which relief can be granted. When deciding a motion to dismiss for failure to state a claim upon which relief can be granted, the Court's inquiry is to examine the legal sufficiency of the facts alleged on the face of the complaint. *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746 (1989). When doing so, the Court must treat all the allegations in the complaint as true. *Interchange Bank v. Rinaldi*, 303 N.J. Super. 239, 257 (App. Div. 1997). However, when a cause of action cannot be reasonably suggested by the facts or a theory of liability stated within the pleading, the complaint should be dismissed. *Printing Mart*, 116 N.J. at 746; *Camden County Energy Recovery Associates, L.P. v. New Jersey Department of Environmental Protection*, 320 N.J. Super. 59, 64 (App. Div. 1999), *see also Banco Popular of North America v. Gandi*, 184 N.J. 161, 166 (2005) (Noting that if a complaint "states no basis for relief and discovery would not provide one, dismissal is the appropriate remedy); *Glass v. Suburban Restoration Co.*, 317 N.J. Super. 574, 582 (App. Div. 1988) (Holding that "it has long been established that pleadings reciting mere conclusions without facts and relying on subsequent discovery do not justify a lawsuit."), *Sickles v. Cabot Corp.*, 379 N.J. Super. 100, 106 (App. Div. 2005) ("a court must dismiss the plaintiff's complaint if it failed to articulate a legal basis entitling plaintiff to relief.").

Where, as here, "the factual allegations are palpably insufficient to support a claim upon which relief can be granted," then "dismissal of a cause of action is required[.]" *In re Prudential*

Insurance Co., 282 N.J. Super. 256, 268 (Ch. Div. 1995). “[I]f the complaint states no basis of relief and discovery would not provide one, dismissal is the appropriate remedy.” *Banco Popular*, 184 N.J. at 166. Specifically, “[a] motion to dismiss ‘may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for plaintiff’s claim must be apparent from the complaint itself.’” *N.J. Sports Prods., Inc. v. Bobby Bostick Promotions, LLC*, 405 N.J. Super. 173, 178 (Ch. Div. 2007) (quoting *Edwards v. Prudential Prop. & Cas. Co.*, 357 N.J. Super. 196, 202, (App.Div. 2003)). On a motion to dismiss, courts are permitted to consider “allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.” *Banco Popular N. Am.*, 184 N.J. at 183.

B. NEW JERSEY COURTS HAVE NEVER RECOGNIZED A CONSTITUTIONAL RIGHT TO A SMOKE-FREE ENVIRONMENT.⁸

Under Article I, Paragraph 1, of the New Jersey Constitution, “as under the Fourteenth Amendment’s substantive due process analysis, determining whether a fundamental right exists involves a two-step inquiry.” *Lewis v. Harris*, 118 N.J. 415, 435 (2006) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). First, the asserted fundamental liberty interest must be clearly identified. *Id.* (citation omitted). “Second, that liberty interest must be objectively and deeply rooted in the traditions, history, and conscience of the people of this State.” *Id.* (citing *King v. S. Jersey Nat’l Bank*, 66 N.J. 161, 178(1974); see also *Glucksberg*, 521 U.S. at 720-21 (liberty interest must be “objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty”) (internal quotation marks omitted).

⁸ Proposed Intervenors join in and fully adopt the State Defendants’ arguments.

While the New Jersey courts have never ruled on whether there is a constitutional right to a smoke-free environment, generally speaking, there is no right to a healthful environment⁹, and other courts that have considered the issue before this Court have found that there is no constitutional right to be free from secondhand smoke. *See Gasper v. Louisiana Stadium and Exposition District*, 418 F. Supp. 716, 721-22 (E.D. La. 1976); *Kensell v. State of Okl.*, 716 F.2d 1350 (10th Cir. 1983); *Caldwell v. Quinlan*, 729 F. Supp. 4, 7 (D.D.C. 1990); *Fed. Emps. for Nonsmokers' Rights v. United States*, 446 F. Supp. 181, 184-85 (D.D.C. 1978).

In *Gasper*, plaintiff nonsmokers sought to enjoin the defendant from continuing to allow tobacco-smoking in the Louisiana Superdome, claiming that the defendant's "permissive attitude" toward smoking violated their constitutional right "to breathe smoke-free air while in a State building." *Gasper*, 418 F.Supp. at 717. Noting that "the Constitution does not provide judicial remedies for every social and economic ill[.]" *Lindsey v. Normet*, 405 U.S. 56 (1972), the *Gasper* Court rejected plaintiffs' arguments:

[I]f this Court were to recognize that the Fifth and Fourteenth Amendments provide the judicial means to prohibit smoking, it would be creating a legal avenue, heretofore unavailable, through which an individual could attempt to regulate the social habits of his neighbor. This Court is not prepared to accept the proposition that life-tenured members of the federal judiciary should engage in such basic adjustments of individual behavior and liberties.

For the Constitution to be read to protect nonsmokers from inhaling tobacco smoke would be to broaden the rights of the Constitution to limits heretofore unheard of,

⁹ *See, e.g., MacNamara v. County Council of Sussex County*, 738 F. Supp. 134, 142 (D. Del. 1990), *aff'd*, 922 F.2d 832 (3d Cir. 1990); *Agent Orange Product Liability Litigation*, 475 F. Supp. 928, 934 (E.D.N.Y. 1979); *Tanner v. Armco Steel Corporation*, 340 F. Supp. 532 (S.D. Tex. 1972) (plaintiffs failed to assert a deprivation of a constitutional right where they alleged injury based upon their exposure to air pollutants caused by defendants' emission from petroleum refineries); *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1 (1981) ("[T]here is no constitutional right to a pollution-free environment."); *Barnett v. Carberry*, 420 F. App'x 67 (2d Cir. 2011) (there is no recognized constitutional right to a healthful environment or to be free from a particular level of electromagnetic field exposure.).

and to engage in that type of adjustment of individual liberties better left to the people acting through legislative processes.

[*Id.*, 418 F.Supp. at 721-22.]

Absent definitive differences in the text of the state and federal provisions, or common law history that dictates different treatment, courts should reject the unprincipled creation of state constitutional rights that exceed their federal counterparts. *King*, 66 N.J. at 178; *see Doe v. Poritz*, 142 N.J. at 119-20 (1995) (although practice “followed by a large number of states is not conclusive[,] . . . it is plainly worth considering in determining whether the practice offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental”) (internal quotation marks omitted)). Plaintiffs provide no authority for the proposition that the claimed right to be free from secondhand smoke “has historical roots¹⁰ in the traditions or collective conscience of the people of New Jersey to give it the ranking of a fundamental right”, *Lewis*, 118 N.J. at 432. This is because those roots are nonexistent.

Accordingly, it would be an impermissibly radical departure from existing tradition, and from the principles that underlie that tradition, to declare that there is such a right protected by the substantive due process guarantee of the New Jersey Constitution. While no one is minimizing Plaintiffs’ safety and health concerns, such matters are better left to the legislative or administrative process, where a proper balancing of interests can be made in a forum where such policy decisions can appropriately be made, or left to the employees’ duly designated collective bargaining representatives to negotiate health and safety policies that best address their members’ concerns.

¹⁰ New Jersey employers did not have a common law duty to maintain a smoke-free working environment. *See, e.g., Smith v. Blue Cross & Blue Shield*, No. C-3617-81E, 16-17 (N.J. Super. Ct., Aug. 18, 1983) (rejecting “hypersensitive” employee’s right to a smoke-free work environment).

This is consistent with how Courts should analyze claims of deprivation of substantive due process. In those situations, courts “must resist the temptation of seeing in the majesty of that word [“liberty”] only a mirror image of our own strongly felt opinions and beliefs.” *Lewis*, 188 N.J. at 441. Courts “must be careful not to impose [] personal value system[s] on eight-and-one-half million people, thus bypassing the democratic process as the primary means of effecting social change in [New Jersey].” *Id.*; see *Kensell*, 716 F.2d at 1351 (to hold that the Constitution empowers the courts to regulate second-hand smoke “would support the most extreme expectations of the critics who fear the federal judiciary as a super-legislature promulgating social change under the guise of securing constitutional rights.”) (citations omitted).

Plaintiffs by their submissions are directly asking this Court to act as a super-legislature, second guessing the policy decisions of the duly elected legislatures in enacting the law and counterbalancing the various interests of workers, employers, the public, and the State. Such a request is inconsistent with the law and as such the substantive due process claim fails on its face.

C. THE COMPLAINT FAILS TO STATE AN EQUAL PROTECTION CLAIM UNDER THE NEW JERSEY CONSTITUTION.

Like the Fourteenth Amendment of the United States Constitution, Article I, Paragraph 1 of the New Jersey Constitution protects “against the unequal treatment of those who should be treated alike.” *Greenberg v. Kimmelman*, 99 N.J. 552, 568 (1985). “In analyzing equal protection challenges, New Jersey courts have rejected the rigid, multi-tiered approach followed by the federal courts, instead relying on a flexible balancing test.” *Rutgers Council of AAUP Chapters v. Rutgers*, 298 N.J. Super, 442, 452 (App. Div. 1997) (quoting *Barone v. Dep’t of Human Services*, 107 N.J. 355, 368 (1987)). The critical issue is “whether there is an appropriate governmental

interest suitably furthered by the differential treatment” involved. *Borough of Collingswood v. Ringgold*, 66 N.J. 350, 370 (1975) (citation omitted). Three factors considered under this balancing test are “the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” *Greenberg*, 99 N.J. at 567. There must be “a real and substantial relationship between the classification and the governmental purpose which it purportedly serves.” *Barone*, 107 N.J. at 368 (quoting *Taxpayers Ass’n of Weymouth Township v. Weymouth Township*, 80 N.J. 6, 43 (1976)).

1. The Act Does Not Implicate any Suspect Classification or Fundamental Right.

Where a statute is facially neutral, as is the case here, even if it has a disparate impact on a class of individuals, an equal protection challenge based on the New Jersey Constitution will succeed only if the Legislature “intended to discriminate” against the class. *Greenberg*, 99 N.J. at 580. In *Greenberg*, the Court found that the Legislature did not intend to discriminate against women when enacting a casino ethics amendment that prohibited spouses of judges from working in the casino industry. *Id.* at 579-80. The *Greenberg* Court relied in part upon *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 257 (1979), in which the United States Supreme Court held that a veteran preference statute comported with the Equal Protection Clause despite its disparate impact on women as there was not showing of discriminatory legislative purpose. *Id.* at 274-54.

New Jersey courts will examine a classification closely if it discriminates on an invidious basis – that is, if the class is “suspect.” *Robinson v. Cahill*, 62 N.J. 473 (1973). New Jersey courts “have not created suspect classifications where the federal courts have refused to do so[.]” *Rutgers Council of AAUP Chapters*, 298 N.J. Super at 453. “The right to a particular job, unlike the right to work in general, has never been regarded as fundamental.” *Greenberg*, 99 N.J. at 573. As casino

workers, Plaintiffs' members do not fall within a suspect classification, such as gender, race, religion, or national origin, and they "do[] not enjoy a constitutional right to work in a casino." *Id.* at 576. Regardless, they are "free to pursue [their] vocation in Atlantic City or elsewhere with other employers." *Id.* They do have the right, however, under Article 1, Paragraph 19 of the New Jersey State Constitution, to engage in collective bargaining by representatives of their own choosing, rather than have their job security and other terms and conditions of employment dictated by Plaintiffs.

2. As the Casino Exemption bears a Rational Relationship to a Legitimate State Objective, it must be Upheld.

It follows that if Plaintiffs "do[] not enjoy a constitutional right to work in a casino[,] then they do not enjoy a constitutional right to work in a casino under conditions of their individual choosing. *Ibid.* Accordingly, analysis of their equal protection claim turns on whether "the means selected by the Legislature 'bear a real and substantial relationship to a permissible legislative purpose.'" *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 473 (2004) (citations omitted). Such analysis "[b]egin[s] with the fundamental principle that a presumption of validity attaches to every legislative enactment." *Board of Educ. v. Caffiero*, 86 N.J. 308, 318 (1981); *Fried v. Kervick*, 34 N.J. 68, 74 (1961). That presumption is "particularly daunting when a statute attempts to protect the public health, safety, or welfare." *In re C.V.S. Pharmacy Wayne*, 116 N.J. 490, 497 (1989). In short, public health and safety legislation has been "consistently sustained if it 'is not arbitrary, capricious, or unreasonable, and the means selected bear a rational relationship to the legislative objective.'" *Id.* (quoting *Brown v. City of Newark*, 113 N.J. 565, 572 (1989); see also *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487-88 (1955) (statute that does not implicate

fundamental constitutional right or liberty interest will be upheld if it bears rational relationship to legitimate legislative purpose and is neither arbitrary nor discriminatory).

As the legislature is not required to articulate its reasons for enacting a statute, “it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993) (citations omitted); *see Nordlinger v. Hahn*, 505 U. S. 1, 15 (equal protection “does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification”). “Legislative bodies are presumed to act on the basis of adequate factual support and, absent a sufficient showing to the contrary, it will be assumed that their enactments rest upon some rational basis within their knowledge and experience.” *Hutton Park Gardens v. Town Council of West Orange*, 68 N.J. 543, 564 - 65 (N.J. 1975) (citing *Burton v. Sills*, 53 N.J. 86, 95 (1968)). This presumption of validity “can be overcome only by proofs that preclude the possibility that there could have been any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support a conclusion that the enactment is in the public interest.” *Hutton Park Gardens*, 68 N.J. at 565 (citing *Reingold v. Harper*, 6 N. J. 182, 196 (1951)) (citation omitted).

Moreover, “[t]he judiciary will not evaluate the weight of the evidence for and against the enactment nor review the wisdom of any determination of policy which the legislative body might have made.” *Ibid.*; *see Bd. of Educ. Of Piscataway Twp.*, 86 N.J. at 318 (“If the statute does not violate the Constitution but is merely unwise or based on bad policy, then ... it is for the Legislature rather than this Court to deliver a finishing blow to it.”) (citations omitted); *Beach Communications, Inc.*, 508 U.S. at 315 (a statute “is not subject to courtroom fact-finding and may

be based on rational speculation unsupported by evidence or empirical data[]”); *Price v. Cohen*, 715 F.2d 87, 95 (3d Cir. 1983) (the court “may not compel the state to verify its logical assumptions with statistical evidence”). The means chosen by the Legislature need not be precise, or even the best way to achieve the state objective, *Williamson*, 348 U.S. at 487-88; the question is simply whether the statute is rationally related to the public health, safety, or welfare. *Brown*, 113 N.J. at 571. As long as there is a conceivable basis for finding a rational relationship, the law will be upheld. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

That the Legislature recognized the potential health risks of smoking but chose not to ban smoking in all public places does not mean that the law denies equal protection. Equal protection “does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all.” *Dandridge v. Williams*, 397 U.S. 471, 486-87 (1970). “[E]vils in the same field may be of different dimensions and proportions, and the reform may therefore take one step at a time, attacking the evil where it seems most acute to the legislative mind.” *Williamson*, 348 U.S. at 489. A legislature “may select one phase of one field and apply a remedy there, neglecting the others.” *Id.* (citation omitted); see *Ry. Express Agency, Inc. v. New York*, 336 U.S. 106, 110 (1949) (“It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.”).

Notably, courts that have considered equal protection challenges based on exemptions in a smoking ban have concluded that economic considerations were sufficient to satisfy rational basis review. See, e.g., *Amiriantz v. New Jersey*, 251 F. App’x 787, 789 (3d Cir. 2007) (affirming District Court’s finding that economic considerations provide a rational basis for New Jersey’s Casino Exemption from the smoking ban); *Batte-Holmgren v. Comm’r of Pub. Health*, 281 Conn. 277 (Conn. 2007) (equal protection clause was not violated by a law which banned smoking in

restaurants and cafes but allowed smoking in casinos and private clubs); *NYC C.L.A.S.H., Inc. v. City of New York*, 315 F. Supp. 2d 462 (S.D.N.Y. 2004) (state law prohibiting smoking in privately-owned premises that are open to the public is a valid exercise of state police powers over the health and welfare of its citizens); *Coal. for Equal Rights, Inc. v. Bill Owens, State of Colorado*, 517 F.3d 1195 (10th Cir. 2008) (in exempting airport smoking concessions from the smoking ban, the legislature rationally distinguished those concessions from the majority of other indoor facilities in the state that are open to the public); *Justiana v. Niagra County Dept. of Health*, 45 F. Supp. 2d 236, 242-243 (W.D.N.Y. 1999) (regulation prohibiting smoking in restaurants of a certain size, while allowing smoking in others, does not offend the Fourteenth Amendment); *Coalition for Equal Rights, Inc. v. Owens*, 458 F. Sup. 2d 1251, 1260-61 (D. Colo. 2006) (no equal protection violation where exemption of casinos from smoking ban based on concerns about loss of revenue to state and economic impact on small towns in which casinos located); *Rossie v. Wisconsin*, 395 N.W.2d 801 (Wis. Ct. App. 1986)(statute prohibiting smoking in [a]ny enclosed, indoor area of a state ... building, but allows smoking in bowling alleys, restaurants, and other areas does not violate the equal protection clause of the Fourteenth Amendment); *City of Tucson v. Grezaffi*, 23 P.3d 675 (Ariz. Ct. App. 2001) (ordinance prohibiting smoking in restaurants but allowing smoking in bars and bowling alleys did not offend equal protection guaranty).

Plaintiffs, as “those attacking the . . . [Casino Exemption] have the burden ‘to negative every conceivable basis which might support it.’” *Beach Communications, Inc.*, 508 U.S. at 307. Plaintiffs have wholly failed to meet their burden of proof. Indeed, Plaintiffs tacitly acknowledge at least two reasonably conceivable bases for the Casino Exemption – the Legislature’s interest in minimizing the impact of a smoking ban on businesses and workers in the state, *see* Compl. ¶ 24, and the Legislature’s interest in minimizing the economic impact of a smoking ban on the State,

vis-à-vis lost tax revenue from “rich corporations”. *See* Compl. ¶ 29. As such, Plaintiffs have failed to state a claim upon which relief can be granted.

i. Minimizing the impact of the smoking ban on businesses and workers in the state

The exceptions to the Act reasonably suggest the legislative objective of protecting the greatest number of people from the risks associated with smoking, with the least disruption to businesses and workers. Other than casinos and casino simulcasting facilities as defined under the Act, other businesses exempt from its prohibitions are businesses who sell or test tobacco products, *see* N.J.S.A. 26:3D-59; and hotels, motels, or lodging establishments, which “may permit smoking in up to 20% of its guest rooms.” N.J.S.A. 26:3D-60. Obviously, the smoking ban would have had an adverse economic impact on a cigar bar or cigar lounge and hotel or motel. The hotel/motel exception, which applies to New Jersey casinos, clearly is intended to prevent economic disruption, notwithstanding that some housekeeping employees, at any particular establishment, might prefer to work in non-smoking rooms.

Similarly, the same economic concerns that prompted the Legislature to restrict gaming to Atlantic City to promote its redevelopment and “provide meaningful and permanent contribution to the economic viability of the resort, convention, and tourist industry of New Jersey” provide rational bases for the different treatment accorded to casino gaming areas under the Act. *See* N.J.S.A. 5:12-1(b)(13). As the “economic stability of casino operations is in the public interest”, N.J.S.A. 5:12-1(b)(12), it was rational for the Legislature to consider potential economic disruptions to casinos and displacement of their workers.¹¹ Atlantic City’s beaches, boardwalk, casinos resorts and hotels, restaurants, concert venues, and other attractions generate revenue for

¹¹ *See* Heineman Cert., Exhibit B, thereof.

local businesses. These businesses employ thousands of housekeepers, bartenders, food servers, cooks, bellmen, doormen, valets, and other service jobs in the casinos and hospitality industry. Thousands of skilled construction trades workers also build, renovate, operate, and maintain casino buildings and facilities. In this regard, it would have been reasonable for the Legislature to consider research available at the time regarding the impact of smoking bans on various industries in different states. For example, the Legislature may have rationally believed that a smoking ban would have a positive economic impact on the restaurant industry and a negative impact on the gaming industry, and tailored the narrow exemptions to the Act accordingly. The Legislature could have concluded, as a matter of public policy, that efforts to protect employees and others from secondhand smoke at casinos are best pursued through voluntary efforts on the part of individual casinos, a targeted municipal ordinance, *see* N.J.S.A. 26:3D-63, or negotiation between the casino employers and their employees' bargaining representatives. "The Legislature may thus limit its action upon a decision to proceed cautiously, step by step, or because of practical exigencies, including administrative convenience and expense." *New Jersey Restaurant Assn. v. Holderman*, 24 N.J. 295, 300 (1957).

ii. Minimizing the impact of the smoking ban on the State

The Legislature has recognized that:

The rehabilitation and redevelopment of existing tourist and convention facilities in Atlantic City, and the fostering and encouragement of new construction and the replacement of lost convention, tourist, entertainment and cultural centers in Atlantic City will offer a unique opportunity for the inhabitants of the entire State to make maximum use of the natural resources available in Atlantic City for the expansion and encouragement of New Jersey's hospitality industry, and to that end, the restoration of Atlantic City as the Playground of the World and the major hospitality center of the Eastern United States is found to be a program of critical concern and importance to the inhabitants of the State of New Jersey.

[N.J.S.A. 5:12-1(b)(3).]

These public policy considerations reasonably suggest the legislative objective of minimizing the economic impact of the smoking ban on the state. Atlantic City hosts over 27 million visitors a year, making it one of the most popular tourist destinations in the United States.¹² In addition to non-gaming revenues¹³, casino visitors also generate a substantial amount of monies which benefit all inhabitants of the State. The State assesses an annual eight percent gambling tax as against all of the casinos' gross revenues, N.J.S.A. 5:12-144, which money is allocated exclusively for the benefit of eligible senior citizens and disabled residents, N.J.S.A. 5:12-145. Casino revenues in New Jersey topped \$5 billion in 2005; the \$401.5 million tax revenue was dedicated to support programs for the aged and disabled.¹⁴ Consideration of fiscal impacts and cost benefit analysis is proper under rational basis review, and the Casino Exemption is rationally related to the legislative objective of minimizing the adverse economic impact a smoking ban would have on the State.

Plaintiffs have failed to show the “means selected by the Legislature to achieve its purposes . . . are so irrelevant as to be irrational.” *In re C.V.S. Pharmacy Wayne*, 116 N.J. at 498 (citation omitted); *see Fitzgerald v. Racing Association of Central Iowa*, 539 U.S. 103, 109 (2003) (a law “might predominantly serve one general objective . . . while containing subsidiary provisions that seek to achieve other desirable (perhaps even contrary) ends as well, thereby producing a law that balances objectives but still serves the general objective when seen as a whole.”)(quotation omitted). “[N]o legislation pursues its purposes at all costs.” *Rodriguez v. United States*, 480 U.S.

¹² <https://www.acnj.gov/page/about-atlantic-city>

¹³ For example, casinos pay \$3.00 to the Casino Reinvestment Development Authority (“CRDA”) for each occupied parking space. N.J.S.A. 5:12-173.2 to -173.4. Although the proceeds of the parking fees are not “State revenues,” they are used by the CRDA to improve “the highways, roads, infrastructure, traffic regulation and public safety” in the corridor area of Atlantic City. *New Jersey v. Trump Hotel & Casino Resorts*, 160 N.J. 505, 512 (1998).

¹⁴ *See* Heineman Cert., Exhibit C, thereof.

522, 525-26 (1987). Balancing competing values in the “achievement of a particular objective is the very essence of legislative choice – and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute’s primary objective must be the law.” *Id.* at 526.

D. THE COMPLAINT FAILS TO STATE A CLAIM UNDER THE SPECIAL LEGISLATION CLAUSE OF THE NEW JERSEY CONSTITUTION.

The New Jersey Constitution provides in relevant part that “[t]he Legislature shall not pass any private, special or local laws . . . [g]ranting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.” *N.J. Const.*, art. IV, § 7, ¶ 9 (8). “[T]he test of whether a law constitutes special legislation is essentially the same as that which determines whether it affords equal protection of the laws.” *Phillips v. Curiale*, 128 N.J. 608, 627 (1992) (quoting *Township of Mahwah v. Bergen County Bd. of Taxation*, 98 N.J. 268, 285(1985)). “The test for whether legislation is general or special involves examining the purpose and object of the enactment, as applied to the facts of the case, and determining whether the resulting classification rests upon any rational or reasonable basis relevant to the purpose and object of the legislation.” *Horizon Blue Cross Blue Shield of New Jersey v. State*, 425 N.J. Super 1, 17 (App. Div. 2012) (citing *Vreeland v. Byrne*, 72 N.J. 292, 300-01 (1977)). “The essence of unconstitutional special legislation is the arbitrary exclusion of someone from the class.” *Jordan v. Horsemen’s Benevolent and Protective Ass’n*, 90 N.J. 422, 432 (1982).

The New Jersey Supreme Court established a three-part test to determine whether a law violates the prohibition against special laws. A court must examine: “(1) the purpose and subject matter of the statute; (2) whether any persons are excluded who should be included; and (3)

whether the classification is reasonable, given the purpose of the statute.” *Jordan*, 90 N.J. at 432-33 (citing *Vreeland*, 72 N.J. 292, 298-301). As in an equal protection analysis, legislation carries a presumption of validity. “A statute must ‘clearly and irremediably violate[]’ the ban on special legislation to be invalidated.” *City of Jersey City v. Farmer*, 329 N.J.Super. 27, 38 (App. Div. 2000) (quotation omitted). Moreover, “[t]he propriety of exclusions must be examined utilizing the principles generally applicable to equal protection.” *Paul Kimball Hosp. v. Brick Twp. Hosp.*, 86 N.J. 429, 446 (1981).

As discussed above, there are multiple rational bases justifying the Casino Exemption. No intended beneficiary is excluded irrationally from the benefits of the statute and no undue or exclusive privilege is granted to the casinos. *See* N.J.S.A. 26:3D-59, -60. In *Raybestos-Manhattan, Inc. v. Glaser*, 144 N.J.Super. 152, 180 (Ch.Div. 1976), the challenged statute imposed upon employers with 500 or more employees, who ceased operations, a tax equal to the total amount of nonvested pension benefits of qualifying employees. *Id.* at 173. The court found that there was no rational basis to justify protecting the unvested pension benefits of employees of a firm employing 500 or more persons while excluding employees of companies employing less than that number. *Id.* at 179. “The number of employees in a firm can in no way be logically related to their need for protection of their unvested pension benefits.” *Id.* at 180.

By contrast, here, exemptions in the Act are not based on some arbitrary criteria, *i.e.*, how many employees a particular employer has, but rather, the employer’s inherent characteristics. The exempt businesses are in the tobacco, hospitality, or casino industry, industries which the Legislature reasonably believed would have been adversely affected by a smoking ban; or touch on issues of personal preference, *i.e.*, whether to smoke in one’s private home or on a public beach or golf course. Moreover, the exemptions clearly bear a rational relationship to the legislative

interest in minimizing economic disruption to businesses and workers from the smoking ban. “[A] statute is not unconstitutional special legislation merely because it addresses the needs of a particular municipality or serves a particular legislative purpose.” *Twp. of Mahwah v. Bergen Cty. Bd. of Taxation*, 98 N.J. 268, 285 (1985). As such, Plaintiffs have failed to demonstrate that the Act is impermissible special legislation.

POINT III

PLAINTIFFS FAIL TO SHOW THEY ARE ENTITLED TO THE EXTRAORDINARY REMEDY OF PRELIMINARY INJUNCTIVE RELIEF

Even assuming this Court permits this lawsuit to continue, Plaintiffs have failed to meet the stringent standards for this Court to grant injunctive relief.

Injunctive relief is an extraordinary equitable remedy that should only be granted if the applicant demonstrates, by clear and convincing evidence, entitlement to the requested relief. *Dolan v. DeCapua*, 16 N.J. 599, 614 (1954). A party seeking injunctive relief bears the burden of demonstrating: (1) irreparable harm is likely if the relief is denied; (2) the applicable underlying law is well settled; (3) the material facts are undisputed and there exists a reasonable probability of ultimate success on the merits of the claim; and (4) the balance of the hardship to the parties favors the issuance of the requested relief. *Crowe v. De Gioia*, 90 N.J. 126 (1982). The purpose of temporary relief “is to maintain the parties in substantially the same condition ‘when the final decree is entered as they were when the litigation began.’” *Id.* at 134 (quotation omitted).

A. PLAINTIFFS FAIL TO SHOW A LIKELIHOOD OF SUCCESS ON THE MERITS.

As discussed above, Plaintiffs’ constitutional claims are meritless. As for Plaintiffs’ arguments regarding the wisdom or efficacy of the Casino Exemption relative to the Act’s overall objectives, “remedial legislation need not be ‘all-or-nothing’ ... the Legislature can decide that to start somewhere is better than to start nowhere.” *Drew Assocs. of NJ, LP v. Travisano*, 122 N.J. 249, 262 (1991). It is worth noting that “[l]egislative inaction can mean only that the Legislature did not act,” and is not dispositive of the question of intent when a statute was originally passed. *Schmoll v. Creecy*, 54 N. J. 194, 203 (1969). However, where the constitutional validity of a statutory provision is challenged “it is the policy of our law not to invalidate a statute which has been in force without substantial change for many years, unless its unconstitutionality is obvious.” *Williams v. Smith*, 94 N. J. Super. 341, 346 (App. Div. 1967).

“[T]emporary relief should be withheld when the legal right underlying plaintiff’s claim is unsettled.” *Crowe*, 90 N.J. at 133. As discussed above, Plaintiffs cannot show that the underlying law is well-settled – there is simply no support in the text of the New Jersey Constitution or New Jersey’s history and traditions for the proposition that freedom from secondhand smoke is a fundamental right. *See Reno v. Flores*, 507 U.S. 292, 303 (“The mere novelty of such a claim is reason enough to doubt that ‘substantive due process’ sustains it”) (quotations omitted). Accordingly, Plaintiffs fail to demonstrate the likelihood of success on the merits by clear and convincing evidence. *See Dolan*, 16 N.J. at 614; *Subcarrier Communications, Inc. v. Day*, 299 N.J. Super 634, 639 (App. Div. 1997) (citations omitted).

B. PLAINTIFFS FAIL TO SHOW THAT THEY WILL SUFFER IRREPARABLE HARM.

Plaintiffs waited about eighteen years after the effective date of the Act in 2006 to seek preliminary injunctive relief. Courts have regularly found that a plaintiff's delay in seeking preliminary injunctive relief is evidence that speedy relief is not needed. *See, e.g., Lanin v. Borough of Tenafly*, 515 Fed. Appx. 114, 117-18 (3d Cir. 2013) (affirming the District Court's finding that a two-year delay in seeking a preliminary injunction was sufficient proof that there was no risk of immediate, irreparable harm); *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (ten-week delay in seeking a preliminary injunction, "undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury."). The Act was enacted in 2006, and presumably has impacted Plaintiffs and/or their constituent members in similar fashion during that time. There is nothing in the record suggesting what has changed during the intervening eighteen-year period to create the risk of immediate irreparable harm to Plaintiffs.

The harm alleged by the Plaintiffs, without any documentary proofs, is that casino "workers have been sickened by their smoke-filled workplaces". Plaintiffs' Brief in Support of Their Request for a Declaratory Judgment and Permanent Injunction ("Pl. Br."), p. 18, thereof. Plaintiffs essentially argue that they are presented with a difficult choice – work in smoke-filled workplaces or risk losing their employment. Plaintiffs however ignore the choice provided by the collective bargaining process to improve health and safety considerations on the job, while avoiding economic dislocation.

Plaintiffs cannot show that the requested injunction is the only way of protecting them from harm. The Legislature can choose to extend the smoking ban to casinos; the casino workers'

bargaining agents can, as they do as a matter of course, negotiate health and safety policies with casino employers; and casino employers can voluntarily implement no-smoking policies and/or improve their air quality and filtration systems. For example, Local 54 has recently negotiated contractual restrictions on cigar smoking in the casinos, banning smoking within 15 feet of the outer ledge of any bar near a gaming area and within 15 feet of any pit games, where live dealers are working. *See* Heineman Cert., ¶ 6. As another example, under a past practice developed under Local 54's collective bargaining agreements, cocktail servers and other workers, who prefer not to work in smoking areas of the casino floor, are permitted to voluntarily switch assignments with co-workers, who are interested in the generally higher tips paid by patrons in the smoking areas. *Id.* These collectively negotiated terms and conditions of employment allow workers to balance their health, safety, and economic preferences.

Furthermore, throughout the State of New Jersey, Local 68 represents HVAC-R mechanics who work on systems to mitigate exposure to smoke and contaminants through advancements in HVAC technology, such as:

- Direct exhaust systems in which contaminated air is removed from the space and exhausted to the outdoors, without no recirculation.
- Ventilation systems in which clean/filtered/tempered air is ventilated into the space.
- Negative air pressure rooms, which are similar to those utilized in hospital settings: <https://www.news-medical.net/health/What-are-Negative-Pressure-Rooms.aspx>.
- Industrial smoke eaters, which are air purification systems designed to remove contaminants from the air: <https://www.blueoxaircleaners.com/air-cleaner-OX3500C.php>.

See Heineman Cert., ¶ 8.

Local 68 members have unique industry knowledge regarding the different safety protocols implemented by their employers; and specific proposals regarding improved air quality and filtration, and their efficacy. Local 68 has recently commenced the development of a new training center in Atlantic City to train Atlantic City residents in HVAC and other skilled maintenance trades, to provide safe and healthful conditions for both workers and the public at Atlantic City's brick and mortar casinos. *Id.*

Trades Council affiliated local unions have been responsible for installation and maintenance of HVAC systems and equipment in Atlantic City casinos, which are key to providing a safe and healthy workplace for employees and a safe and enjoyable experience for members of the public visiting casinos, including both smoking and non-smoking patrons. Construction workers are active on projects installing negative air pressure ventilation systems and complete air exhaust systems, which can contain and negate the health impact of smoking in the 25% of the casino floors, where smoking is currently allowed. *Id.* at ¶ 20. The Trades Council is in a unique position to advance and represent the interests of union members employed by and in the New Jersey casinos, through their experience in construction design and development. For example, multiple companies now manufacture quality air filtration systems, which can be retro-fitted to the casinos' current air handling system. *Id.* at ¶ 21. Also, many areas of the casinos have a raised floor for running networks to the gaming areas. The airflow on casino floors can be improved by using raised floors for air supply, with the return air ducts placed in the ceiling, pulling all smoke immediately up and away from all patrons and workers. <https://airfixture.com/products/ufad/raised-access-flooring>. *Id.* In addition, manufacturers are currently making gaming tables with a built in capture/filtration system for smokers, which keep smoke out of the face of the dealers and other casino workers. <https://www.casinoair.com/>. *Id.*

The foregoing systems are used to clean the air in casinos and other work spaces, allowing an improvement in the safety and health of workers and the public, without the risk of economic dislocation posed by a total smoking ban. IUPAT District Council 21's skilled glaziers work with glass partitions, which offer an alternative for enclosing smoking areas and, in conjunction with advanced air handling systems, would allow for a safer alternative than the traditional casino floor configurations. *Id.* at ¶ 15.

Under New Jersey law, being a casino worker in Atlantic City is not an immutable characteristic – Plaintiffs are “free to pursue [their] vocation in Atlantic City or elsewhere with other employers.” *Greenberg*, 99 N.J. at 573. However, Plaintiffs have the opportunity, along with the Proposed Intervenors and their members, to collectively bargain improved terms and conditions of employment with the casino industry, to develop and participate in improvements in health and safety, and to participate as advocates in the democratic process.

C. PLAINTIFFS FAIL TO SHOW THE RIGHTS OF ALL INTERESTED PARTIES WILL BE SERVED IF INJUNCTIVE RELIEF IS ENTERED.

Plaintiffs failure to demonstrate likelihood of success on the merits and irreparable harm precludes injunctive relief. However, the balancing of equities and public interest also weigh against granting Plaintiffs' application. In contrast to the Proposed Intervenors, Plaintiff UAW, on behalf of its relatively few members, is advocating for a total smoking ban, which will impact the job security, wages and benefits of the Proposed Intervenors, potentially causing job losses of over 3,000 union members, *see* Heineman Cert., Exhibit A, thereof, in excess of Plaintiff UAW Region 9's total membership employed in the casino industry. A smoking ban is a very challenging issue, where the jobs of workers employed directly in casinos, in the regional construction industry

and many of those in the regional economy, are directly tied to the success of the casino industry in Atlantic City. For the past two decades, there have been annual decreases in the number of these jobs available in the industry, due to increased competition from surrounding states, as well as online gaming that has pulled away patrons, who once regularly visited Atlantic City. Spending and attendance by the public, including smokers at the brick-and-mortar casinos, which provide employment to the Union's members, is crucial to the regional economy and should not be placed at risk. The impact of the 2008 municipal smoking ban and the impact of smoking bans in Delaware and Pennsylvania caution against the grant of the relief sought by Plaintiffs.

“The third and fourth [preliminary injunction] factors merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). While Plaintiffs argue that the State Defendants do not have an interest in the enforcement of an unconstitutional law, *see* Pl. Br., pp. 18 – 19, thereof, as discussed, Plaintiffs are not likely to succeed on their claims that the Casino Exemption is unconstitutional under the due process and equal protection guarantees of the New Jersey Constitution, or impermissible special legislation, *see supra* II. B - D; III. A. Further, “any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977)).

The public interest would also suffer if the Court granted Plaintiffs' requested relief. The purpose of a preliminary injunction “is to maintain the parties in substantially the same condition ‘when the final decree is entered as they were when the litigation began.’” *Crowe*, 90 N.J. at 134 (citation omitted). Here, Plaintiffs are asking the Court to do the opposite, to summarily dictate terms and conditions of employment, with no regard to the potential impact on all affected casino workers, including Proposed Intervenors' members. As the duly designated bargaining

representatives for the overwhelming majority of all potentially affected casino workers, Proposed Intervenor are tasked with protecting workers' rights, including advancing and responding to their economic, health, and safety concerns. In balancing those interests, Proposed Intervenor are quite rightly concerned about potential disruptions to casino employers and resulting job losses.¹⁵

Granting Plaintiffs' requested relief would foreclose the possibility of any tailored, collaborative decision-making regarding each bargaining unit's specific interests and areas of expertise, possible options to address those interests, and the efficacy and acceptability of such options to the affected casino workers. As noted previously, Local 68 and the Building Trades affiliates have unique industry knowledge regarding the different safety protocols implemented by casino employers; and specific proposals regarding improved air quality and filtration, and their efficacy. The Unions are uniquely positioned to negotiate occupation-specific safety measures that best meet the needs of their casino worker members, while protecting the job security, livelihoods and health and retirement benefits of their members and fellow workers throughout the Region.

CONCLUSION

For the foregoing reasons, Proposed Intervenor respectfully request that their Motion to Intervene be granted; the Complaint be dismissed; and alternatively, should the Court decline to dismiss the Complaint, that Plaintiffs' request for a preliminary injunction be denied.

Respectfully submitted,

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/s/ SETH PTASIEWICZ

SETH PTASIEWICZ

¹⁵ See Heineman Cert., Exhibits A – E, thereof.

