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A RETURN TO THE WILD WEST: THE RAPID DEREGULATION OF THE RIVERBOAT CASINO GAMBLING INDUSTRY IN MISSOURI

I. INTRODUCTION

Gambling, both within Missouri and throughout the country, has experienced a remarkable boom in recent years. Casino gambling, particularly, has expanded from the twin “sin cities” of Las Vegas, Nevada and Atlantic City, New Jersey to virtually every state in the Union. This has occurred as the result of two kinds of legislation: the federal Indian Gambling Regulatory Act (IGRA) of 1988¹ and state riverboat casino legislation. Some form of gambling is now legal in nearly every state. Only the states of Hawaii and Utah continue to outlaw all forms of gambling.² Thirty-seven states and the District of Columbia operate state lotteries,³ while commercial gambling existed in eleven states in 1997.⁴ Overall, since 1991, the number of states with some form of casino gambling has increased dramatically to thirty-four.⁵

Recently, gambling has become highly accessible to the American people. It is widely available throughout the country. In fact, gambling is now the number one entertainment attraction in the United States.⁶ Over sixty percent of the nation’s adult population participates in some form of gambling each year.⁷ In 1992, alone, more than \$294 billion was spent on legal gambling in

1. 25 U.S.C. § 2701 (1988).

2. See Martin Koughan, *Easy Money*, MOTHER JONES (July-Aug. 1997), at 32; see also Ronald J. Rychlak, *Lotteries, Revenues, & Social Costs: A Historical Examination of State Sponsored Gambling*, 34 B.C. L. REV. 11 (1992) (noting that every state except Hawaii and Utah conducts a state-sponsored lottery and that most states allow other types of gambling within their borders).

3. See Koughan, *supra* note 2; see also National Gambling Impact Study Commission, *Staff Report: Lotteries 1* (1999).

4. See Koughan, *supra* note 2; see also *North American Gaming Report 1997*, INT’L GAMING AND WAGERING BUS., July 1997, 54-531.

5. See Ranjana Madhusudham, *Betting on Casino Revenues: Lessons from State Experiences*, 49 NAT’L TAX J. 401, 401-02 (1996).

6. See I. Nelson Rose, *Gambling and the Law-Update 1993*, 15 HASTINGS COMM. & ENT. L.J. 93, 94 (1992); see also William N. Thompson, *Legalized Gambling 63-73*, 41 (1994) (stating that in terms of cash flows and profits, gambling is the number one entertainment attraction in the United States).

7. See *Frontline: Gambling Facts and Stats*, at <http://www.pbs.org/wgbh/pages/frontline/shows/gamble/etc/facts.html> (visited Dec. 22, 1999); see also Rose, *supra* note 6, at 169.

the United States.⁸ More recently, a whopping \$482 billion was wagered in the United States.⁹ Clearly, a formerly condemned industry has become very popular recently.¹⁰

Nevertheless, a deep division exists in the way that many citizens regard gambling activity. Some citizens approve of gambling as a voluntary and relatively harmless form of "entertainment." Other citizens, however, believe gambling activity is a dangerous vice that should be carefully controlled or eliminated. They think gambling is a damaging, immoral industry that preys on the weak. Indeed, although both gambling and tobacco use are widely perceived as vices, the gambling industry's rights to media exposure through advertising have dramatically increased recently, while at the same time, the tobacco industry's ability to advertise its product has been significantly impaired.¹¹

How the recent flurry of gambling activity should be conducted and the regulation that should precede it is a crucial issue. The stakes are high: each plastic token wagered, in fact, represents the product of hard work. In 1992, Missouri became a riverboat casino state.¹² Certain safeguards were initially put into place to regulate the riverboat casino gaming industry in its infancy within the state. Recently, however, many of the most important of these regulations have been struck down through the efforts of lobbyists representing the gambling industry. They have successfully and artfully manipulated politicians within the Missouri State legislature. In addition, they have courted the public to gain its support for several notable changes. As a result of this process, today very few meaningful regulations constrain how riverboat casino gambling is conducted in the state of Missouri. The results of this under-regulation are a brewing disaster. The Missouri legislature's recent haste to

8. See Rose, *supra* note 6, at 169.

9. See Frontline, *supra* note 7.

10. See, e.g., *American Gaming: GOVERNMENT LODGING* 192 (noting that some form of gambling is now legal in nearly every state).

11. See, e.g., *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 119 S. Ct. 1923 (1999). Pursuant to a statute passed by Congress and an implementing Federal Communications Commission (FCC) regulation, radio and television broadcasters were prohibited from carrying advertising regarding privately operated commercial casino gambling, regardless of the location of the broadcast station or casino. The Court concluded that the statute could not be enforced against advertisements of lawful private casino gambling that were broadcast by a radio or television station where such gambling was legal. *Id.* at 1926. The state of Louisiana allowed riverboat casinos to operate lawfully within its borders, but prohibited such gambling businesses from advertising on radio or television broadcasts. *Id.* at 1929. The Supreme Court struck down the Louisiana law as a violation of the commercial free speech rights of the riverboat casino operators. *Id.* at 1936.

12. See Daniel T. Murphy & Jack M. Epps, *Riverboat Gaming Development in Missouri*, 53 J. MO. B. 15, (Jan.-Feb. 1997).

deregulate the riverboat gambling industry is alarming and dangerous to the state's citizens. It must be reversed.

This paper confronts the disturbing hyper-expansion of the legal rights of gambling casinos in the state of Missouri. Riverboat casinos were legalized in 1992, in furtherance of a trend of increasing acceptance of gambling by the American public. In the years following their appearance in Missouri, these businesses have been incredibly successful in lobbying for the removal of most of the state regulations that existed upon the commencement of the industry in 1992. Many of the state's citizens, as well as the Missouri Supreme Court, have opposed such rapid expansion of the industry's rights, but have not had the financial wherewithal to thwart the casino industry's repeated self-interested efforts to increase its profitability levels within the state. The bans on games of chance, restricted boarding times, the boat requirement, the on the river requirement, and the cruising requirement all are now gone. Most troubling of all, there is pressure to remove the loss limit provision and ease the business premises restrictions on casinos.

The industry has detrimentally impacted the state's working poor in a powerful way and has spurred a compulsive gambling epidemic. The industry's financial impact on the state is negligible at best, as the casino operations merely reshuffle discretionary spending and employment. Furthermore, the negative externalities of the industry's presence in the state are out of control because of the expanding number of such casinos operating within the state and the ease with which such establishments now conduct their business.

The state legislature's regulation of the riverboat casino industry is utterly ineffectual and must be overhauled to effectively safeguard the citizens of Missouri. This paper will embark upon a discussion of the trends in the industry within the state and propose statutory changes that would allow small stakes "recreational" gambling to continue, while significantly curtailing most of the dangers of compulsive gambling that stem from the current under-regulation of gambling activity within the state.

II. GAMBLING INDUSTRY HISTORY & BACKGROUND

A. *Gambling in America*

The availability of gambling facilities has cycled throughout the course of American history. Gambling has proceeded through several boom and bust periods.¹³ The activity's popularity with the public has oscillated from widespread acceptance to complete exile. Although gambling is currently in

13. See Rose, *supra* note 6, at 95-98 (describing the three major waves of legalized gambling in the United States).

the midst of a period of immense popularity, it has been met with equally intense disfavor in the past. The first white settlers in the United States frowned upon gambling as a waste of time and resources.¹⁴ Later, however, in the frontier region of the country, a wide-open, “Wild West” gambling mentality reigned supreme. At that time, gambling was a popular past time and no regulations on gambling activity existed. A backlash against all forms of gambling, however, soon followed. The majority of the public again despised the practice as socially destructive. As a result, all forms of gambling were generally prohibited in America from the late 1800’s to the early 1960’s.¹⁵ During this period of time, the United States Congress actively discouraged lotteries and all other public gambling activities.¹⁶ Gambling was seen as a moral vice, an activity harmful and degrading to individual gamblers, as well as the afflicted community. The United States Supreme Court echoed the popular sentiment of the time by proclaiming “lotteries. . . are supposed to have a demoralizing influence upon people.”¹⁷

Even in the early 1960’s, gambling was illegal in all but a few states.¹⁸ Finally, however, public opposition to all forms of gambling began to erode. The State of New Hampshire enacted the New Hampshire Sweepstakes, the country’s first state lottery, in 1964.¹⁹ In the 1960’s many states adopted state lotteries and some allowed betting on greyhound or horse racing. Like many other states, Missouri has allowed some of these forms of gambling through express legislative exceptions that provide the activities are legal and not subject to the general statewide ban on all gambling activities.²⁰ While state lotteries and track betting were common at this time, casino gambling was still limited to the cities of Las Vegas and Atlantic City.

Recently, public popularity and accessibility concerning gambling activities has reached an all-time high.²¹ Two new forums for wagering have spurred this nationwide explosion of gambling activity: Native American reservations and floating riverboat casinos. In 1988, the United States

14. See National Inst. L. Enforcement & Crim. Just., U.S. Dept. of Just., *The Development of the Law of Gambling: 1776-1976*, at xxiii (1977) (stating that “The early colonists opposed any unproductive use of time,” and game-playing was classified as such along with “dancing, singing, and . . . unnecessary walking on Sundays.”). In early New England, gambling was restricted to curtail idleness. *Id.* at 39-42.

15. See Rychlak, *supra* note 2, at 13.

16. *Greater New Orleans Broad. Ass’n*, 119 S. Ct. at 1926. Several anti-lottery statutes existed at this time. See, e.g., 18 U.S.C. § 1301-1303 (1999).

17. *Ex Parte Jackson*, 96 U.S. 727, 736-37 (1878).

18. See Michael Roberts, *The National Gambling Debate: Two Defining Issues*, 18 WHITTIER L. REV. 579, 586 (1997).

19. See Rychlak, *supra* note 2, at 11.

20. See MO. REV. STAT. § 313.500 - § 313.720 (1985) (enacting the Missouri state lottery); see also MO. REV. STAT. § 313.200 - § 313.500 (1986).

21. See Thompson, *supra* note 6, at 41.

Congress passed the Indian Gaming Regulatory Act (IGRA).²² This statute authorized Native American tribes to conduct various forms of gambling, including casino gambling, if the State where the tribal reservation was located permitted such gambling “for any purpose by any person, organization, or entity.”²³ In 1997, about half of the states allowed Class III Indian Gaming, which often includes casino gambling.²⁴ Recently, this form of gambling has become very widespread and popular.²⁵ By the mid-1990’s, tribal casino-style gambling generated over \$3 billion in gaming revenue each year.²⁶

Iowa ushered in the coming prominence of the riverboat casino gambling industry in 1991 when it enacted a statute to allow riverboat casino gambling within its borders.²⁷ This legislation marked the beginning of a vigorous geographic expansion of public accessibility to gambling facilities through riverboat gambling casinos. Several states, including Missouri, followed Iowa’s lead and adopted riverboat casino gambling as legal.²⁸ During the 1990’s, the emergence of riverboat casino gambling operations throughout the country has been a provocative issue. A majority of voters within the affected states have approved this kind of gambling within their states, but many of their votes were extracted through less than noble means.²⁹ The heavy promotional spending of lobbyists within the gambling industry has bought the passage of several of these referendums. Many of the measures passed as the result of illusory promises of economic prosperity from the placement of a riverboat casino in local communities.³⁰

22. 18 U.S.C. § 2701 (1988).

23. 18 U.S.C. § 2710 (d)(1)(B) (1988).

24. See generally United States General Accounting Office, *Casino Gaming Regulation: Roles of Five States and the National Indian Gaming Commission* 4-6 (May 1998).

25. *Id.*

26. See *Native American Gaming 2: Government Lodging* 407, 423-429. Revenues generated from tribal casino-style gambling accounted for eighteen percent of all casino gaming revenue nationwide in the mid 1990’s. *Id.*

27. See Rose, *supra* note 6, at 99. See also IOWA CODE ANN. § 99F.3 (West 1994).

28. See Murphy & Epps, *supra* note 12, at 1 (noting that Illinois, Mississippi, Louisiana, Missouri, and Indiana all approved riverboat gambling soon after Iowa).

29. See Koughan, *supra* note 2, at 32 [“The individual states (rather than the federal government) primarily regulate gambling and that is where the industry has handed out the bulk of its influence money.”]. A Mother Jones investigation found that over the past five years the gambling industry spent more than \$100 million on political contributions and lobbying fees to influence state governments. *Id.*

30. See James C. Fitzpatrick, *Big Money Flows to Sway Voters on Gambling Issue*, KANSAS CITY STAR, Mar. 30, 1994, at A1 (noting that preceding the April 1994 vote on the ballot proposition to legalize games of chance on Missouri riverboat casinos, proponents of the measure raised over sixty times the funds of their opponents, but still lost the vote). Gambling proponents raised \$3.2 Million, while gambling opponents raised \$45,000. *Id.*

B. *Riverboat Casino Gambling in Missouri*

On November 3, 1992, Missouri voters authorized legislation that allowed excursion and dockside casino gaming within the state on the Mississippi and Missouri rivers.³¹ Sixty-two percent of the state's voters passed the proposal.³² While a majority of the Missouri voters chose to approve the gambling measure, an active minority strongly opposed any casino gambling activity within the state. Gambling opponents believe that an increase in gambling activity within the state is harmful to the state's citizens. As a result of the issue's polarizing effect on public opinion, the development of the riverboat gambling industry within the state of Missouri has been vigorously contested through both litigation and legislation.

On April 28, 1993, the Missouri General Assembly enacted Senate Bills 10 and 11.³³ These two Senate acts endorsed an expansive definition of riverboat gambling games that included, but was not limited to, games of skill or games of chance on excursion gambling boats.³⁴ The acts created the Missouri Gaming Commission (hereafter referred to as "The Commission") to regulate riverboat gambling.³⁵ The Commission was designed to take the place of the State Tourism Commission in performing the duty of regulating riverboat gambling excursions.³⁶ Missouri Governor Mel Carnahan signed the acts into law on April 29, 1993.³⁷ The next day, a group of plaintiffs filed a lawsuit in Missouri state court, in a case styled *Harris v. Missouri Gaming Commission*, to challenge certain games proposed to be played on Missouri riverboats in the Assembly acts.³⁸ In *Harris*, the Supreme Court of Missouri held the playing of games of chance on Missouri riverboat casinos was unconstitutional.³⁹

Immediately after the *Harris* decision, however, the Missouri legislature passed an amendment to the Missouri Constitution that overruled the rationale in *Harris* that disallowed games of chance on Missouri riverboat casinos. The purpose of the legislation was to legalize the playing of all games of chance

31. See Murphy & Epps, *supra* note 12, at 15.

32. See *Harris v. Missouri Gaming Comm'n*, 869 S.W. 2d 58, 60 n.1 (Mo. banc. 1994). Referendum Law House Bill 149, Proposition A authorized riverboat gambling excursions on the Mississippi and Missouri Rivers. These excursions were to be regulated by the State Tourism Commission. These excursions may originate where approved by local voters. A five hundred dollar maximum loss limit per person per excursion was included. The proposal was intended to produce increased General Revenue. *Id.*

33. *Id.* at 59.

34. MO. REV. STAT. § 313.800 (1)(10) (1994).

35. *Harris*, 869 S.W.2d at 60.

36. MO. REV. STAT. § 313.812(3) (1994). The acts included special exemptions from licensing requirements for certain boats and stretches of the Mississippi and Missouri riverbanks, and allowed all riverboats to be permanently docked.

37. *Harris*, 869 S.W.2d at 60.

38. *Id.*

39. *Id.*

aboard Missouri riverboat gambling casinos. The amendment authorized gaming on excursion gambling boats and floating facilities, regardless of whether the game involved “skill” or “chance.”

After the legislature drafted and approved the amendment, a majority of the voters within the state of Missouri had to approve the measure, as an amendment to the state constitution, before it would be enacted into law. The bill’s riverboat gambling industry proponents spent over sixty times the funds of citizen groups opposing the amendment. The gambling rights expansion bill was nevertheless defeated by Missouri voters.⁴⁰ Operators of Missouri riverboat casinos, however, were intent on gaining passage of the amendment. They sought to increase the profitability of their operations through the ability to conduct games of chance aboard their riverboat casinos.

Slots are one of the most profitable betting games for casino operators. They are classified as games of chance. Therefore, industry members needed to pass the amendment to experience the increased level of profitability that the operation of slot machines on their boats would bring. Unfortunately, however, slot games, are the most addictive, and hence the most potentially harmful, betting devices.

Despite the initial defeat of the amendment, on November 8, 1994, supporters of the gambling industry were successful in placing the same proposal on a ballot before Missouri voters for a second time in the same year. After these gambling industry proponents expended considerable efforts in a second attempt to gain the bill’s passage, a slight majority of the state’s voters passed the Missouri constitutional amendment into law by a slim margin of fifty-four percent of a total of 1,751,459 participating Missouri voters in favor of the amendment.⁴¹ Thus, the voters narrowly approved the amendment to the constitution of the state of Missouri.⁴²

As a result of the amendment, riverboat casino licensees could now conduct games of chance on their riverboat casinos.⁴³ The amendment was adopted as Article III, §39(e) of the Missouri Constitution. It stated “the general assembly is authorized to permit only upon the Mississippi River and

40. See Fitzpatrick, *supra* note 30, at A1.

41. See, e.g., Terry Ganey & Mark Schlinkmann, *Hancock II Out: Slot Games In*, ST. LOUIS POST-DISPATCH, Nov. 9, 1994, at A6. After three tries, full-blown riverboat gambling in Missouri became a reality as voters approved the “games of chance” amendment 54 to 46 percent. *Id.* Multiple re-votes are commonly utilized as a strategy by legalized gambling proponents to wear down and out-spend their opponents. *Id.*

42. *Akin v. Missouri Gaming Comm’n*, 956 S.W.2d 261, 263 (Mo. 1997). The ballot question read: Shall the General Assembly be authorized to permit only upon the Mississippi River and Missouri River lotteries, gift enterprises, and games of chance to be conducted on excursion gambling boats and floating facilities? This proposal would increase state revenues from existing gaming boats approximately \$30,000,000 per year. Impact on local governments is unknown. *Id.*

43. *Id.* at 263.

Missouri River lotteries, gift enterprises, and games of chance to be conducted on excursion gambling boats and floating facilities.”⁴⁴

In 1997, a case styled *Akin v. Missouri Gaming Commission* was filed to challenge the constitutionality of the licensing of a new form of Missouri riverboat casinos.⁴⁵ In *Akin*, the Supreme Court of Missouri held that the new form of casinos was unconstitutional.⁴⁶ However, in November of 1998, Missouri voters approved an amendment to the Missouri Constitution that retroactively legalized the licensing of the new kind of gambling casinos that operated in off-river, man-made moats.⁴⁷ This amendment overruled the result in *Akin*. Like the amendment that followed the *Harris* decision, it expanded the rights of Missouri riverboat casino operators.

III. CURRENT REGULATORY ENVIRONMENT

A person must be present on a riverboat casino to make a wager.⁴⁸ No person under the age of 21 is allowed to gamble.⁴⁹ No gambling on sporting events is allowed on riverboat casinos.⁵⁰ All wagering aboard riverboats must be conducted with tokens, chips, or other forms of credit, not with money or other negotiable currency.⁵¹ Gamblers, however, may use credit card or debit card transactions or cash checks to attain funds with which to bet.⁵² In many cases, automatic teller machines (ATMs) are available a few feet away from where wagering takes place. This often provides an irresistible convenience for gamblers. In addition, riverboat casinos may remain open twenty-four hours each day. Finally, excursion gambling boat operators are required to set gambling games, such as slots, so that they pay out at least eighty percent of all wagers.⁵³

A. *Missouri Gaming Commission & Basic Statutory Framework*

Chapter 313 of the Missouri Revised Statutes created the Missouri Gaming Commission (“The Commission”).⁵⁴ The Commission is an administrative

44. MO. CONST. art. III, § 39(e) (1994).

45. *Akin*, 956 S.W. 2d 261.

46. *Id.* at 264.

47. MO. REV. STAT. § 313.803 (1994).

48. MO. REV. STAT. § 313.807(2) (1994).

49. MO. REV. STAT. § 313.817(4) (1994).

50. MO. REV. STAT. § 313.800(10) (1994).

51. *See, e.g.*, MO. REV. STAT. § 313.805(1) - (13) (1994); *see also* MO. REV. STAT. § 313.817(3) (1994). Gambling excursion boat licensees are prohibited from allowing a gambler to bet on the licensee’s credit. *Id.*

52. MO. REV. STAT. § 313.812(9) (1994).

53. *See* MO. REV. STAT. § 313.805(1)(12) (1994). This leaves a generous twenty percent gross profit margin for casino operators.

54. MO. REV. STAT. § 313.004(1) (1994).

agency body with control over the regulation and approval of all riverboat casino gambling activity within the state of Missouri.⁵⁵ The Commission is required to meet quarterly.⁵⁶ It includes five members who may serve a maximum of two three-year terms.⁵⁷ Subject to local voter approval, the Commission has the power to determine the number of gaming licenses granted within the state, as well as the location and type of each gaming facility.⁵⁸ Voters in a particular city or county, however, can vote to exclude excursion gaming boats from docking in their place of residence.⁵⁹

The following terms are defined in the Missouri Revised Statutes and are vital to a basic understanding of the State's regulation of riverboat casinos. The definitions that follow are all the currently adopted forms of these terms. The wording of many of these definitions, however, has changed since 1992 in a manner advantageous to the riverboat casino gambling industry. The "Mississippi River" and "Missouri River" are defined as the "water, bed, and banks of those rivers, including any space filled by the water of those rivers for docking purposes in the manner approved by the Commission, but shall not include any artificial space created after May 20, 1994, and located more than one thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers."⁶⁰ Notwithstanding the provisions of section 313.800, any person or business entity who has filed for an excursion gambling license with the Missouri Gaming Commission prior to March 10, 1994, shall be allowed to create an artificial space up to two thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers.⁶¹ Gambling games are defined as "games of skill or games of chance on an excursion gambling boat, but does not include gambling on sporting events."⁶² A "licensee" is any person licensed under sections 313.800 to 313.850 of the Missouri Revised Statutes.⁶³ "Adjusted gross receipts" are the gross receipts from licensed gambling games and devices less winnings paid to wagerers.⁶⁴

55. See MO. REV. STAT. § 313.805 (1)-(17) (1998).

56. MO. REV. STAT. § 313.004(2) (1998).

57. MO. REV. STAT. § 313.812(1)(10) (1998).

58. MO. REV. STAT. § 313.004(2) (1998). These five members of the Commission cannot be elected officials and are appointed by the governor. *Id.*

59. MO. REV. STAT. § 313.812(10) (1998).

60. MO. REV. STAT. § 313.800(1)(16) (1998).

61. MO. REV. STAT. § 313.803 (1994).

62. MO. REV. STAT. § 313.800(1)(10) (1994).

63. MO. REV. STAT. § 313.800(11) (1994).

64. MO. REV. STAT. § 313.800(1)(1) (1994).

B. Interpretation of Cases

1. Harris v. Missouri Gaming Commission

On April 28, 1993, the Missouri General Assembly enacted Senate Bills 10 and 11 “relating to the regulation of certain gaming activities.”⁶⁵ These acts endorsed a definition of riverboat gambling games that included, but was not limited to, games of skill or games of chance on excursion gambling boats.⁶⁶ On April 30, 1993, Troy Harris, a taxpayer and registered Missouri voter, filed a lawsuit to challenge the legislation.⁶⁷ The suit claimed that the acts were an unconstitutional violation of section 39(9) of the Missouri Constitution.⁶⁸ At that time, section 39(9) stated “the general assembly shall not have the power. . .except as provided in section 39(b) and 39(c) of this article, to authorize lotteries or gift enterprises for any purpose, and shall enact laws to prohibit the sale of lottery or gift enterprise tickets.”⁶⁹ Harris alleged Senate Bills 10 and 11 violated Article III, § 39(9) of the Missouri Constitution because they improperly allowed lotteries on excursion gambling boats.⁷⁰

The Missouri Supreme Court, sitting en banc, held the challenged law was an act of the General Assembly,⁷¹ so it was subject to the limitations of Article III, § 39(9) of the Missouri Constitution.⁷² The Court sorted all gambling activities into two categories: games of chance and games of skill.⁷³ The Court distinguished games of chance from games of skill.⁷⁴ The Court concluded games of chance were lotteries.⁷⁵ Specifically, the Supreme Court held “a game escapes the constitutional bar against lotteries if skill is predominant.”⁷⁶

Games of chance included all those gambling activities in which a player’s choice or will has no part in the result and there is no human reason, foresight,

65. *Harris*, 869 S.W.2d at 59.

66. MO. REV. STAT. § 313.800 (1)(10) (1994).

67. *Harris*, 869 S.W.2d at 60.

68. *Id.*

69. MO. CONST. art. III, § 39(9) (1994).

70. *Harris*, 869 S.W.2d at 60.

71. See Paul A. Parker, *Salus Populi Suprema Lex Esto: Gambling, Taxes, the Court, and Citizen Amendments in Missouri*, 59 ALB. L. REV. 1675, 1676 (1996).

72. *Harris*, 869 S.W.2d at 61.

73. *Id.* at 63-64. “This Court has repeatedly held that the elements of a lottery are consideration, chance, and prize.” (internal quotes omitted).

74. *Id.* at 62. In skill games, one person can be a better player than others. *Id.* at 63. “Chance” is defined as “something that happens unpredictably without any discernible human intention or direction.” WEBSTER’S THIRD NEW INT’L DICTIONARY 373 (1976). If skill is present in a game, there is human intention or direction and pure chance is not present. *Harris*, 869 S.W.2d at 62.

75. *Harris*, 869 S.W.2d at 62.

76. *Id.*

or design which enables a player to affect the outcome of the game.⁷⁷ In this type of game, the player's expected return was not favorably increased by his or her reason, foresight, dexterity, sagacity, design, information, or strategy. Games of chance were "lotteries" within the meaning of Article III, § 39(9) of the Missouri Constitution.⁷⁸ Conducting these games upon Missouri riverboat casinos was prohibited.⁷⁹ These outlawed games included slot machines, bingo, keno layout, number tickets, pull-tabs, jar tickets, push cards, and punchboards.⁸⁰

Games of skill, on the other hand, allowed a player to increase, to some degree, the probability of winning by the use of the player's reason, foresight, dexterity, sagacity, design, information, or strategy.⁸¹ Games of skill included poker and blackjack⁸² and were not lotteries under section 39(9) of the Missouri Constitution,⁸³ so they could lawfully be conducted aboard Missouri riverboat casinos.⁸⁴ The holding in *Harris* meant that only games of skill could be conducted aboard Missouri riverboat casinos. Unfortunately, extensive lobbying by gambling proponents later resulted in the passage of an amendment to the Missouri Constitution that overruled the Court's result in *Harris*.⁸⁵

2. Akin v. Missouri Gaming Commission

The Commission issued licenses for the operation of several casinos, including the Riverport Casino Center in Maryland Heights and the Station Casino Kansas City.⁸⁶ These two casinos were different from previously approved Missouri casinos in many significant ways. First, they were built in man-made basins or moats off the flow of the Mississippi and Missouri rivers.⁸⁷ The moats were created for the sole purpose of holding the new casinos.⁸⁸ In addition, the casinos were built on barges, not boats.⁸⁹ Finally,

77. *Id.*

78. *Id.* at 64.

79. *Id.* at 63-64.

80. *Id.* at 62-63.

81. *Harris*, 869 S.W.2d at 64.

82. *Id.* at 62-63.

83. *Id.* at 64.

84. See Ganey & Schlinkmann, *supra* note 41, at A6. Gambling proponents spent \$8 Million in a 1994 winning campaign to bring video gambling terminals to Missouri. *Id.*

85. See Fred Faust, *School Won't Let Mom Talk About Her Casino Job*, ST. LOUIS POST-DISPATCH, Feb. 1, 1998, at A1.

86. See Virginia Young, *"Boats in Moats" Win Round In Court Fight*, ST. LOUIS POST-DISPATCH, Jan. 30, 1998, at A1.

87. *Id.*

88. See Faust, *supra* note 85, at A1.

89. *Id.*

the architecture of the new casinos was blended with adjoining land-based buildings so that gamblers would not even see the water.⁹⁰

On August 29, 1996, in response to the Commission's issuance of licenses to these casinos that allowed them to operate within the state of Missouri, three plaintiffs filed a lawsuit.⁹¹ They alleged that the recently approved casinos were unconstitutional because they were floating in man-made basins, rather than "upon" the Mississippi or Missouri Rivers.⁹² They argued that the casinos were within 1,000 feet of the main channel of the river, but were not contiguous to the river.⁹³ Therefore, the plaintiffs argued, the casinos violated the Missouri Constitution's requirement that riverboats within the state could be only "upon the Mississippi River and Missouri River."⁹⁴

The Missouri Supreme Court held that the Missouri Constitution did not authorize riverboat gambling in artificial spaces that were not contiguous to, or directly "upon" the Mississippi River or Missouri River.⁹⁵ Instead, the Missouri constitutional amendment authorized the General Assembly to permit riverboat gambling "only upon the Mississippi River and the Missouri River,"⁹⁶ or in spaces contiguous to the Mississippi or Missouri Rivers.⁹⁷ The Court concluded that the 1994 amendment authorized games of chance on gambling boats and floating facilities that were solely over and in contact with the surface of the Mississippi and Missouri Rivers.⁹⁸ This included artificial spaces that were contiguous to the surface stream, and thus river-based.⁹⁹ The amendment, however, did not allow for gambling facilities in artificial spaces that were not contiguous to the surface stream of the river, and thus were land based.¹⁰⁰ The Court concluded the mere presence of river water in an artificial space within 1,000 feet of the river channel did not make the gambling "only upon the Mississippi River or Missouri River."¹⁰¹ Thus, the statute did not include noncontiguous artificial spaces within the definitions of the Mississippi or Missouri rivers.

The *Akin* decision volleyed a shock wave throughout the Missouri riverboat casino industry. It threatened the existence of three heavily funded Missouri gambling projects: St. Louis' Riverport Casino Center and two

90. *Id.*

91. *Id.*

92. *Akin*, 956 S.W.2d at 262.

93. *See id.*

94. MO. CONST. art. III, § 39(e) (1996).

95. *Akin*, 956 S.W.2d at 264.

96. MO. CONST. art. III, § 39(e) (1996); *see also* MO. REV. STAT. § 313.800(1)(16) (1996).

97. *Akin*, 956 S.W.2d at 264.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

Kansas City projects.¹⁰² The two Kansas City projects represented a combined investment of \$720 million by gambling corporations.¹⁰³ In November of 1998, however, Missouri voters passed an amendment to the state constitution that made casinos that operated in off-river, man-made moats legal.¹⁰⁴ This overturned and rendered moot the holding of *Akin*.¹⁰⁵

IV. ANALYSIS

The effects of prolific gambling activity on local communities can be harmful, unless the gambling industry is effectively regulated to safeguard the interests of the general public. The current regulatory climate affecting Missouri riverboat gambling is completely ineffective and, as a result, leaves the citizens of the state at risk of great peril. The restrictions on how riverboat casino gambling can occur in the state of Missouri are very minimal. They are both too few in number and too weak in their potency. They favor the gambling industry's financial interests to the peril of the state's citizens. The Commission must approve each excursion gambling boat's operations.¹⁰⁶ However, the Commission has generally sided with the casino industry, and as a result, has been very lax in advocating a vigorous regulatory environment.

A basic Commission regulation that prohibited gambling license holders from socializing or conducting business with convicted felons was challenged by a casino corporation operating in Missouri.¹⁰⁷ The relevant Commission Rule stated "[n]o licensee shall employ or contract with any person who has pled guilty to, or has been convicted of, a felony to perform any duties directly connected with the licensee's privileges under a license granted pursuant to this section. . ."¹⁰⁸ A Missouri State Court, however, upheld the regulation despite the objection.¹⁰⁹

A. *Changes in the Law since 1992*

The Missouri Supreme Court has clearly sought to safeguard the citizens of Missouri from excessive gambling activity through its holdings in *Harris* and *Akin*. Unfortunately, both of these holdings have been rendered moot as the

102. See Faust, *supra* note 85, at A1.

103. *Id.*

104. MO. REV. STAT. § 313.803. Notwithstanding the provisions of section 313.800, any person or business entity who has filed for an excursion gambling license with the Commission prior to March 10, 1994, shall be allowed to create an artificial space up to two thousand feet from the edge of the main channel of the river. *Id.*

105. See Matthew Potter, *Is Alternative Dispute Resolution a Possibility in the Riverboat Gambling Quagmire?: Akin v. Missouri Gaming Commission*, 1998 J. DISP. RESOL. 193 (1998).

106. MO. REV. STAT. § 313.805(1)(2) (1998).

107. *Pen Yan Inv., Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 302 (Mo. Ct. App. 1997).

108. MO. REV. STAT. § 313.812(6)(8) (1998).

109. *Pen Yan*, 952 S.W.2d at 303.

result of subsequent legislative action, which has been approved by Missouri voters.

As previously indicated, if there are no substantial regulations to safeguard the citizens of the state of Missouri, then the negative externalities that gambling activity spurs will be widespread and epidemic in impact. Most of the important regulations put in place in 1992 at the commencement of the legalized riverboat casino gambling industry in the state have been repealed or significantly diluted.

As previously discussed in the context of the *Akin* case, the requirement that Missouri riverboat casinos be present only “upon the Mississippi River and Missouri River” has been repealed by the enactment of subsequent legislation favorable to riverboat licensees.¹¹⁰ The original statutory language required riverboat casinos be within 1,000 feet of the main channel of the Mississippi or Missouri Rivers.¹¹¹ Riverboat casinos can now be located in man-made basins, so long as those basins are within 2,000 feet of the main channel of the Mississippi or Missouri Rivers.¹¹² Initially, excursion gambling boats were required to resemble nineteenth century paddlewheel boats.¹¹³ They had to cruise the river, unless the Commission determined that continuous docking of them was in the best interests of Missouri or public safety.¹¹⁴ Both of these regulations are now void. The riverboats that the Commission had initially licensed as cruising vessels are now tied to the land, as they do not cruise anymore. The Commission has endorsed continuous docking for safety purposes, so the cruising requirement has been removed.¹¹⁵

In addition, boarding times were initially restricted to the top of the hour only. This rule restricted gambler access to riverboat casinos. Now, however, continuous, open boarding is allowed where gamblers can enter the casino immediately after arriving, regardless of the time when they arrive.¹¹⁶ All of these relaxations of the original laws regulating the riverboat casino industry have made casino gambling much more accessible to the citizens of Missouri.

110. MO. REV. STAT. § 313.803 (1996). Due to the amendment, boats in moats are now allowed in the state of Missouri. *Id.*

111. MO. REV. STAT. § 313.800 (1996).

112. MO. REV. STAT. § 313.803 (1996). Notwithstanding the provisions of section 313.800, any person or business entity who has filed for an excursion gambling license with the Missouri Gaming Commission prior to March 10, 1994, shall be allowed to create an artificial space up to two thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers. *Id.*

113. MO. REV. STAT. § 313.812(3) (1996).

114. MO. REV. STAT. § 313.805(1)(15) (1996).

115. MO. REV. STAT. § 313.812(4) (1996).

116. A sign aboard the President casino on the Admiral in St. Louis (observed Dec. 30, 1999) proclaimed: “Our new continuous boarding pass will allow you to play all day without interruption.”

A limit on the maximum loss gamblers can incur is the most important safeguard currently in effect. The law mandates a maximum loss of \$500 per individual player, per gambling excursion.¹¹⁷ This safeguard effectively prevents excessive losses by an individual on a single day. It is troubling, however, that there has been significant political pressure to repeal this provision to eliminate the loss limit on individual gambling sessions.¹¹⁸ It is likely there will be no loss limit law in the near future. It is also likely that gambling establishments will be permitted to operate in ordinary buildings on land in the future.

B. *The Pitfalls of Under-Regulation*

Due to the current lack of vigorous regulation of the Missouri riverboat casino industry and the potential harms of gambling, it is likely that Missouri communities will experience very significant negative repercussions. Gambling produces negative externalities, effects on families and on greater society that extend far beyond actual gamblers.¹¹⁹ Citizens have criticized increased gambling activity from riverboat casinos as leading to wasted personal savings accounts, chronic addictions to gambling activity, and the societal vices of prostitution, alcoholism, and drug abuse.¹²⁰ Gambling opponents have also argued that an increased level of gambling activity causes additional criminal activity, an increased need for public welfare, and an increased number of personal bankruptcies.¹²¹

The Missouri Gaming Commission's goal should be to design regulations that effectively reduce the societal costs associated with gambling activity. If left unchecked, gambling contributes to: corruption and organized crime, bribery, narcotics violations, drug trafficking, and other illegal conduct, and "offers a false, but sometimes irresistible hope of financial advancement."¹²²

1. Compulsive Gambling

The most severe destructive effect that gambling inflicts is the way that its increased availability triggers gambling addiction through compulsive gambling activity. Many of the most profound societal costs of casino gambling stem from pathological or compulsive gambling. Compulsive

117. MO. REV. STAT. § 313.805(1), (13) (1996); *see also* MO. REV. STAT. § 313.817(3) (1996).

118. *See* LINCOLN MARHSALL & DENIS RUDD, INTRODUCTION TO CASINO & GAMBLING OPERATIONS 133 (1996).

119. M. Neil Browne & Virginia Morrison, *The Role of Ethics in Regulatory Discourse: Can Market Failure Justify the Regulation of Casino Gambling?*, 78 NEB. L. REV. 37, 67 (1999).

120. *See* Potter, *supra* note 105, at 193.

121. *Id.* at 204.

122. Brief for the Respondents at 15-16, *Greater New Orleans Broadcasting Ass'n v. United States*, 119 S. Ct. 1923 (1999) (No. 98-387).

gambling is a chronic and progressive failure to resist impulses to gamble, and includes gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.¹²³ The average socio-economic cost of each compulsive gambler per year has been estimated as \$53,000.¹²⁴ Statistics estimating the proportion of the population susceptible to addictive gambling behavior range from one to eleven percent.¹²⁵ The addictive behavior of over 3 million Americans is primarily associated with continuous play games, such as slot machines.¹²⁶ While the proportion of the population susceptible to gambling addiction is relatively small, their actual numbers and impact upon society, economically and socially, are quite extensive.¹²⁷ Compulsive or pathological gambling can have severe repercussions: suicide, violence, child abuse, and neglect can all result.¹²⁸ In addition, street crime, domestic violence, and personal bankruptcy almost always accompany compulsive

123. See Henry Lesieur, *Compulsive Gambling*, SOC'Y, May-June 1992, at 42. See also MISSOURI GAMING COMM'N, KNOW THE ONE NUMBER THAT'S ALWAYS ON YOUR SIDE: 1-888-BETSOFF, at 2 (citing the key signs of compulsive gambling are emotional dependence on gambling, loss of control, and interference with normal functioning). Exhibiting five or more of the following compulsive gambling symptoms may indicate a gambling problem:

1. Frequently think about past gambling experiences, future plans, or how to get money for gambling.
2. Need to increase spending to reach a high level of excitement.
3. Have failed at stopping or controlling gambling.
4. Become restless or irritable when trying to cut back or stop gambling.
5. Gamble to escape problems and to feel better.
6. Frequently return to "get even" after experiencing losses.
7. Lie to cover up gambling activity.
8. Have committed or planned illegal acts to finance gambling.
9. Have problems with job, school, or relationships.
10. Rely on others for financial help.

124. See Better Gov't Assoc., *Staff White Paper: Casino Gambling in Chicago*, at 14 (1992).

125. See Koughan, *supra* note 2, at 36 ("Having a casino nearby has been shown in at least one state to increase the number of people with compulsive gambling problems from about 1 percent of the general population to 5 percent."); see also *The Nat'l Impact of Casino Gambling Proliferation: Hearing Before the House Comm. on Small Bus.*, 103d Cong. 42, at 83 (1995) (prepared statement of Valerie Lorenz, Executive Director, Compulsive Gambling Center, Inc.) ("Adult gambling addiction has increased from .77% of the adult population. . . to as much as 11% in some states in 1993.").

126. United States Supreme Court Respondent' Brief at 16-20, *Greater New Orleans Broadcasting Ass'n*, 119 S. Ct. at 1923 (1999). Compulsive gambling has grown along with the expansion of legalized gambling nationwide, leading to billions of dollars in economic costs. *Id.*

127. See *Hearing Before the House Comm. on Small Bus.*, *supra* note 125, at 83-84.

128. *Id.* at 84 ("Costs resulting from compulsive gambling are broken homes, physical and mental health problems, increase in social and welfare services, indebtedness, bankruptcies, and crime."). See also *Pawn Shops & Casinos*, TAMPA TRIBUNE, Dec. 20, 1997, at 14 (citing that current statistics and studies indicate the suicide rate is four times higher in casino towns than in towns without casinos).

gambling behavior.¹²⁹ While compulsive gamblers are a small minority of the total number of casino patrons, they represent a substantial portion of casino profits.¹³⁰

2. Increased Crime Rate

Increased public access and exposure to gambling casinos causes increased local crime rates. Nearly every region that has acquired a casino has experienced an increased crime rate.¹³¹ This happens because as addicted gamblers search for funds to carry on their gambling habit, they are likely to engage in white-collar or petty crime.¹³² In addition, increased gambling activity necessarily means a higher level of public consumption expenditures and a lower public savings rate.

3. Regressive Taxation of the Poor & Financial Ruin

The worst aspect of gambling, particularly casino gambling, is how it victimizes the poor. Riverboat gambling casino operations hurt those who are least able to absorb gambling losses. Because gambling activity is much more common among the poor,¹³³ legalized gambling has been widely characterized as a regressive tax on the poor.¹³⁴ Using legalized gambling as a source of tax revenue is regressive in nature,¹³⁵ and therefore does not properly tax a segment of society that should fairly be expected to contribute additional amounts to the state's total tax revenue. Legalized gambling raises additional tax revenue by extracting money from the segment of society that can least afford to make additional tax payments, the lower class working poor. Another financial hardship that results from under-regulated casino gambling is an

129. See Rychlak, *supra* note 2, at 292.

130. See Maryland Attorney General Curran's Executive Summary on Casino Gambling, at <http://www.cecilmagazine.com/features/curran.htm> (visited Dec. 22, 1999) (noting significant crime rate increases in Mississippi regarding fraud, embezzlement, violent youth crimes, and alcohol-related incidents; similar increases in Atlantic City, New Orleans, Black Hawk County, South Dakota and Deadwood, South Dakota).

131. See *Frontline: Gambling Stats and Facts*, *supra* note 7 ("Experts outside the gambling industry estimate that people with gambling addictions account for about 5% of all players, but 25% of casino profits.").

132. See Browne & Morrison, *supra* note 119, at 50.

133. See Todd A. Wyett, Note, *State Lotteries: Regressive Taxes in Disguise*, 44 TAX LAW 867 (1991).

134. See, e.g., CHARLES T. CLOTFELTER & PHILIP J. COOK, *SELLING HOPE* (Nat'l Bur. Econ. Research, Harvard U. Press 1989).

135. See Rychlak, *supra* note 2, at 13. While lotteries have been successful in raising tax revenues, the costs have been unfairly burdensome on society's poor. *Id.*

increased number of personal bankruptcy filings.¹³⁶ Bankruptcy filings have a significant negative long-term impact on individuals and their families.¹³⁷

4. The Industry's Illusory Promises to the Community

Legalized gambling has become a very popular means of raising additional tax revenues because it is a politically unaccountable move: total tax revenue amounts are increased, while politicians are not charged with raising the income tax or sales tax rates.¹³⁸ Politicians have favored riverboat gambling because it produces revenues for cities and the state without raising the rate of taxation on their constituents.¹³⁹ This method of boosting tax revenues provides politicians insulation because it is an indirect tax on the poor. The poor wield very little political power as they do not vote in large numbers and often do not have the ability to protect their own interests.

Despite the fact that legalized riverboat casino gambling is a regressive tax on the poor, the Missouri riverboat casino industry cites tax revenue generated from its operations as an important contribution to the welfare of the citizens of the state. Missouri riverboat casino licensees pay a tax of twenty percent of their total "adjusted gross receipts" received from gambling games.¹⁴⁰ The "adjusted gross receipts" amount is the total gross receipts from all licensed gambling games and devices less the winnings paid to wagerers.¹⁴¹ Each gambling boat designates a city or county as its "home dock." The boat's "home dock" then receives ten percent of the licensee's adjusted gross receipts tax collections, to be used to promote the safety of the public visiting the gambling boats.¹⁴² The remainder of the adjusted gross receipts tax collections is deposited in an educational fund within the state treasury.¹⁴³

136. See Todd Nelson, *S.D. Bankruptcies Up 5 Percent: Judge: Gambling Caused Most Cases*, ARGUS LEADER, Jan. 15, 1993, at 1 (noting that significant increases in bankruptcies occurred in South Dakota after legalized gambling activities, including casino gambling and the use of video lottery terminals, began in 1989.).

137. See Murphy & Epps, *supra* note 12, at 15.

138. See Browne & Morrison, *supra* note 119, at 78 n. 132 (stating "[l]enders have an antipathy towards persons who have filed for bankruptcy, and with the prospering economy, lenders can afford to discriminate when choosing borrowers.").

139. See *Frontline: Easy Money* (PBS television broadcast, June 10, 1997) (quoting University of Nevada, Las Vegas professor William Thompson: "[t]here are phenomenal profits, phenomenal profits to be made. So there is a business incentive that is driving the spread of gambling. Also, politicians are greedy for what they consider to be free money. They consider gambling tax like money falling off of trees.").

140. MO. REV. STAT. § 313.822 (1998).

141. MO. REV. STAT. § 313.800(1)(1) (1998).

142. MO. REV. STAT. § 313.822(1)(1) (1998).

143. See Young, *supra* note 86, at A1.

In addition, Licensees must pay the Commission two dollars for each person who embarks on an excursion gambling boat.¹⁴⁴ One dollar of this fee is paid to the “home dock” of the boat.¹⁴⁵ Due to the recent popularity of riverboat casinos, the amount of tax revenue generated from their operations is significant.¹⁴⁶ However, this amount is far from equaling the huge negative costs the industry has inflicted on the citizens of the state of Missouri.¹⁴⁷

The second way that the riverboat casino gambling industry justifies its operations within the state is that it allegedly creates jobs for Missouri residents. This is, however, an illusory promise.¹⁴⁸ In fact, no job rate increases have generally resulted from casino activity in a community.¹⁴⁹ Casinos merely divert public spending away from more useful purposes.¹⁵⁰ Legalized gambling cannibalizes small businesses in the community by seizing the public’s discretionary spending dollars.¹⁵¹ Casinos do not create new jobs, but instead reshuffle the distribution of a constant number of jobs in the community.¹⁵² Furthermore, riverboat casinos do not increase tourism in the areas of their operations because they are no longer unique. Riverboat casinos and other opportunities for gambling activity are now common throughout the nation. As a result, casinos draw overwhelmingly local gamblers, not out of

144. MO. REV. STAT. § 313.822 (1998).

145. *Id.*

146. *See* Young, *supra* note 86, at A1. About \$136 Million per year in gaming taxes was going directly to fund Missouri public schools; \$53 Million per year was going to cities and counties where the casinos were located. *Id.*

147. *See* E.L. Grinols & J.D. Omorov, *Development of Dreamfield Delusions?: Assessing Casino Gambling’s Costs and Benefits*, 16 J.L. & COM. 49 (1996) (“The social costs of expanded casino gambling. . .are between \$112-\$338 annually per adult. . .Producer, consumer, and tax benefits are no greater than \$56. Based on available data, therefore, casino gambling fails a cost-benefit test.”).

148. *See* WORLD BOOK YEARBOOK 398 (1994) (“The employment increases resulting from most gambling operations are illusory.”).

149. *See* Grinols & Omorov, *supra* note 147, at 76. After analyzing the effects of casinos on employment and unemployment by looking at data for eight casino markets in Illinois, the authors noted that casinos had little or no effect in reducing unemployment or increasing employment, except in one or two cases. *Id.*

150. *See* PAUL A. SAMUELSON, *ECONOMICS* 398 (11th ed. 1980) (“[Gambling] involves simply sterile transfers of money or goods between individuals, creating no new money or goods. Although it creates no output, gambling does absorb time and resources.”).

151. *See, e.g.,* Koughan, *supra* note 2, at 36 (“[Gambling is] a black hole that eats money without returning a socially useful product to the community. Take Joliet, Illinois, home to riverboat gambling since 1992. Unlike Las Vegas, where the vast majority of gambling comes from out-of-staters, in Joliet 82 percent comes from the locals—who can no longer spend that money in the area stores buying clothes, or furniture, or groceries.”).

152. *See* Loretta Fairchild, *Gambling: Who Wins, Who Loses*, BUS. NEB., June 1996, at 4-5 (“Riverboat-type casinos typically cater to local markets. Providing gambling to local residents simply transfers money from one local business to another and does not lead to a net increase in jobs.”).

town tourists.¹⁵³ Overall, any positive effects of the estimated 7200 jobs that the riverboat casino gambling industry provides in the St. Louis metropolitan area¹⁵⁴ are greatly outweighed by the detrimental effects of the industry upon the local community.

C. Solutions to the Gross Under-Regulation of the Missouri Riverboat Casino Industry

Incredibly, after the Commission duly licenses a gambling excursion boat, alcoholic beverages may then be sold or consumed on its premises, despite the state law that prohibits having liquor and gambling in the same location.¹⁵⁵ Allowing individuals to gamble while they are intoxicated is reckless and irresponsible. Intoxicated gamblers are not able to rationally and knowingly make the choice to put their money at risk. Gambling while intoxicated, therefore, should be prohibited. The law, as it currently stands, encourages reckless, unreasoned activity that can lead to financial ruin. An exception to the general rule against liquor and gambling in the same location for riverboat gambling casinos is clearly unwarranted. It discourages responsible gambling. Therefore, to promote responsible gambling, no alcoholic beverage sales should be allowed in locations where gambling is being conducted.

In addition, the minimum age of twenty-one for entry into Missouri riverboat gambling casinos should be more firmly enforced.¹⁵⁶ Because casinos financially benefit from allowing underage individuals to gamble, more significant penalties are needed to ensure the compliance of casinos. For this reason, casinos should be held strictly liable for any losses suffered by minors on their riverboats when the casino has failed to properly check the minor's identification. This penalty measure would effectively encourage Missouri riverboat casinos to whole-heartedly act to bar individuals of less than twenty-one years of age from entry onto their boats. Alternatively, local police officers, not security personnel employed by riverboat casinos, should verify the ages of all potential gamblers before they are allowed entry onto a riverboat casino. This would guarantee objectivity in the application of the "no gamblers under 21" rule. Furthermore, penalties for any licensee not in compliance with Commission rules should be more severe. This would also encourage riverboat casino licensees to comply.

Riverboat casinos should be assessed additional taxes on the "adjusted gross receipts" of their operations. These funds should have to be completely utilized to in funding an effective treatment program for compulsive gamblers.

153. *Id.*

154. *See* Faust, *supra* note 85, at A1.

155. MO. REV. STAT. § 313.805(1), (3) (1998); *see also* MO. REV. STAT. § 313.840(1) (1998).

156. MO. REV. STAT. § 313.817(4) (1998).

This would combat gambling addiction in affected individuals. In addition, the riverboat casino hours of operation should be restricted. They are currently open a staggering twenty-four hours each day.

Finally, it is crucial that full disclosure is provided to all gamblers on Missouri riverboats regarding the Missouri riverboat casino gambling laws, as well as the odds of winning each of the games. The odds of winning each card game and the precise percentage of the total amount wagered on slots being paid out in winnings should be clearly disclosed in plain language on the face of the games. Furthermore, loss limit amounts should be lowered from \$500 to \$200, or even \$100. This would more effectively safeguard gamblers from the financial devastation of high stakes gambling, but still allow recreational gambling.

V. CONCLUSION

The current regulations imposed on the riverboat gambling casino industry in Missouri are inadequate and ineffective. New, more vigorous regulations are needed to effectively safeguard the citizens of Missouri from the severe negative repercussions of increased gambling activity. New regulations would still allow gambling for entertainment purposes, but would substantially eliminate high stakes, problem gambling activity. Immediate, substantial regulatory action by the Missouri State legislature is needed to protect the state's citizens from the multitude of harms that accompany under-regulated casino gambling operations.

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