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BEFORE THE WASHINGTON STATE GAMBLING COMMISSION

In re Petition of Big Fish Games, Inc. for a
Declaratory Order

COMMENT OF CHERYL KATER

1 **INTRODUCTION**

2 Despite naming its core product “Big Fish Casino,” Petitioner Big Fish Games, Inc. (“Big
3 Fish”) is trying hard to portray itself as something other than a gambling operation. It uses a
4 number of euphemisms to that effect such as “free-to-play games,” “social gaming,” “mobile
5 gaming,” and “casual gaming.” But as the United States Court of Appeals for the Ninth Circuit
6 correctly held, Big Fish Casino is gambling under Washington law. There is no reason for this
7 Commission to overturn that finding.

8 Big Fish is right that the Ninth Circuit’s decision was based on the complaint Ms. Kater
9 filed in her lawsuit, which does not contain everything about how Big Fish Casino operates. Ms.
10 Kater does not yet have all of the information about Big Fish Casino’s operation because she has
11 not yet had the opportunity to request any documents or take any depositions in her lawsuit.
12 However, she has learned more about how Big Fish works since she filed her case, and she
13 presents that information in the Factual Background section below. Most importantly, Ms. Kater
14 has learned that some players have lost hundreds of thousands of dollars at Big Fish Casino, that
15 Big Fish hires personal VIP hosts to cater to those biggest of spenders, that the availability of
16 “free” chips is directly tied to how much money players spend, and that the “social gaming”
17 aspects of Big Fish Casino are engineered to pressure addicted players into spending more
18 money.

19 Next, in the Legal Argument section, Ms. Kater explains why she is a “necessary party”
20 under Washington law, which requires the Commission to obtain her consent before issuing a
21 declaratory order, such as the one Big Fish requests, that would substantially prejudice her. Ms.
22 Kater respectfully declines to consent. At the Commission’s request, she also explains what the
23 term “thing of value” means under Washington law and why that term applies to the chips that
24 are at the core of the Big Fish Casino.

25 Finally, in the concluding section, Ms. Kater respectfully offers some questions that she
26 believes the Commission should ask before deciding to grant Big Fish’s petition. Ms. Kater
27 appreciates the careful manner in which the Commission has approached this serious issue, and
28

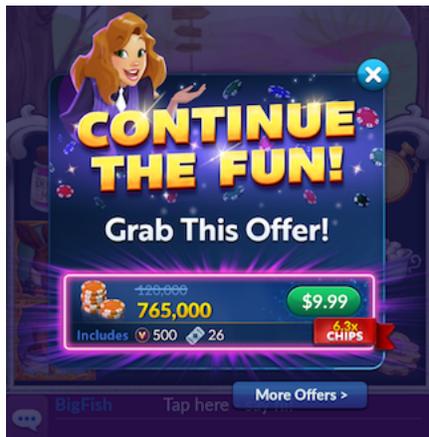
1 she thanks the Commission for taking the time to consider her comment.

2 FACTUAL BACKGROUND

3 I. Big Fish Casino’s Games

4 The Big Fish Casino makes money by offering electronic
5 versions of popular casino games—mostly slot machines, but also
6 blackjack, poker, and roulette. Like the brick-and-mortar casinos
7 that this Commission regulates, Big Fish Casino operates by
8 enticing players to open their wallets to get casino chips, which are
9 required to play the games.

10 Using their chips, players wager at games that operate and
11 look like slot machines. Players at these machines choose how
12 many chips they want to bet each time they spin, which determines
13 the size of the jackpot they stand to win. For example, a player
14 betting \$1 worth of chips might have a “HUGE WIN” and gain ten times that amount.



15 When players lose all of their chips they must ante up
16 with more real money if they wish to continue playing. If a
17 player does have enough chips to spin a slot machine, Big
18 Fish replaces the game with a full-screen message that reads:
19 “Continue the Fun! Grab this Offer!” It then offers a package
20 of chips for \$9.99 to continue playing the game.

21 Big Fish publishes offers of packages of chips for
22 sale, ranging from \$1.99 for 20,000 chips to \$249 for 10
23 million chips. “VIP Members” are entitled to special offers for many more chips at discounted
24 prices. There are 15 published tiers of VIP membership, plus a “secret” 16th tier for the biggest
25 spenders. Big Fish explains that there are two ways to become a VIP: “[p]urchasing chips and
26 gold packages” for real money and “[l]eveling up” by collecting “XP.” (Ex. A.) Players “[g]ain
27 XP by placing bets” with chips that they buy for real money. (Ex. B.) VIP tiers, therefore, are
28 directly tied to the amount of money players spend playing the game. Reaching the highest level

1 VIP tier requires spending more than a quarter million dollars gambling at Big Fish Casino.

2 Big Fish does sometimes offer free chips. Big Fish tells players that “[y]ou automatically
3 get free chips each day that you open Big Fish Casino. For every consecutive day that you play,
4 you get additional chips up to a maximum amount based on your VIP tier.” (Ex. C.) Players are
5 also told that they “[g]et free chips every 30 minutes” and that “[t]he higher your VIP tier, the
6 bigger your bonus.” (*Id.*) In other words, the way that players get “free” chips is to spend money
7 buying chips. Top tier VIP players can get extra bonus chips from their personal VIP concierges,
8 but even those are based on “recent spend.” (Ex. G.) Sending out a personal representative with a
9 free play voucher is a documented technique used by Las Vegas casinos to keep players
10 spending money when they feel like they’re losing. Natasha Dow Schüll, *Addiction by Design:
11 Machine Gambling in Las Vegas* 154-55 (2014) (“Some have raised the question of whether it is
12 ethical to reward players who are losing to keep them playing longer, pointing out that it is
13 illegal to adjust a game’s mathematical odds over the course of a play session.”).

14 Players who do not spend any money get small amounts of free chips—a few thousand a
15 day, which would cost a dollar or two if purchased. That doesn’t get you far. For context, one
16 player reported going through 40 *million* chips in less than an hour of playing slots. (Ex. G.) At
17 some point, players are *always* faced with a choice: spend real money on chips or stop playing.
18 For people addicted to gambling, that’s not really a choice.

19 **II. Big Fish’s Corporate History and Business Model**

20 Although Big Fish claims throughout its petition that its chips have no “real-world value”
21 (a phrase it uses repeatedly) and that there is no charge to play the games, it delivered a starkly
22 different message to its investors when it was owned by Churchill Downs, a publicly traded
23 American company.¹ Publicly traded companies must file annual reports with the U.S. Securities
24 and Exchange Commission, which makes them available to the public on its website. In its first
25 annual report after it bought Big Fish Games, Churchill Downs explained to its investors exactly
26

27 ¹ Earlier this year, Churchill Downs sold Big Fish Games to Aristocrat Technologies, Inc., a
28 Nevada subsidiary of an Australian company that primarily makes slot machines and other
gambling devices, for almost a billion dollars. “Australia’s Aristocrat Leisure nets gaming
company Big Fish for \$990 million,” Reuters (Nov. 29, 2017), [https://cite.law/H2Z8-P2T9;
Stock Purchase Agreement, https://cite.law/5FCQ-HHD8](https://cite.law/H2Z8-P2T9; Stock Purchase Agreement, https://cite.law/5FCQ-HHD8).

1 how it planned to make money on its purchase of the company:

- 2 • our free-to-play strategy assumes that a large number of players will
3 download our games because they are free, and that we will then be able to
effectively monetize the games ... ;
- 4 • even if our free-to-play games are widely downloaded, a significant portion
5 of the revenues generated from these titles are derived from a relatively
small concentration of players ... [.]

6 Churchill Downs, Inc., *2014 Annual Report* 36, <https://cite.law/Y36L-V93L>. Churchill Downs
7 specifically noted that Big Fish’s “business depends on developing and publishing free-to-play
8 and premium paid casual and mobile games that consumers will download and spend time and
9 money on consistently.” *Id.*

10 Big Fish portrays itself as a “social gaming” platform, but that phrase means something
11 very different to Big Fish than it does to the average person. The main social units of Big Fish
12 Casino are called “clubs,” and they are specifically designed to use social pressure to increase the
13 amount of money people spend on its games. Clubs are groups of people who band together in a
14 group and compete with other clubs by playing Big Fish Casino slot machines together to win
15 special bonuses and prizes. The more chips club members win, the more bonuses they get. In the
16 “competitive” clubs, Big Fish warns that members are generally “expected to follow certain Club
17 rules in terms of competing and funding.” (Ex. D.) The club leaders, who are other Big Fish
18 Players, have the ability to kick players out of clubs if they are not contributing to the club by
19 buying, wagering, and winning chips. (*See* Ex. E.) Big Fish tells club leaders who are
20 considering kicking out a member that they should “[c]heck if they’re funding the Club first,
21 from the ‘Members’ page. Losing funding members makes it more difficult to level up the Club
22 – leveling up the Club allows for a larger Club and bigger Club Challenges and bigger Challenge
23 rewards.” (*Id.*)

24 **III. The Problem of Addiction to Mobile Games.**

25 The gambling app industry refers to games like the ones offered at the Big Fish Casino as
26 “free-to-play,” but that phrase is a misnomer. The casino games cost money—a lot of money.
27 And for the gambling addicts who produce a huge share of the Big Fish Casino’s revenue, there
28 are real-world consequences. Ms. Kater lost more than \$10,000 playing the game. Another

1 player, Suzie Kelly, lost more than \$300,000 to her addiction to Big Fish Casino, withdrawing
2 funds from her husband’s retirement account and taking out two home equity loans to pay her
3 Big Fish credit card debts. In 2016, Big Fish’s casino games alone brought in \$182.5 million in
4 revenue. Churchill Downs, Inc., *2016 Annual Report* 41, <https://cite.law/S8RR-GMMZ>.

5 New York University Professor Natasha Dow Schüll, one of the country’s preeminent
6 experts on machine gambling, is unsurprised that people become addicted to these games the
7 same way that they become addicted to more traditional gambling games. As she explains,
8 people who gamble at machines play “not to *win* but simply to *continue*.” Schüll, *supra*, at 2, 12
9 (emphasis in original). “[I]t is not the chance of winning to which [machine gamblers] become
10 addicted; rather, what addicts them is the world-dissolving state of subjective suspension and
11 affective calm they derive from machine play.” *Id.* at 19. All the while, they keep feeding money
12 into the machine, destroying families and causing financial ruin. *See generally id.* at 189-234. As
13 Professor Schüll has stated in media interviews, mobile games like Big Fish Casino operate on
14 those same addictive principles. *See, e.g.,* All Things Considered, “Stuck In The Machine Zone:
15 Your Sweet Tooth For ‘Candy Crush,’” NPR (June 7, 2014), <https://n.pr/SBIVN8>. Indeed, Big
16 Fish’s new corporate owner, Australian gambling machine company Aristocrat, invented the
17 strategy of providing frequent “wins” of an amount less than the initial bet, a strategy that
18 increases players’ perception of winning (even as they lose) and drives addiction. Schüll, *supra*,
19 at 121-27.

20 Washington has recognized that unregulated for-profit gambling contributes to the
21 devastating problem of gambling addiction, which affects thousands of adults and adolescents
22 across Washington and the United States. *See* 2005 Wash. Sess. Laws 1605. Internet gambling is
23 especially pernicious in this regard because it makes gambling uniquely accessible to teenagers.
24 Evergreen Council on Problem Gambling, *What’s the Big Deal About Teen Gambling?*,
25 <https://cite.law/H35Q-393T> (warning parents that “[o]ne-third of Washington teens surveyed
26 said they had gambled in the last 12 months” and thousands of Washington high school seniors
27 “are already having problems because of gambling”). In fact, Churchill Downs alerted investors
28 that increased regulatory scrutiny of its marketing to children could prove a drain on its earnings.

1 See Churchill Downs, Inc., 2014 Annual Report 36, <https://cite.law/Y36L-V93L>. Like
2 Washington’s legal casinos, Big Fish Casino does have an age limit. Unlike regulated casinos,
3 that age limit is 13 years old. (Decl. of Andy Vella dated July 3, 2018, Ex. A at 2.)

4 **IV. Kater Litigation History**

5 After losing well over \$10,000 on Big Fish’s games, Cheryl Kater filed a class action
6 lawsuit on behalf of all players who lost money at Big Fish Casino against Big Fish’s then-parent
7 company, Churchill Downs. The basis of her lawsuit was Washington’s Recovery of Money Lost
8 Gambling Act, RCW 4.24.070, which permits recovery of money lost at illegal gambling games
9 from either the winner or the proprietor of the game. Ms. Kater sued Churchill Downs because
10 she played Big Fish Casino while Churchill Downs was the proprietor of the game.²

11 Ms. Kater initially lost her case, with the judge finding that because the chips at Big Fish
12 Casino cannot be redeemed for cash, the games are not gambling. Ms. Kater then appealed that
13 decision to the United States Court of Appeals for the Ninth Circuit. She argued that Big Fish
14 Casino’s chips are “things of value” under Washington law, and that nothing in the statute
15 requires the ability to cash out as a prerequisite for a game of chance to be gambling. The three-
16 judge panel of the Ninth Circuit unanimously agreed with her, with Hon. Milan D. Smith, Jr.
17 writing that “despite collecting millions in revenue, Churchill Downs, like Captain Renault in
18 *Casablanca*, purports to be shocked—shocked!—to find that Big Fish Casino could constitute
19 illegal gambling. We are not.” *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 785 (9th Cir. 2018).

20 Churchill Downs disagreed with the decision and hired well-known attorneys from two
21 major Washington, DC law firms to file a petition for rehearing by a larger panel of Ninth Circuit
22 judges. The granting of such a petition is a two-step process. After all of the 22 active judges on
23 the Ninth Circuit receives a copy of the petition, any one of them can request a vote on whether
24 or not to grant it and rehear the case. If a judge requests a vote, then the judges are polled to

25
26 ² Big Fish is not currently named as a defendant in the *Kater* case. At the July meeting, Big
27 Fish’s counsel stated that Ms. Kater “opposed” Big Fish’s participation in the lawsuit.
28 (Transcript at 0:47:06.) That statement is misleading. Ms. Kater opposed Churchill Downs’
attempt to get out of the case entirely and replace itself with Big Fish Games before she even had
a chance to learn who was responsible for what conduct. (Ex. F.) Depending on what she learns
in discovery, she reserves the right to add Big Fish as a defendant. In any event, as explained
below, Big Fish’s status as a non-party to the *Kater* case is irrelevant.

1 determine if there is a majority in favor of rehearing the case. Not a single judge requested to
2 hold a vote on Churchill Downs' petition. The case is currently back in front of the district court
3 in Tacoma. Still unhappy with the Ninth Circuit's holding, Big Fish now seeks relief from this
4 Commission.

5 **LEGAL ARGUMENT**

6 The Commission requested briefing on several legal issues, which Ms. Kater addresses
7 here. First, because Ms. Kater is a necessary party who would be substantially prejudiced by the
8 declaratory order that Big Fish is asking for, her consent is required before the Commission
9 enters that order. She is a necessary party because her success in her lawsuit may be affected by
10 the Commission's decision. She would be substantially prejudiced by the entry of the order Big
11 Fish is asking for because Big Fish and Churchill Downs intend to use that order against her in
12 her lawsuit in order to argue that the court no longer has to listen to the Ninth Circuit's decision.

13 Second, Big Fish's chips are things of value under Washington law. As the Ninth Circuit
14 explained, the definition of "thing of value" under Washington law unambiguously includes Big
15 Fish Casino's chips because those chips are "a form of credit ... involving extension of ...
16 entertainment or a privilege of playing [Big Fish Casino] without charge." *Kater*, 886 F.3d at
17 787. Big Fish largely repeats the same arguments that its former parent company made to the
18 Ninth Circuit, and which the three-judge panel unanimously rejected. The argument that the
19 Ninth Circuit did not consider—that Big Fish Casino is purportedly not gambling because it
20 gives away free chips—is factually extremely dubious.

21 Third, although it is not directly related to the "thing of value" definition, Ms. Kater
22 wishes to address the Commission's social gaming pamphlet, which is discussed at length in Big
23 Fish's petition. As the Ninth Circuit correctly recognized, the pamphlet is the well-intentioned
24 creation of the Commission's staff based on their understanding of the Commission's priorities,
25 not an official statement of the law. The Commission's records do not suggest that any
26 commissioner ever saw the pamphlet before it was published, let alone approved it. If the
27
28

1 Commission or a court determines that the pamphlet is not correct, then it can be revised.

2 **I. The Commission Requires Ms. Kater’s Consent Before Issuing the Declaratory**
3 **Order that Big Fish Has Requested.**

4 Washington law provides for an administrative agency to decide the applicability of its
5 rules to a specific situation in a declaratory order proceeding, rather than by traditional
6 rulemaking. However, there are limitations on when the declaratory order procedure can be used.
7 Chief among those is the consent limitation. Before issuing a declaratory ruling, the Commission
8 must obtain the written consent of every person who is 1) a necessary party and 2) would be
9 substantially prejudiced by the declaratory ruling. RCW 34.05.240(7); WAC 230-17-180(5).

10 **A. Ms. Kater Is a Necessary Party Under Washington Law.**

11 When the Washington Legislature drafts a law, it does not do so on a blank slate. Rather,
12 it does so with an understanding that certain terms have commonly understood legal meanings,
13 and with the intention to use those meanings. *Ralph v. State Dep’t of Nat. Res.*, 182 Wn.2d 242,
14 248 (2014). “Necessary party” is a legal term of art that has been used by Washington and
15 federal courts for over a century. *See, e.g., Pain v. Isaacs*, 10 Wash. 173, 175 (1894); *Waterman*
16 *v. Canal-Louisiana Bank & Tr. Co.*, 215 U.S. 33, 49 (1909) (“Davis is a necessary party, in the
17 sense that he has an interest in the controversy”). By 1988, when the Legislature enacted the
18 statute that is at issue here, the meaning of that term was well-set in Washington’s law: “A
19 necessary party is one who has sufficient interest in the litigation that the judgment cannot be
20 determined without affecting that interest or leaving it unresolved.” *Harvey v. Bd. of Cty.*
21 *Comm’rs of San Juan Cty.*, 90 Wn.2d 473, 474 (1978). Big Fish suggested at last month’s
22 hearing that the necessary party standard was “a high standard[.]” (Transcript of July Meeting at
23 0:51:17.) But the Washington Supreme Court has held precisely the opposite, calling the
24 necessary party standard “a low standard that requires a showing of possibility that the failure to
25 join will impair or impede the party’s interest.” *Burt v. Washington State Dep’t of Corr.*, 168
26 Wn.2d 828, 833 (2010). There is no reason to believe that the term means anything different in
27 this context.

28 Big Fish’s counsel also suggested at the July meeting that this standard properly applied

1 only to court cases and not to administrative proceedings, but the law does not support that
2 conclusion. The declaratory order process before the gambling commission is the administrative
3 equivalent of a declaratory judgment proceeding.³ In fact, it *replaces* the normal declaratory
4 judgment procedure in the context of an agency action. *See Alsager v. Bd. of Osteopathic Med. &*
5 *Surgery*, 196 Wn. App. 653, 673 (2016). And in the declaratory judgment context, the rule is the
6 same. *Primark, Inc. v. Burien Gardens Assocs.*, 63 Wn. App. 900, 906 (1992) (“A necessary
7 party for these purposes is defined as one whose ability to protect its interest in the subject matter
8 of the litigation would be impeded by a judgment. Such a party must claim a sufficient interest in
9 the litigation such that the judgment cannot be determined without affecting that interest.”).

10 Other Washington administrative agencies have arrived at the same conclusion. For
11 example, in *In Re Cascade Nat. Gas Corp.*, No. UG-001119 (Jan. 19, 2001), *available at*
12 <https://cite.law/BU5U-TB3Y>, the Utilities and Transportation Commission considered a petition
13 by a gas company requesting a declaration that the company did not require a certificate from the
14 commission to provide certain services. The petition arose directly out of a dispute with another
15 gas company that did hold a certificate and did not want its territory to be encroached upon. *Id.*
16 ¶¶ 26-28. The commission noted that the declaratory order process was inappropriate in that
17 context because it would require the consent of “all certificated gas companies” as necessary
18 parties. *Id.* ¶ 13.

19 In this case, Ms. Kater easily satisfies the standard to be a necessary party. She has a
20 significant interest in whether or not Big Fish Casino is gambling, because her pending lawsuit
21 depends on that exact question. Instead of having the matter decided by a jury of Washingtonians
22 after discovery and a fair trial, Big Fish is seeking to shortcut the judicial process by asking this
23 Commission to effectively decide Ms. Kater’s case based on its one-sided and misleading
24 characterization of its business.

25 While Big Fish does not explain its plan in its petition, there can be no real question
26

27 ³ A declaratory judgment action is when a person files a lawsuit asking a court to determine
28 the rights of the parties rather than to award money damages. Often, it’s used by someone who
believes they’re about to get sued and does not want to wait for the other side to sue them. For
example, an insurance company who does not believe it has to cover a claim might file a
declaratory judgment action to ask the court to decide that it does not have to pay.

1 about what it intends to do. At every step of the litigation in the *Kater* case, Churchill Downs has
2 invoked the pamphlet created by the Commission’s staff (discussed in detail below) and urged
3 the courts to defer to what it says. *See Kater*, 886 F.3d at 788. The goal is the same here. If the
4 Commission finds that Big Fish Casino is not gambling, Churchill Downs *will* argue in court that
5 the decision is dispositive and ends Ms. Kater’s case. Big Fish even concedes that the petition
6 was brought as a direct result of the Ninth Circuit’s ruling in Ms. Kater’s case. (Pet. ¶ 6.)

7 Whether or not that plan is successful, this petition affects Ms. Kater’s ability to protect
8 her interests in court. That is true regardless of whether Big Fish is a party in the *Kater* litigation.
9 She is therefore a necessary party to this proceeding.

10 **B. Ms. Kater Would be Substantially Prejudiced by an Adverse Ruling**

11 Being a necessary party is not enough to trigger the consent requirement. If the necessary
12 party would not be substantially prejudiced by the entry of the declaratory order, then the
13 Commission can proceed without written consent. RCW 34.05.240(7); WAC 230-17-180(5).
14 Because Ms. Kater *would* be substantially prejudiced by the declaratory order Big Fish requests,
15 her consent is required.

16 It is at best disingenuous for Big Fish to suggest that Ms. Kater will not be substantially
17 prejudiced when the very purpose of the petition is to obtain a ruling that will allow Churchill
18 Downs to win its case against Ms. Kater. Ms. Kater has spent the last three years prosecuting her
19 lawsuit. After losing in the district court, she appealed and prevailed in the Ninth Circuit. But if
20 the Commission enters a declaratory order finding that Big Fish Casino is not gambling,
21 Churchill Downs and Big Fish will argue that the court in Ms. Kater’s case no longer has to
22 listen to the Ninth Circuit. They will say that the law is now “clarified” and that this Commission
23 has definitively ruled that their games are not gambling. That will prejudice Ms. Kater because it
24 would allow Big Fish and Churchill Downs to negate the victory that Ms. Kater won in court.
25 Courts regularly find that a plaintiff is prejudiced when defendants who don’t like the answer
26 they got in one forum try to seek a remedy in another. *See, e.g., Martin v. Yasuda*, 829 F.3d
27 1118, 1126 (9th Cir. 2016) (“[I]n order to establish prejudice, the plaintiffs must show that, ...
28 that they would be forced to relitigate an issue on the merits on which they have already

1 prevailed in court[.]”); *Steele v. Lundgren*, 85 Wash. App. 845, 859 (1997) (holding that
2 “[p]rejudice can be substantive, such as when a party loses a motion on the merits and then
3 attempts, in effect, to relitigate the issue” in another forum).

4 Ms. Kater is a necessary party because her interest in her lawsuit may be affected by the
5 declaratory order Big Fish requests. She will be substantially prejudiced by it because Big Fish
6 and Churchill Downs will then use that order against her in her own lawsuit. Accordingly,
7 without Ms. Kater’s written consent, this Commission’s rules and Washington law prevent the
8 entry of an order declaring that Big Fish Casino is not a gambling game.⁴

9 **II. The Ninth Circuit Correctly Found that Big Fish Casino Is Gambling Under**
10 **Washington Law Because Its Chips are Things of Value.**

11 As discussed above, the Commission should not reach the substantive matters of this
12 declaratory petition. However, the Commission is correct to recognize that these are important
13 issues, and Ms. Kater appreciates the opportunity to provide the Commission with more detailed
14 information about Big Fish Casino and how it qualifies as gambling under Washington law.

15 **A. Big Fish Casino Chips are “Things of Value” Under RCW 9.46.0285.**

16 In Washington, “gambling” is defined by statute as “staking or risking something of
17 value upon the outcome of a contest of chance or a future contingent event not under the
18 person’s control or influence, upon an agreement or understanding that the person or someone
19 else will receive something of value in the event of a certain outcome.” RCW 9.46.0237. There is
20 no dispute that Big Fish Casino’s games are contests of chance, as there is nothing the player can
21 do to affect the outcome. The previously open question, now resolved by the Ninth Circuit, was
22 whether the chips that are wagered at Big Fish Casino count as “something of value” under the
23 statute.

24 RCW 9.46.0285 defines “thing of value” to include three categories:

25 [1] any money or property, [2] any token, object or article exchangeable for money
26 or property, or [3] any form of credit or promise, directly or indirectly,

27 ⁴ Ms. Kater acknowledges that she would not be prejudiced by a declaratory order—as
28 suggested by Commissioner Troyer—holding that Big Fish Casino *is* gambling. (*See* Transcript
of July Meeting at 0:56:02.) However, she does not request that such an order be entered, and she
agrees with Commissioner Troyer that this is a matter better left to the court. (*See id.* at 0:56:20.)

1 contemplating transfer of money or property or of any interest therein, or involving
2 extension of a service, entertainment or a privilege of playing at a game or scheme
3 without charge.

4 Since the statute uses the word “or,” an item need only fall into one of these categories to meet
5 the “thing of value” definition. *See State v. Hardtke*, 183 Wn.2d 475, 483 (2015) (finding the
6 legislature’s use of the word “or” to create “separate and distinct categories”).

7 For this case, the relevant part of the statute is the last one. “[T]he virtual chips are a
8 ‘thing of value’ because they are a ‘form of credit ... involving extension of ... entertainment or a
9 privilege of playing [Big Fish Casino] without charge.’” *Kater*, 886 F.3d at 787. The Ninth
10 Circuit accurately and succinctly explained why:

11 The virtual chips, as alleged in the complaint, permit a user to play the casino games
12 inside the virtual Big Fish Casino. They are a credit that allows a user to place
13 another wager or re-spin a slot machine. Without virtual chips, a user is unable to
14 play Big Fish Casino’s various games. Thus, if a user runs out of virtual chips and
15 wants to continue playing Big Fish Casino, she must buy more chips to have “the
16 privilege of playing the game.” Likewise, if a user wins chips, the user wins the
17 privilege of playing Big Fish Casino without charge. In sum, these virtual chips
18 extend the privilege of playing Big Fish Casino.

19 *Id.* (internal citations omitted).

20 To arrive at this determination, the Ninth Circuit relied on the Washington Court of
21 Appeals’ decision in *Bullseye Distributing LLC v. State Gambling Commission*, 127 Wn. App.
22 231 (2005). *Bullseye* involved a machine that “utilized play points that [players] obtained by
23 purchase, by redeeming a once-a-day promotional voucher, or by winning a game on the
24 machine.” *Kater*, 886 F.3d at 787. Agreeing with this Commission, the *Bullseye* court
25 “concluded that the game’s play points were ‘things of value’ because ‘they extend[ed] the
26 privilege of playing the game without charge,’ even though they ‘lack[ed] pecuniary value on
27 their own.’” *Id.* (quoting *Bullseye*, 127 Wn. App. at 241). In other words, it didn’t matter that the
28 game could be played for free sometimes, because the prize that people could win allowed them
to continue playing the game. That is exactly how Big Fish Casino operates.

Big Fish offers the Commission the same argument that it made to the Ninth Circuit: that
Bullseye is irrelevant because it centered on players’ ability to redeem points for money or
merchandise. (Pet. ¶ 24.) The Ninth Circuit expressly disagreed:

1 Contrary to Churchill Downs' assertion, nothing in *Bullseye* conditioned the court's
2 determination that the play points were "thing[s] of value" on a user's ability to
3 redeem those points for money or merchandise. Instead, *Bullseye*'s reasoning was
4 plain—"these points fall within the definition of 'thing of value' because they
5 extend the privilege of playing the game without charge." *Id.* at 1166. Based on the
6 reasoning in *Bullseye*, we conclude that Big Fish Casino's virtual chips also fall
7 within section 9.46.0285's definition of a "thing of value."

8 *Kater*, 886 F.3d at 787-88. That's what's going on here: even if Big Fish Casino chips do not
9 have any inherent pecuniary value, they nevertheless extend players the privilege of playing the
10 game, which would otherwise cost money. That makes them things of value.

11 Churchill Downs presented the Ninth Circuit with the argument that "other federal courts
12 that have held that certain 'free to play' games are not illegal gambling." *Id.* at 788. The Ninth
13 Circuit was also not persuaded by that argument, noting that the same cases Big Fish cites in its
14 petition "involve[] analysis of different state statutes, state definitions, and games." *Id.* Instead of
15 other states' laws, the Ninth Circuit's "conclusion turn[ed] on Washington statutory law,
16 particularly its broad definition of 'thing of value'...." *Id.* That is the correct analysis.

17 The Ninth Circuit did not consider the argument, which Big Fish raises here, that its
18 periodic distribution of free chips means that the game is free. *See id.* at 787. But as a factual
19 matter, **Big Fish Casino is not free**. If players run out of chips, they cannot continue to play
20 unless they either spend money or wait for Big Fish to give them some more promotional chips.
21 As Professor Schüll explained, that continuation of play is exactly what Big Fish's big spenders
22 are addicted to. Further, the mechanism is the same as how the machine described in *Bullseye*
23 operated. Everyone got to play for free every single day, but additional plays after that cost
24 money. *See Bullseye*, 127 Wn. App. at 235-36. This Commission argued that this fact was
25 irrelevant to whether or not the machine was gambling, and the court agreed. *Id.* at 242. Big Fish
26 Casino differs only in that instead of having to go to a bar or a restaurant to play, people can play
27 anytime and anywhere on their phones.⁵

28 And as explained in the background section above, even Big Fish's promotional chips
aren't really free. The amount and the availability of those "free" chips are directly based on

⁵ Although the Ninth Circuit did not need to consider the matter, the idea that Big Fish's chips aren't merchandise just because they are "virtual" is highly suspect. Any other computer software is "virtual" too, but nobody can argue that a license key for Microsoft Office has no value just because it cannot be used outside of Microsoft Office.

1 “recent spend” —that is, the amount of money that the player has spent on chips recently. (Ex.
2 G.) Worse, Big Fish uses the promise of “free” chips as a predatory tool to get addicted players
3 to come back and put down more money. If a player hasn’t spent enough money recently, then
4 Big Fish won’t give them any more free chips. At some point, players *always* have to put in cash
5 or stop playing. That fact, combined with the addictive nature of machine gambling, is how
6 players lose tens or hundreds of thousands of real-world dollars on Big Fish’s casino games.

7 As far as the statute, it contains nothing to suggest that something that otherwise meets
8 the statutory definition of “thing of value” is no longer a thing of value if it is given away for free
9 on occasion, or even regularly. Churchill Downs’s argument also doesn’t line up with common
10 sense. If a grocery store gives away free samples of cheese, that doesn’t mean that cheese has no
11 value; it’s simply an attempt to get consumers to buy cheese. *See, e.g., Bailey v. Morales*, 190
12 F.3d 320, 325 (5th Cir. 1999) (“[F]ree samples and risk-free trials of products are common
13 marketing tools.”). And despite its protestations, even Big Fish’s internal accounting practices
14 treat the chips as having value, not booking them as revenue until after they are wagered and lost
15 (which takes, on average, a mere three days). *See Churchill Downs, Inc., 2016 Annual Report* 65,
16 <https://cite.law/S8RR-GMMZ>

17 Further, free slot play at traditional casinos is now ubiquitous and “has largely replaced
18 the issuance of cash for promotions, rebates and mail offers[.]” Steven M. Gallaway, “The Beat
19 Goes On,” *Global Gaming Business Magazine* (July 26, 2016), <https://cite.law/5HRN-K742>.
20 This state is no exception to the trend. Regular players at the Ilani Casino in Ridgefield can earn
21 “Status Points” that entitle them to free slot play;⁶ 7 Cedars Casino in Sequim offers \$5 of free
22 play to seniors every Monday;⁷ and women who play frequently can receive up to \$25 in promo
23 play on “Ladies Day Wednesdays” at The Point Casino in Kingston.⁸ And whether it is 7 Cedars
24 or Big Fish, the same thing happens when the promotional play runs out: players have to pay.

25 As the Ninth Circuit correctly held, Big Fish Casino’s chips meet the statutory definition
26 of “thing of value” because they entitle players to keep playing the game without charge.

27 ⁶ “Super Slot Play Thursdays,” <https://cite.law/KRN5-T49F>.

28 ⁷ “Savvy Seniors,” <https://cite.law/J6DC-27LV>.

⁸ “Ladies Day Wednesdays,” <https://cite.law/3K8T-E2QM>.

1 Because Big Fish Casino games permit players to wager those chips at games of chance for the
2 ability to win more, they are gambling games under Washington law.

3 **III. A Pamphlet Produced by Staff Should Not Prevent the Commission’s**
4 **Careful Study of this Issue.**

5 Although it does not relate directly to the definition of “thing of value,” Ms. Kater wishes
6 to offer some clarification on the pamphlet created by the Commission’s staff that Big Fish says
7 supports its view of the law. The pamphlet is a two-page document that is in the lobby of the
8 Commission’s office in Lacey, and also on the Commission’s website. It says that it provides
9 “general guidance” and advises people with questions to contact their attorney.

10 Churchill Downs presented the pamphlet to the Ninth Circuit, arguing that it represented
11 the settled view of the Commission. The Ninth Circuit chose not to defer to the statements in the
12 pamphlet because it concluded that the pamphlet did not necessarily represent the official view
13 of the Commission. *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 (9th Cir. 2018). This is
14 what Big Fish’s counsel was referring to when she said that the pamphlet was not “formal”
15 enough.

16 The Commission operates knowing that its interpretations of statutes must be “clear and
17 definitive” for a court to defer to them. *See W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*,
18 140 Wn.2d 599, 612 (2000); *see also* RCW 34.05.230 (setting out procedure for agency to
19 communicate an interpretive statement to the public). This is a good rule because it allows the
20 Commission to have open dialogue with its staff and with the public on important matters
21 without being concerned that offhand statements or informal pamphlets will be held up later as
22 an official legal position in a court case. In fact, at the May 2013 meeting, former Commission
23 chair John Ellis questioned staff members’ conclusion that certain mobile games—including Big
24 Fish Casino—are not gambling. (Ex. H at 5.) A few months later, former Commissioner
25 Geoffrey Simpson raised a similar concern about the value of virtual currencies. (Ex. I at 12-13.)

26 As far as the pamphlet is concerned, Big Fish has never provided any evidence that it has
27 been adopted as the official position of the Commission. *See Gerow v. Wash. State Gambling*
28 *Comm’n*, 181 Wn. App. 229, 239 (2014) (holding that Gambling Commission rules related to

1 whether certain devices must be licensed require a three-vote majority to be adopted). The
2 Commission’s records disclose that it was prepared by Jim Dibble, David Trujillo, Mark Harris,
3 and Amy Hunter, with input from Susan Newer. (*See* Ex. J.) The records contain no indication
4 that any commissioner ever approved or even reviewed the pamphlet before it was provided to
5 the public, further demonstrating that the Ninth Circuit was right not to defer to it.⁹

6 The pamphlet reflects the Commission staff’s understanding of the law at the time the
7 pamphlet was prepared (given the Ninth Circuit’s decision in *Kater*, it is now out of date) and
8 specifically says that it is intended to provide only “general guidance.” The experience and
9 dedication of the Commission’s full time staff is invaluable, but it is the appointed
10 commissioners, not the staff, who the Legislature has vested with the authority to interpret the
11 state’s laws. If the Commission considers the matter in this or another proceeding and arrives at a
12 different conclusion than is stated in the pamphlet, then Director Trujillo and his capable staff
13 will certainly be able to update it to reflect an accurate statement of the law.

14 CONCLUSION

15 Ms. Kater is a necessary party who would be substantially prejudiced by the declaratory
16 order that Big Fish requests. Accordingly, that order cannot be entered without her consent. Nor
17 need it be, because the Ninth Circuit ruled correctly that Big Fish Casino is, indeed, gambling.
18 Accordingly, Big Fish’s petition should be denied.

19 If the Commission is inclined to rule substantively on Big Fish’s petition, it should first
20 require Big Fish to publicly answer some questions about how it operates. Because Ms. Kater’s
21 case is at an early stage, she has not yet had the opportunity to take discovery, and Big Fish’s
22 lawyers have suggested that they are going to continue trying as hard as they can to make sure
23 that she never can. But there are some deeply troubling aspects of Big Fish’s business model that
24 the Commission should know more about before giving it a stamp of approval. Big Fish’s
25 internal documents detailing its product design strategy are likely to be helpful here, and the
26 Commission has every right to request to inspect them or even issue a subpoena. *See* RCW

27 ⁹ Ms. Kater’s counsel requested “[a]ll records related to the creation, drafting, preparation, or
28 publication of the pamphlet[.]” In response, the Commission did not produce any communication
with any commissioner.

1 9.46.140. As a start, Ms. Kater proposes the following questions:

2 1. How much of Big Fish’s revenue comes from games that look identical to slot
3 machines? Another similar company, Double Down, testified at last month’s hearing that virtual
4 slot machines were their largest money-maker.

5 2. How long can players play for free, and what happens when they run out of free
6 play? Big Fish talks at length about how its games are free to play, but that clearly isn’t the
7 whole story. Its reports to investors say both that the game is “monetized” via sale of chips, and
8 that the casino brought in more than \$180 million in a single year.

9 3. Does Big Fish design its games to maximize the amount of time and money
10 players spend, and if so, how? Big Fish’s internal documents are unlikely to talk about addiction
11 exactly, but they are likely to discuss how to maximize the amount of time its players spend
12 interacting with its games. They are also likely to discuss when and how free chips are allocated.
13 If those chips are allocated in such a way to encourage people to spend money, that is no
14 different from designing the games to be addictive.

15 4. What does Big Fish do to protect children from becoming addicted to its pay-per-
16 play games? Big Fish’s terms of service allow players as young as 13. There are many media
17 reports of children spending thousands of dollars of their parents’ money on games similar to Big
18 Fish Casino. *See, e.g.*, Bourree Lam, “Amazon Will Refund \$70 Million Worth of App
19 Purchases Made by Kids,” *Atlantic* (Apr. 5, 2017), <https://cite.law/7Z6M-UJAN>. Some of the
20 slots on offer appear to be themed to attract children, such as “Treasure Trove Island Cove,”
21 which features a cartoon pirate.

22 5. How much of Big Fish’s revenue comes from players who are losing thousands of
23 dollars or more on its games? Churchill Downs’s annual reports note that a large chunk of its
24 income comes from a relatively small number of players.

25 6. Setting aside players who only play for free, how much does the average paying
26 player lose on Big Fish Casino on a weekly, monthly, and yearly basis?

27 7. Are there limits on how much people can wager at the game or in one spin? Ms.
28 Kelly reports losing \$300,000 at Big Fish Casino’s slot machines, and she says that she isn’t

1 alone.

2 8. What is Big Fish’s policy regarding persons who ask to exclude themselves from
3 the game?

4 If Big Fish wants this Commission to approve of its operation—whether in a declaratory
5 order proceeding or in a different kind of proceeding—then the public deserves to answers to
6 these questions.

7
8 Respectfully submitted,

9 **CHERYL KATER,**

10 Dated: August 2, 2018

By: /s/ Alexander G. Tievsky
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17 *Admitted in Illinois. Illinois permits Washington attorneys to appear before Illinois
18 administrative agencies. Ill. Sup. Ct. R. 707; see WAC 230-17-045(3).

Exhibit A



[Big Fish Casino](#) [VIP Rewards Program](#) [VIP FAQ](#)

Articles in this section

How do I become a VIP?



Big Fish

Updated 1 day ago

How do I become a VIP?

There are two ways to become a VIP:

- [Purchasing chip and gold packages](#)
- [Leveling up](#)

VIP Tier	VIP Points Required to Reach Tier
Tier 0	0
Tier 1	250
Tier 2	1,250
Tier 3	3,750
Tier 4	11,250
Tier 5	41,250
Tier 6	103,705
Tier 7	178,750
Tier 8	441,250
Tier 9	841,250

Tier 10	1,516,250
Tier 11	3,266,250
Tier 12	7,391,250
Tier 13	13,391,250
Tier 14	29,641,250
Tier 15	64,641,250

Purchasing

For every purchase you make, you'll earn VIP Points. The amount of VIP Points earned depends on your current VIP tier.

As you continue to collect VIP Points, you'll move from one VIP tier to the next.

VIPs Tier 4 and above have exclusive access to several benefits, including early access to slot machines, special VIP-only slot machines, as well as the VIP Lounge. Anyone who becomes a VIP by purchasing at least \$5 or more will have access to these benefits even before becoming VIP T4!

Leveling Up

You'll also earn VIP points every time you collect enough XP to [level up](#).

Exhibit B



[Big Fish Casino](#) > [How to Play](#) > [General](#)

Articles in this section ▼

XP & Leveling Up



Big Fish

Updated 20 hours ago

What is XP, and how do I gain it?

Experience Points (XP) reflect your accomplishments in Big Fish Casino.

Gain XP to level up, earn rewards, and unlock new games and features.

How do I get XP?

Gain XP by placing bets.

What rewards do I get for gaining XP?

Gain XP to level up.

As you level up, you'll earn cool new titles, get rewards, and unlock new games and features.

Rewards:

- Chips
- Gold
- Tickets
- Free spins
- VIP Points

Unlockable items:

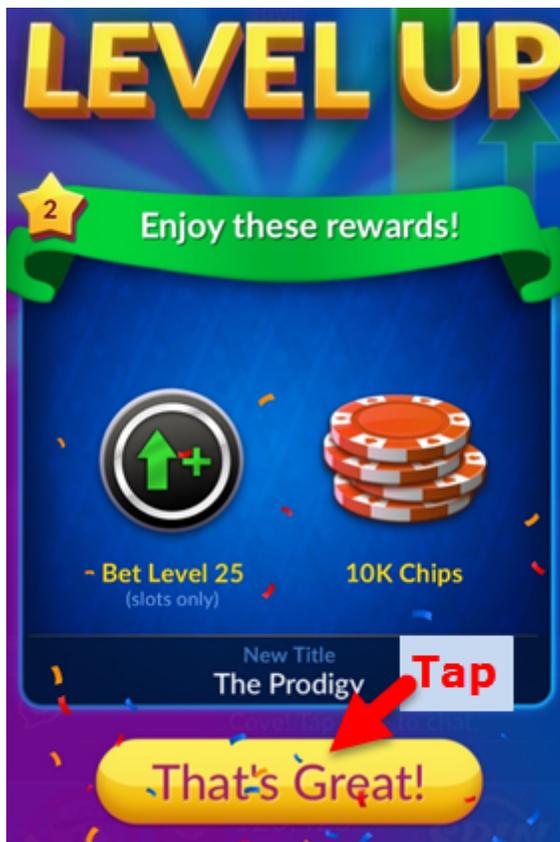
- Slot machines*
- Higher line bets
- Gifts

**If you installed Big Fish Casino before January 5, 2016, you will continue to have access to any slot machine that you already play, provided it is still included in the game. Future slot machines will unlock based on your level.*

How do I collect my reward?

You'll receive an in-game notification when you level up.

Tap the button within the notification to accept your reward.



Depending on the game or the type of slot machine you're playing, the Level Up notification may appear at different times:

- **Slots:** Level Up notification will appear while you're playing the slot machine.
- **Classic Slots and other games** (Roulette, Texas Hold 'Em Poker, etc.): Level Up notification will appear the next time you close/reopen Big Fish Casino and return to the Lobby or the next time you exit a new format slot machine.*

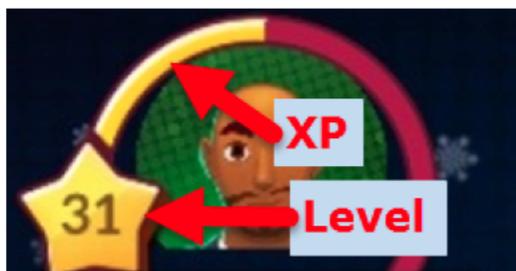
**PC players: You must level up at a new format slot machine to see the notification and get your reward. If you level up while playing an original format slot machine, you will not receive the reward until the next time you level up at a new format machine. At that time, you will receive both the current and previous rewards.*

How do I check my XP and level?

Your level and XP are displayed directly over your profile picture.

Your level appears within a star-shaped badge in the bottom-left corner of your picture.

The bar around your profile picture reflects your XP. It shows how much XP is needed to go from your current level to the next level. The XP bar fills from left to right. Once the bar is filled, you'll level up and the bar will reset.



Was this article helpful?

430 out of 661 found this helpful

Have more questions? [Submit a request](#)

Return to top

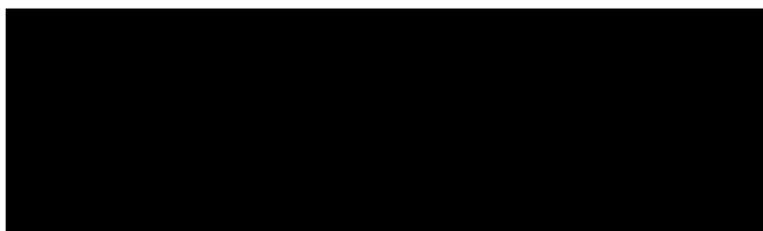


Exhibit C



[Big Fish Casino](#) [Chips / Gold / Purchasing](#) [Free Chips](#)

Articles in this section

How do I get free chips?



Big Fish

Updated 3 days ago

How do I get free chips?

There are a bunch of ways to get free chips:

In-game Bonuses

- [Return Bonus](#) - You automatically get free chips each day that you open Big Fish Casino. For every consecutive day that you play, you'll get additional chips up to a maximum amount based on your VIP tier.
- [Daily Friend Bonus](#) - Add friends to get more Daily Bonus chips. You'll get 1,000 chips per friend up to a maximum of 25,000 chips.
- [Chip Bonus](#) - Get free chips every 30 minutes. The higher your VIP tier, the bigger your bonus.
- [Daily Spin](#) - Spin once each day when you first open the game.
- [Videos](#) - Watch videos to get chips.

Facebook

- Facebook - Redeem promotions on the [Big Fish Casino Facebook page](#). You do not need a Facebook account to redeem these promotions.

Email

- Email newsletter - Redeem promotions in the Big Fish Casino email newsletter.

Redeeming in-game currency:

- [Tickets*](#) - Redeem tickets for the chance to win chips in the Reward Center.
- [Gold**](#) - Exchange gold for chips.*

**Tickets can be won in gameplay. They can also be received as part of an in-app purchase.*

***Gold can be won in gameplay. It can also be purchased via an in-app purchase.*

[Facebook](#) [Twitter](#) [Link](#) [Google](#)

Exhibit D



[Big Fish Casino](#) > [Clubs / Chat / Friends](#) > [Clubs](#)

Articles in this section



Club Member Dos and Don'ts



Big Fish

Updated 3 hours ago

Interested in joining a Club, or already a member?

Here are some tips on getting the most out of Clubs and having a fun time playing Casino with others!

Do:

- Read the descriptions of Clubs to find one that's the best for you.
 - If you'd just like to have fun, hang out, and socialize with others while playing, look for a Club not requiring certain amounts of Club challenge activity or donations.
 - If you're more competitive, look for a Club competing with others or focused on completing challenges, possibly with certain requirements to stay active.
- Search for a Club type that suits you best.
 - Look for a "Social" Club if you'd like to chat and meet new friends, without any expectations regarding funding or competing.
 - Look for a "Casual" Club if you'd like a Club that aims to grow and participate in Club tournaments, but doesn't have very strict expectations. Members of this type of Club should try to help out as they can, but it's understood that not everyone

can contribute all of the time. This type of Club is the middle ground between Social and Competitive Clubs.

- Look for a "Competitive" Club if you'd like to compete with other clubs and rank high in the Club tournaments. Members of these Clubs will be expected to follow the Club leader's rules regarding competing and funding. Aim to win those Club tournaments!
- If your current Club isn't the right fit, that's ok – you can leave and join a new Club, or even start a Club of your own! To leave a Club, tap "More Options" on the Club page, then tap "Leave Club". Try out more Clubs and experiment to find the one that suits you best!
- Participate in Club chat to talk with other members in the Clubs, even if they're at a different slot machine! Tap the "Slot" button to the left of the chat window to switch between chatting with the table and chatting with your Club (non-Classic slots only).
- Work with your fellow Club members to complete Daily Challenges, by spinning in slot machines. Complete the challenges to earn Club bonuses!
- If it's something you like, compete with other Clubs to get to the top! Also compete in Club tournaments, coming soon!
- Invite your friends to the Club, to stay in touch and play together more easily.
- Share the Club with friends outside of the game, by tapping "Share Club" on the Club page.
- Send Friend Requests to other Club members, so that you can send them personal Inbox messages!
- Fund the Club – this helps level up the Club. Leveling the Club is important, as higher levels allow more members and greater Challenge rewards!
- Be on the lookout for more features and improvements – we're working on bringing exciting new things to Clubs soon!

Don't:

- Forget to collect your Club bonuses. As the challenges are completed, you'll be able to collect the bonuses from the main Club page. They do expire if not collected, so make sure to collect them!
- Worry if you're kicked from a Club – you can join a new Club that's a better match for you, or start one of your own. Join a Club with friends, or invite them to yours, and try out new Clubs to find one that you'll have the most fun in. Make sure to look for a Club whose Club type suits you best.
- Miss out on Club discussions and gossip. Make sure to switch to Club chat at a slot machine, to see what everyone's been saying!

Exhibit E



[Big Fish Casino Clubs / Chat / Friends Clubs](#)

Search

Articles in this section

Kicking a member from the Club



Big Fish

Updated 14 hours ago

Should I Kick a Club member?

As a Club leader, you have the ability to remove Club members.

To remove a member:

1. Visit the Members page.
2. Tap the ... button.
3. Select **Kick From Club**.
4. Provide a reason for kicking the member.
5. Tap **Kick Member**.

Please keep in mind that kicking is unpleasant for the one being kicked, and could lead to losing a contributing Club member, so be mindful before deciding to kick someone out.

Here are some things to keep in mind when thinking about kicking a member:

- Check if they're funding the Club first, from the "Members" page. Losing funding members makes it more difficult to level up the Club – leveling up the Club allows for a larger Club and bigger Club Challenges and bigger Challenge rewards.
- When kicking someone, the pop-up will also display their recent chips donated, to help in making an informed decision.

- Check if they're contributing to Challenges from the Daily Club Challenge page. Completing Challenges lets everyone in the Club get bonus Chips and Club reputation.
 - We're also working on making it easier to see everyone's Challenge/Club point contributions, besides the top 10.
- Are they an active member in Club chat? Keeping the Club social helps keep other Club members engaged and active.
- If they haven't been active or contributing recently, why not? Check in with them – send them a personal Inbox message to find out. They may have been away recently; encourage them to play more by sending them an Inbox message. There is also a limit to funding a Club – if the Club has already reached its max funds that day, they would be unable to fund the Club that day.
- New Club members may not be able to fund the Club right away – if they funded a Club earlier that day, they will be unable to fund one for 24 hours.
- Are they being disruptive in chat, or with other Club members? Setting expectations for your Club or sending them a personal Inbox message to discuss things may help, but feel free to kick them if they're not helping with the right mood for the Club.
- Remember – you can always make your Club Invite only, by editing the Club settings from "More Options". This helps you choose who you would like in the Club.

[Fac Twi Link Goc](#)

Exhibit F

No. 16-35010

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CHERYL KATER,
Plaintiff-Appellant,

v.

CHURCHILL DOWNS, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
For the Western District of Washington
Case No. 2:15-cv-00612-MJP
The Honorable Marsha J. Pechman

**PLAINTIFF-APPELLANT'S RESPONSE IN OPPOSITION TO
APPELLEE'S MOTION TO SUBSTITUTE UNDER RULE 43(b)**

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Nearly three years ago, Plaintiff-Appellant Cheryl Kater filed a lawsuit against Defendant-Appellee Churchill Downs to recover what she lost at its illegal online gambling operation. Now, Churchill Downs is under contract to sell that portion of its business—non-party subsidiary Big Fish Games, Inc. (“Big Fish”)— to an Australian gambling machine manufacturer for a nine-figure profit. Churchill Downs now asks, for the first time on appeal, that the Court ignore the allegations in Ms. Kater’s complaint and dismiss it from this lawsuit so that the sale can proceed. Federal Rule of Appellate Procedure 43 provides no legal basis for such a maneuver, and the motion should be denied.

I. Churchill Downs Cannot Escape this Lawsuit Based on a Hypothetical Future Sale.

“[S]ubstitution under Rule 43(b) is appropriate only where necessary, and necessary means that a party to the suit is unable to continue such as where a party becomes incompetent or a transfer of interest in the company or property involved in the suit has occurred.” *Sable Commc’ns of Cal. Inc. v. Pac. Tel. & Tel. Co.*, 890 F.2d 184, 191 n.13 (9th Cir. 1989) (internal citations, alterations, and quotation marks omitted) (citing *Ala. Power Co. v. I.C.C.*, 852 F.2d 1361, 1366

(D.C. Cir. 1988)). There is no provision in Rule 43 allowing substitution of a party based on a possible *future* transfer of interest. In every case Churchill Downs cites to support its position, the relevant transfer was fully complete before the substitution request was granted.

As of the date of the filing of Churchill Downs's motion, however, Churchill Downs still owns Big Fish. The sale of the Big Fish subsidiary is a hypothetical future event subject to a number of contingencies. For example, the parties can cancel the sale by mutual agreement, or unilaterally if the closing does not occur by a certain date. Stock Purchase Agreement dated November 29, 2017, <https://perma.cc/TFA4-RQT3>. Rule 43(b) requires that the party to be substituted is actually incompetent to proceed and does not allow for a substitution where the relevant party simply does not wish to litigate the case any longer. *Alabama Power*, 852 F.2d at 1366. Accordingly, the motion should at least be denied as premature.

II. Churchill Downs Is Still a Competent Defendant.

Even assuming the sale takes place, substitution is not appropriate because Churchill Downs will remain a legally competent defendant under the allegations in Ms. Kater's complaint. In the cases

Churchill Downs cites, the interest *in the case* had entirely passed to a different entity, meaning that the original defendant was not legally competent to continue in that capacity. *See Maier v. Lucent Techs., Inc.*, 120 F.3d 730, 733 n.1 (7th Cir. 1997) (“Because AT&T’s interest in this case has passed to Lucent, which is no longer a subsidiary of AT&T, we grant the motion.”); *Beghin-Say Int’l, Inc. v. Ole-Bendt Rasmussen*, 733 F.2d 1568, 1569 (Fed. Cir. 1984) (allowing substitution where interest in the relevant patent had been assigned to a different entity).

But here, Ms. Kater named only Churchill Downs as a defendant and alleged conduct on the part of Churchill Downs itself—not any subsidiary. Specifically, she alleged that Churchill Downs owned and operated the gaming device at which she lost things of value, and that Churchill Downs was, at the relevant time, the “proprietor for whose benefit such game was played or dealt[.]” RCW 4.24.070. (*See also* EOR 28 ¶¶ 37-38; EOR 31 ¶ 49; EOR 33 ¶ 59.) Ms. Kater alleges that Churchill Downs—not Big Fish Games—retained the benefit of what she lost gambling at the Big Fish Casino. (EOR 28 ¶ 38.) Accordingly, even if Ms. Kater had filed her lawsuit after the sale was complete, Churchill Downs would *still* be a competent defendant. Its potential

transfer of the Big Fish portion of its business to another entity at a healthy profit does not relieve it of liability for being the proprietor of an illegal gambling game. *See Niven v. E.J. Bartells Co.*, 983 P.2d 1193, 1196 (Wash. Ct. App. 1999) (“Glen Alden's earlier transfer of ... liabilities to its subsidiary ... did not end Glen Alden’s responsibility for those liabilities. It merely gave Glen Alden and its successor ... a claim for indemnity[.]”). Ms. Kater intends to continue to pursue her claims against Churchill Downs both before this Court and on remand, regardless of any sale.

III. Churchill Downs Cannot Raise this Matter for the First Time on Appeal.

Finally, if Churchill Downs believes that Ms. Kater named the wrong defendant, then it should have said so a long time ago. Churchill Downs’s explanation as to why Big Fish is the proper defendant does not depend on the potential sale. If it is now true, as Churchill Downs claims in its motion, that Big Fish and not Churchill Downs is the proprietor of the online gambling game at issue here, (*see Mot. at 1*), then the same has been true since this action was filed. Churchill Downs could have raised this issue, but it decided to not do so, even informally. As far as this appeal is concerned, the argument that

Churchill Downs is the wrong defendant is waived. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[A]n appellate court will not consider issues not properly raised before the district court. Furthermore, on appeal, arguments not raised by a party in its opening brief are deemed waived.”).

In any event, it is doubtful that the relationship between Churchill Downs and Big Fish is so clear-cut, especially considering that Churchill Downs’s new position directly conflicts with its previous statements to this Court and the district court. (*Compare* Mot. at 1 (“Big Fish Games, Inc.—not Churchill Downs—owns and operates ... the game at issue in this case”) *with* Defs. Br. at 5 (“Churchill Downs owns Big Fish Casino[.]”) *and* dkt. 24 at 1 (“Defendant Churchill Downs Incorporated ... is a diversified entertainment company that owns and operates ... Big Fish Casino.”).) Substituting Big Fish as the defendant will likely lead to an extended discussion—never raised before the district court—as to whether it can still be held liable for Churchill Downs’s actions. Such “potentially complex issues” related to substitution of parties “which were not considered by the District Court in the first instance and have only been briefed here as part of [a]

motion to substitute” are not appropriate for consideration on appeal.

Koons v. XL Ins. Am., Inc., 620 F. App’x 110, 113 (3d Cir. 2015).

CONCLUSION

Churchill Downs’s motion to substitute should be denied. If the case is remanded, then any necessary addition or substitution of parties can take place in the district court.

Dated: January 18, 2018

Respectfully submitted,

CHERYL KATER,

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Exhibit G

Erica Martin (Big Fish Casino)

Apr 25, 10:54 AM CDT

Hey Suzie,

Although I'm typically unable to provide boosts because of the terms of the weekly purchase plan that you're on, I've gone ahead and snuck some chips your way as a special one-time courtesy today. Hoping that they help score some big wins your way!

Erica

Suzie Kelly

Apr 24, 8:23 PM CDT

Erica..

Can you all loosen up?? This is ridiculous. I lost \$400 in minutes today.

Byron Scott (Big Fish Casino)

Jun 14, 12:24 PM CDT

Hi Suzie,

We have guidelines in place where the amount we can provide is based on a number of factors, recent purchases being one of those factors. I am going over our normal guidelines for you, I'm more than happy to do this given your Tier + our history together.

I have added a few more chips for you now.

- Byron

Suzie Kelly

Jun 13, 3:50 PM CDT

Hi Byron...

Curious.. Why have all of the chip gifts lately been 30 and 40 million? Haven't I spent enough on the app?

Byron Scott (Big Fish Casino)

Aug 1, 11:44 AM CDT

Anytime Suzie and not at all, I have to base the amounts on recent spend unfortunately, but I know you're going through a lot of nonsense so I'll continue to try and provide the highest amount I can.

How's your weather been? Its 95 here today, I hope I don't melt :(

Suzie Kelly

Aug 1, 11:23 AM CDT

Hi B.. I always appreciate the chips. Really 🙏

Did I do something to offend you? You used to give me a lot more. The 40 mill never lasts me more than an hour.. if I'm lucky 😞

Exhibit H

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, MAY 9, 2013
APPROVED MINUTES**

- PUBLIC MEETING -

Chair John Ellis called the Gambling Commission meeting to order at 9:55 a.m. at the Vancouver Heathman Lodge and introduced the members present. He welcomed ex-officio member Senator Steve Conway, who represents the 29th District in Tacoma. Senator Conway has quite a background in gambling issues, in large part from him chairing for a number of years the primary House committee that heard gambling related legislation.

MEMBERS PRESENT: **Chair John Ellis**, Seattle
 Commissioner Mike Amos, Selah
 Commissioner Kelsey Gray, Seattle/Spokane
 Commissioner Margarita Prentice, Seattle
 Senator Steve Conway, Tacoma

STAFF: **David Trujillo**, Interim Director
 Mark Harris, Assistant Director – Field Operations
 Tina Griffin, Assistant Director – Licensing Operations
 Amy Hunter, Administrator – Communications & Legal
 Callie Castillo, Assistant Attorney General
 Gail Grate, Executive Assistant

Agenda Review / Director's Report:

Interim Director David Trujillo asked Chair Ellis to join him at the podium for a personnel recognition matter. He explained that Chair Ellis' term as Gambling Commissioner will end June 30 and he recognized Chair Ellis for his dedication to the Governor of Washington State, to this Commission, licensees, staff, and to the citizens of Washington State. Chair Ellis has served with distinction and honor. Interim Director Trujillo read a thank you letter from Governor Jay Inslee to Chair Ellis dated May 8 and presented a certificate and plaque commemorating his term of service on the Gambling Commission from February 2005 to June 2013.

Chair Ellis thanked his fellow Commissioners, the staff of the Gambling Commission, all of the stakeholders, representatives of the Tribes, and others who were present. He said it had been extremely rewarding to participate as a Commissioner on the Gambling Commission for eight plus years. It is frequently said, but cannot be said too often, that the Gambling Commission staff operate as a model public agency, and that is definitely true. It has been extremely enjoyable to be a part of and to observe their commitment to making gambling not only fair and honest, but well received, and dealing with issues openly in the state. He has enjoyed very much working with all of the stakeholders concerning gambling issues; although, some of the stakeholders may not regret

too much seeing him depart since he was not always on their side. But at the same time, Chair Ellis said he has enjoyed their professional approach to the issues that the Commission had to deal with – many of which were not easy.

Agenda Review/Director's Report

Chair Ellis announced that the executive session at the end of the meeting was going to be significantly longer than normal because the Commission would be reviewing the qualifications of applicants for the Director position. As a departure from the normal procedure, after the conclusion of the executive session, the public meeting would be reopened to make a decision concerning the recruitment process, because that needs to be made in a public meeting.

Interim Director Trujillo welcomed Senator Conway to his first meeting as an ex-officio on the Commission, adding he looked forward to learning from Senator Conway's experience. He reported that the Governor had appointed Mr. Chris Stearns to the vacant Commissioner position. He was unable to make this meeting, but does plan to attend the July Commission meeting. Commissioner Stearns is from the Navajo Nation and practices Native American law with Hobbs, Straus, Dean & Walker. He is an active member of Seattle's Native American and social justice communities, has served as Chairman of the Seattle Human Rights Commission, and serves on the Seattle Public School Strategic Plan Task Force. In 2012, he was named Vice President of the Board of Directors of the Seattle Indian Health Board. Commissioner Stearns is no stranger to Washington, D.C. as he served as the Indian Affairs Director under Energy Secretary Bill Richardson, as Democratic Counsel to the U.S. House Committee on Natural Resources under Chairman George Miller, as Deputy Counsel to the U.S. House Native American Affairs Subcommittee, as North Dakota State Campaign Director for Vice President Al Gore, and as political advisor to Tex Hall who is the President of the National Congress of American Indians.

Interim Director Trujillo reported there were no staff requested changes to the agenda. He drew attention to a letter that explains the "My Account" online feature. Beginning on May 15, various online services will be available under the "My Account" tab. With one login, licensees would be able to submit activity reports, view previously submitted activity reports, update contact information, submit organizational employee applications with one electronic payment, get the contact name and number of their field agent, tell staff what information a licensee may want to receive, view calendar information of Commission events, view the latest newsletter and tweets, and complete a customer feedback form. Staff is continuing to work towards a one-stop, one portal for the "My Account" concept. Representative Richard DeBolt sent the Commission a letter dated April 10 that said his questions from November 2012 regarding a rule petition had been answered and he encouraged the Commission to act upon the petition. Representative DeBolt had sent the Commission a letter in November 2012 asking them to take pause with a rule petition and to consider it thoughtfully.

Interim Director Trujillo pointed out an article regarding the Washington State Online Poker Ballot Initiative, explaining there were currently two Initiatives (I-582 and I-583) that they are planning to move forward with. I-582 would authorize only online poker in this state; casino games and sports betting would still not be allowed. The proposal does have a mechanism for the Washington State Gambling Commission to create a licensing process for online poker rooms. Taxes would be

paid for online poker, but I-582 was silent as to what the tax rate would be. I-583 would repeal the criminal penalties for online poker as long as the person was not involved in the operation of the gaming platform.

Chair Ellis asked if there were any questions; there were none. He welcomed Paul Dasaro and Rick Herrington.

Staff Presentation on Social Gaming Platforms (*PowerPoint Presentation*)

Mr. Paul Dasaro, Administrator of the Electronic Gambling Lab, introduced Rick Herrington, Program Manager in the Criminal Intelligence Unit, and explained they would be giving an overview about the concept of social gaming. Social gaming is a very trendy issue right now and it is very difficult to define what it is; a lot of buzz about it is heard in the technology world. There is no real industry-accepted definition of what exactly social gaming is, but generally speaking there are several characteristics that are typical of social games. Some of those characteristics include online play over the internet. Many of the games are characterized by the inclusion of multiple players. Often players interact with each other at some level in an online world. Many of the games use social media directly so people can log on to Facebook or some other social media site and play directly through their Facebook page. The casino-style games in social gaming are characterized by the use of virtual game play credits that players can earn or they can purchase credits to play the game with real money, but the credits cannot be redeemed for real money. The social gaming media makes most of its money from players that are offered the option of purchasing items within the game.

One of the popular games right now is called Farmville where players can pay a small amount of money to purchase additional land or an additional tool to use within the game. It is important to note that most social gaming is not considered traditional casino style, although one of the most popular games is poker. It is a very large and consistently growing industry with \$8 billion in revenue last year. At least 78 million people play these games in the United States and 200 million players worldwide play social games. The question is what motivates people to play these games. People spend hours playing the games. Some of the items are community-based play – players playing either within a game world with other players nearby or playing directly against other players, which can be seen in the poker style games. There is a lot of competition with people trying to beat each other and everybody is trying to improve their statistics, plus virtual cash is an element. It is not necessary to buy virtual cash to play the game as most games offer players a certain amount of virtual cash just for entering. Players do not have to actually purchase virtual cash with real cash, although that is an option. The virtual cash does enhance game play and it also allows people to improve their play within the game. Another popular social game is called Candy Crush.

One of the most popular poker games is a standard Texas Hold'em game called DoubleDown Casino. Players are sitting at a virtual poker table playing with other real people who can be anywhere in the world. They are playing with virtual chips that can either be purchased or just gained through entering the game. This is a company that was purchased recently by IGT and is an IGT themed slot game. DoubleDown is based out of Seattle. It is an online version of the same game that has been approved for Washington TLS, and is in many jurisdictions throughout the

world. Players are using virtual chips and not real chips, and these virtual chips cannot be redeemed for real cash. With DoubleDown's ability to purchase virtual chips, players get 150,000 chips for \$3, which they can purchase directly through their Facebook page. Zynga has a different conversion, but is essentially the same concept. Players can purchase more chips or more time to play with real money, which is how these companies make their money. Most of the social games are played through any type of internet capable device, like desktop computers through web browsers or through specialized software that can be installed. Mobile devices like Smartphones, Tablets, and iPods are a growing medium. Apple devices are a closed environment, and are a relatively small share of Smartphones and Tablets, but they are very popular in certain parts of the world. Android would be the more common types that are seen in Google and Samsung and are a more open environment, so it is a somewhat easier market for manufacturers to enter, and has a much larger market share throughout the world.

Program Manager Rick Herrington explained that when he looks at any form of gambling, especially on the internet, he applies the basic rules of gambling: chance, consideration, or prize. In each of these games, there are two of the elements, but not the third, which is an actual prize. Players do get virtual prizes and/or an endorphin rush; they can build their avatar and improve their avatar by purchasing other things of the same nature. It is not gambling in the current format according to Washington State law. At any time in the future, if the federal government or Washington State changes its laws, any one of these social platforms could be changed to a real gambling platform overnight.

Senator Steve Conway asked if other states allowed prizes and how it would be monitored. He asked if staff had checked other states to see if they were allowing actual prizes with this form of gaming. **Mr. Herrington** replied he did not think anybody else was allowing prizes to be awarded. He explained it was on Facebook and is being done internationally, but they are gambling platforms right now. The only place they are not gambling formats is in the United States, but he could not say whether another state is allowing it. If they are, they are in violation of the Unlawful Internet Gambling Enforcement Act (UIGEA) and a whole myriad of other laws. UIGEA deals with internet gambling and payment services, so if there is any payment process done over the internet with any form of gambling, it is illegal. If any state is offering this and allowing it to go on, it is in violation of federal law.

Mr. Dasaro stated there were several states that were in the process of allowing regular online gaming, but as far as he knew, most of those states were not contemplating using this particular type of gaming for their online sources. A week or two ago Nevada went live with their first official intranet gambling platform, which is only within the boundaries of the state of Nevada, and that was done completely proprietary through a company called Fertitta Gaming. Ultimate Poker is the name of the site, but that is a strict online gaming platform that is not tied to Facebook or any of the other traditional social gaming platforms. Other states that are currently very close to developing similar platforms are Delaware and New Jersey. There is talk within those states of establishing interstate gambling compacts so that an operator in Nevada could offer bets to players in New Jersey or Delaware, depending on how those compacts flesh out over time. But under current law in all those states, it is just within the borders of that state.

Chair Ellis said if the issue for whether or not social gaming currently constitutes gambling under Washington law was prize, then what would players get if they won. There is the option to buy chips, but does that mean the player simply has a bigger pile of chips in front of them than somebody who is playing solely with the free chips. **Mr. Herrington** affirmed, if they are playing poker, they would have a bigger advantage over the player with fewer chips. It is all virtual currency that does not really exist; it is just there and has no redeemable value. **Chair Ellis** said that, to argue the other side of that question, as demonstrated by 78 million people playing the game in the United States there was a value in simply being able to play and to play effectively. Therefore, if players were able to play more and play better by winning the virtual chips, they would have received a prize. **Mr. Herrington** replied he would call it buying endorphins.

Chair Ellis asked if there were any more questions; there were none. He thanked Mr. Dasaro and Mr. Herrington for the presentation.

Recruitment Update

Ms. Lisa Benavidez, Administrator of the Human Resources and Training Division, gave an update on the process to date for filling the Director position. At the April Commission meeting, the Commissioners approved the position description, a salary range of consideration, and a recruitment process in which Commission staff would be responsible for recruiting for the Executive Director position. The job announcement was posted on April 15 and closed on May 5. There were 27 applications received and of those 27 applications, 8 candidates met the minimum qualifications. Of those 8 candidates, there was one application that was a really standout candidate. Ms. Benavidez had been asked to provide a grouping of applicants: the A group would be the candidates that would be recommended to move forward; the B group would be the candidates that met the minimum qualifications; and the C group would be the candidates that did not meet the qualifications required for this position. During the Executive Session, the Commissioners will consider the candidates in both the A group and the B group. Ms. Benavidez said she had a copy of the candidates placed in the C group in case the Commissioners were interested in looking at those. Ms. Benavidez recommended moving forward during the executive session to review all of the candidates that meet the minimum qualifications, then come back to the public portion of the meeting and have the Commissioners make a decision on which of the eight candidates they would like to consider further. The candidates are only identified by number in the packets of information provided to the Commissioners. Once they decided which candidates to move forward, Ms. Benavidez would contact those candidates. None of the candidates have been notified that this is a public process, so she would let them know that if they want to continue to be considered in this process, their names would be made public and the rest of the process would be happening in public. She asked that the Commissioners let her know if they have recommendations or ideas on types of interview questions they would like to ask the top candidates. Ms. Benavidez explained she would be responsible for writing the final interview questions and also for scheduling those interviews. She suggested a few dates that both she and AAG Callie Castillo was available. She hoped that all the Commissioners would be available to interview the finalists and asked if the Commissioners had any conflicts on any of the following dates: June 4, 10, 17, 18, 19, and 25. Following the interviews, Ms. Benavidez would then move forward with scheduling the psychological and polygraph exams for the candidates.

Chair Ellis asked if, in the process as Ms. Benavidez envisioned it, following the interviews but before the polygraph and psychological exams, the Commissioners would have the option to designate a preferred candidate and proceed only as to that candidate. **Ms. Benavidez** affirmed that was correct.

Commissioner Gray said she had glanced at the references and asked if they looked good. She wanted to make sure the Commissioners were also involved in checking references and know what is said. She thought it was really important the Commissioners developed questions that they have used. **Ms. Benavidez** agreed.

Chair Ellis thought that was clearly an important part of Ms. Benavidez' proposal. He suggested looking at several of the elements individually to make sure the Commissioners were all comfortable with them. He said there was one candidate in the A group that Ms. Benavidez thought had outstanding credentials and seven in the B group who met the minimum qualifications but were not on the same level as the outstanding candidate. These candidates have been identified by number only, not by name. During the executive session, the Commissioners will review all eight of the applications to make sure they are comfortable with the decision that Ms. Benavidez had made; the one candidate in the A group and the seven in the B group. He asked if that seemed like a good procedure; the other Commissioners affirmed. He explained that at the end of the executive session, he would reconvene the public meeting for the Commissioners to make a determination as to which candidate or candidates they wanted to proceed with interviews. He asked that AAG Callie Castillo attend both the executive session and the interviews to make sure the Commission does not cross the line between what can be discussed in an executive session versus what can only be discussed during an open public meeting. He suggested going over the suggested interview dates.

Commissioner Gray agreed it was a good thing to look at the suggested interview dates, but thought the Commission had not had an opportunity to really look at the candidates. She was concerned the Commission was moving too fast. She understood they were trying to get this done quickly, but felt they had not had the opportunity to really look at the A group and the B group of candidates and decide whether the Commission was looking at interviewing just one candidate or more. There may be two or three candidates from those eight. She thought the Commission could look at the suggested dates, but she did not want to get locked into just those dates and that timing.

Chair Ellis responded he did not think the Commission was locked into anything; they would be looking at the candidates in the executive session later this afternoon. If there was any follow-up the Commissioners thought was important, that they have not talked about, that could be done as well. He explained that Ms. Benavidez was just trying to coordinate calendars, recognizing that June is entering into the vacation period. There is no need for urgency because the Commission has a very good Interim Director; there is no huge hole that demands being filled immediately. Chair Ellis asked if any of the Commissioners had a conflict with any of the suggested dates.

Commissioner Amos had a conflict on June 10. **Chair Ellis** understood that plans could change and suggested that if any of those dates become ones where a Commissioner has a conflict, they should let him know and he would coordinate with Ms. Benavidez. He indicated that Ms. Benavidez would continue to take the lead in the process of receiving the Commissioners' input on interview areas or questions they would like to see included between now and the week of May 13. The Commissioners should give their input to Ms. Benavidez and she would prepare the questions.

It would be most efficient for all of the Commissioners who are available to attend the interviews, participate, and observe the candidates in action, and then be able to go into an executive session and discuss the qualifications of the candidates, taking into account their applications, their qualifications, and their interview performance.

Commissioner Gray asked about the group that had been selected at the April meeting that included Commissioner Amos, Ms. Benavidez, and herself. **Chair Ellis** replied that, when they talked about that at the last meeting, it occurred to him that the other Commissioners would need to be present at the interviews in order to knowledgably discuss the candidates during the executive session.

Commissioner Gray said that, in the development of the questions, she was really interested in the kinds of questions they could have. She was hoping that in executive session they could spend a bit of time on the kinds of questions. **AAG Castillo** responded that any discussion would be prohibited under the Open Public Meeting Act. Everything except the actual evaluation of the applicants must be done in a public setting; any general discussion by the Commission as a body, or any committee thereof (including two members), would have to be done in a public session. There would need to be notice to the public for any sort of meeting the Commission would have. The Open Public Meeting Act really limits what the Commission can do in executive session. She suggested that if the Commission wanted to have a general discussion, they do it here in this meeting. If a Commissioner has an individual thought, they could relay it directly to Ms. Benavidez, but if the Commission wants to have a discussion among themselves, it would have to be done in a public meeting.

For the same reason that AAG Castillo just mentioned, **Chair Ellis** cautioned against cc'ing the other Commissioners with any ideas a Commissioner may submit to Ms. Benavidez so there is not the appearance of a dialogue among the Commissioners to develop those questions. Staff will give public notice of the Special Commission meeting for the purpose of the interviews, which only requires 24-hours notice. **Commissioner Gray** asked if it was required to provide public notice that the Commission was going to have that discussion now. **Chair Ellis** replied they could have that discussion now because it fit within the confines of the agenda item of the recruitment process. **AAG Castillo** confirmed. **Commissioner Gray** asked if the Commissioners would be interested in giving Ms. Benavidez some general ideas on the kinds of questions they thought would be important. **Ms. Benavidez** asked if Commissioner Gray would be concerned about doing that in front of any potential candidates that might be in the room. **Commissioner Gray** replied no, it would just be general kinds of questions. **Chair Ellis** pointed out that Mr. Trujillo, for example, was a candidate. He thought Ms. Benavidez was asking whether Mr. Trujillo would have an advantage over other candidates the Commission may interview if he heard in advance the kinds of questions or areas of questioning the Commission was talking about. He thought Mr. Trujillo could probably leave the room, but **AAG Castillo** replied that would not be required by law. The Commission could not exclude candidates from the public meeting; it would be the candidate's own preference, but the Commission itself could not exclude the public, including applicants, from that discussion. **Chair Ellis** asked if Commissioner Gray would like to suggest some areas that she would like to see included. **Commissioner Gray** replied it was not so much in terms of areas, and she would not go into any detail, but she did believe a candidate's discussion about how they

might address a problem would be important. **Ms. Benavidez** suggested that Commissioner Gray send her an email if she would like to go into more detail. **Commissioner Gray** agreed.

Chair Ellis asked if any of the other Commissioners had areas or specific types of questions they thought should be included that they would like to discuss now. **Interim Director Trujillo** said he would prefer to step out of the room if there were any detailed questions. **Chair Ellis** asked if anyone had any detailed suggestions; there were none. **Chair Ellis** said the Commissioners would submit any input they had to Ms. Benavidez by the end of next week by email. **Ms. Benavidez** said she would be in the office all week so if anyone wanted to call her, she would be available. **Chair Ellis** asked if there were any other areas that Ms. Benavidez would like additional input from the Commission on. **Ms. Benavidez** replied there was not. **Chair Ellis** asked if any Commissioners had other comments or questions they would like to raise at this point.

Commissioner Prentice stated that over time, she has developed a trust for Ms. Benavidez and she did not think Ms. Benavidez needed a lot of additional instruction from the Commission. She thought they were all on the same page and did not want to get bogged down. She said it was time to proceed. **Chair Ellis** agreed, indicating that Ms. Benavidez and her staff had done a commendable job, being somewhat under the gun to proceed forward, in giving the Commission the draft job specifications, the draft bulletin, getting the bulletin published, and getting a broad response. **Commissioner Gray** agreed it was very thorough.

Legislative Update

Ms. Amy Hunter provided a quick update on the legislative process, noting there would be a special session. The last day of the regular session was Sunday, April 28 and the special session is scheduled to begin on Monday, May 13. There are just a couple of bills that are still in the process:

- ESSB 5723 is the enhanced raffle bill that Special Olympics has addressed the Commission about in the past. That bill had some amendments that were done in the House so it needed to go back to the Senate for concurrence, which has occurred. The bill went to the Governor on April 27 and Ms. Hunter anticipated that he would sign the bill. Assuming that it is signed, it would be effective on July 28. Staff has tried very hard to cover the policy issues while it was in the process so that it would be the Legislature setting everything, like the “refer a friend” drawing and other special things. If it was not spelled out in the bill then it would come to the Commission during the rule making process to figure it out. Staff thought it was better to have things be specific. The main area that was not specific dealt with an independent audit, which Special Olympics wanted in the bill for their interest in protecting their assets. That is now in the bill and it is very specific that the Commission would do rule making around that. Ms. Hunter felt that would probably be the biggest area that would need more discussion. She did not want to downplay the amount of work that would be involved with the rule making, because staff will have to go through the current rules and see if they now conflict with what this law would allow and how to best spell that out. It might be one rule that says the provisions in x, y, z rules do not apply, or go through the individual rules and say something like except for enhanced raffles these are what the requirements are. Ms. Hunter has had e-mail conversations with Mr. Eliason, who is with Special Olympics, working on this to figure out who the people are from his

organization that will be their point of contact on the rule making part. Plus staff from both Field Operations and Licensing Operations have been established. Staff is anticipating the rules would be up for filing at the July meeting. Ms. Hunter thought it was a disappointment to Special Olympics, who had some different ideas about the emergency rule making provisions and they were hoping to do a raffle by the end of the year.

Assuming the process goes smoothly, Ms. Hunter anticipated the rules would be up for filing at the July meeting, up for discussion at the August meeting, up for final action at the September meeting, and effective the middle of October. The most work usually goes into rules when they are up for filing, so she thought Special Olympics would be able to make some fairly solid plans based on where the rule making process was at that point. It is on the fast track already. Typically, staff waits for the Governor's action before starting to do much more. But in this case, with all of the outreach that had gone on, Ms. Hunter said she would be very surprised if the Governor would veto the bill. If that happened, then staff would stop what they have done up to that point and go from there.

- House Bill 1403 deals with information that needs to be given to the Department of Revenue. The bill passed unanimously in both the Senate and the House, but it had been changed at different times, so the bill had to go back for concurrence. All of that happened, and the bill was delivered to the Governor who signed it on May 1. It will be effective July 28. Staff needs to let the Department of Revenue know who our coordinator is and get the applications over to the Department of Revenue. It will take some time, but is not expected to be real intense. The Commission has 38 business license applications that would be required under this bill to be provided to the Department of Revenue. Assistant Director Tina Griffin has followed the bill very closely and already has some pretty defined ideas on how that would occur.
- SGA 9158 (Commissioner Prentice's confirmation) and SGA 9106 (Commissioner Gray's confirmation) are still active. The Legislature has the ability to act on those during the special session, so there is still time. The Commissioners continue to serve even if they have not gone completely through the confirmation process.
- The statewide budget bill is obviously the one that most of the action during special session should occur on. And there is an update on page 4 of the memo explaining what the latest versions of those bills do as far as impacts on the Commission. But really, they are impacts on agencies statewide. There is nothing specific for the Gambling Commission in the budget, which is good news.

Those bills that died will be up for more discussion during the 2014 session. They do not have to be reintroduced. Some of the bills that died were gambling specific.

- House Bill 1295 modified the powers and duties of the Commission.
- HB 1824 reduced the penalty for a person when they're doing unlawful internet gambling in his or her primary residence, and it's for recreational purposes. That bill did have a hearing.
- SB 5552 deals with child support enforcement and being able to check the DSHS system if there is a winner over a certain threshold.

Ms. Hunter said she would bring to the July Commission meeting a list of bills that would require any type of agency implementation. Staff tracks many other general government bills and near the end of the legislative session, the Legislative Team goes through those bills more closely to see if there are things that staff would need to do. Ms. Hunter started presenting that list last year and hoped that was an effective way for the Commission to know some of the behind-the-scenes things that happen at the end of the session. Ms. Hunter thanked the Commission for their assistance and input as she has gone through the legislative process. She said it was always helpful to hear their ideas and pass on their input on the bills to the Legislature.

Chair Ellis asked if there were any questions; there were none. He thanked Ms. Hunter for all of the good work done by her and her staff on another successful legislative session.

House Bill 1295

Chair Ellis thanked Ms. Hunter for preparing the information; it was very helpful.

Ms. Hunter explained her memorandum included testimony on HB 1295, which several of the Commissioners had a chance to watch on TVW. This report was a follow-up to discussion at the last meeting about taking a position on HB 1295 at this meeting as opposed to waiting until the fall. Staff intends to meet with the members of the Committee during the interim, so the more they know about the Commission's position, the better they can pass that on to the committee members who are always genuinely interested in hearing what the Commission has to say. When Senator Conway was in the House, he always asked what the Commissioners thought. The bill deals with the Gambling Commission's powers and duties and gives some things to the Legislature that are currently in the Commission's powers and duties. The bill says the Legislature retains sole authority for approval of any expansion or enhancement of the scope and manner of approved gambling activities and any increase in the maximum wager, money, or other thing of value that may be wagered or contributed by a player in any gambling activity subject to that chapter. From a practical point, it means there would be some changes that are now accomplished by rule that would need to go to the Legislature. There would also be many current staff approvals that could fall under being an expansion or an enhancement. The question then becomes what the Legislature was intending and how the Commission would best deal with it.

The bill was introduced on January 22 and the prime sponsor was Representative Sam Hunt who had been the Chair of the House Government and Tribal Affairs Committee during the 2011 and 2012 sessions. That committee was responsible for hearing gambling-related bills. Prior to that committee, it had been the House Commerce and Labor Committee that had heard gambling bills for many years and was chaired by then Representative Steve Conway, who is now a Senator and an ex-officio member on the Commission. This year, gambling issues went to the Government Accountability and Oversight Committee, a newly created committee chaired by Representative Chris Hurst. There were seven other members who signed on to the bill: Representatives Rodne, Wilcox, Appleton, Zeiger, Moscoso, and McCoy. Some of those members had been on the House Government and Tribal Affairs Committee. Chair Hurst and Representative Moscoso would be the two members on the current committee who would be hearing this bill.

In January, previous Director Day and Ms. Hunter had met with Representative Hunt and Chair Hurst as a follow-up to the letter that Representative Hunt had sent to the Commission in November 2012 regarding the Galaxy Gaming petition. The timing ended up making it appear that the meeting was related to this bill, but was originally intended as a follow-up to the letter. During the meeting, the Representatives were very open to any options the Commission might see for the bill. Ms. Hunter followed up the meeting with an e-mail explaining the Commission had not had a chance to talk about the bill and that the comments had been offered from staff's perspective and to help ensure that, if legislation was passed, the Commission and staff would be properly interpreting it to carry out the intent of the bill. The Committee heard the bill on February 7 and the Commission decided at the February Commission meeting to take a neutral with concerns position on the bill. Ms. Hunter was able to relay that position to the Committee before they took executive action on the bill, which was scheduled but not voted on, so the bill died in Committee after the hearing. It was one of the few items on their agenda for that day and they devoted over 40 minutes of their one-hour hearing to the bill.

Commissioner Prentice said she had watched the hearing on television and thought they had a very good discussion. She did not have the feeling that it dragged on but felt it was done knowledgeably.

Ms. Hunter reported there were six people who testified about the bill:

- Representative Hunt did not have a lot of information about why he introduced the bill. He said that, as technology changed, he wanted to clarify that expansion of gambling was within the power of the Legislature, so his intent was to strengthen that. He also said he was willing to continue working on it and this was his first try to clarify that.
- Victor Mena said one of the themes of the hearing was the rules process, how that works, and how much time is devoted by the Commission. The piece that was missing from that testimony, which Ms. Hunter tried to make clear in her e-mail, was that much of that had to do with the laws that the Commission has to follow for rule making. By the time a petitioner files something, the Commission has to wait so many days before it is published in the register. It ends up being a minimum of a three-month process. That is not because anyone was being necessarily slow. He thought everyone could see the benefits of that three-month process as it allowed for more time.
- Ric Newgard is with Seattle Junior Hockey and the Washington Charitable and Civic Gaming Association. He said that right now they know who they need to come to for changes, which is the Gambling Commission. They have limited funds and do not have any funds to hire a lobbyist, so they would be concerned about not having access to the decision makers.
- Dolores Chiechi, Recreational Gaming Association, talked about the role that ex-officio members play, which gives the give-and-take, both for ex-officio members to give the Commissioners input and also to be able to take that back to the Legislature. She said that she was concerned and did not want to see it go backwards. The Gambling Commission was created to keep the Commission out of some of these areas.

- Chris Keeley, Recreational Gaming Association and the past owner of a card room for 14 years, spoke about some of the details the bill would have the Legislature involved in if it were to pass, like the game approvals. The Committee would be dealing with derivatives of games and some things that this five-person Commission does not presently deal with because they are done by Commission staff.

Ms. Hunter said she spoke next and tried to be clear that the Commission had not had a chance to talk about the bill yet, but that she saw it as being a policy bill and the Commissioners appreciate that it is within the Legislature's purview to decide what type of direction they want to give. The Commission would want to make sure that, if legislation passed, it was clear so they could carry out the intentions of the bill. Ms. Hunter said she went through some of the different approvals that it appeared the bill would be hitting on, like wagering limits and rule changes that range from operational to licensing. She went through how many petitions the Commission gets and how those were being disposed of. If the Commission was not getting the petitions, then in theory the Legislature would be getting bills in those arenas. She went through the list of other approvals that staff goes through. One other thing that was discussed was the pilot program. There was some discussion about whether that was a pilot program by the Legislature or by the Commission and that process.

- Martin Durkan, Jr., from the Muckleshoot Tribe signed up with a "maybe" position. He went through what his testimony was.

Ms. Hunter said Chair Hurst explained that one of the reasons he signed on to the bill was so there would be a hearing on it. They have seen many areas where major changes have occurred. He thought the Tribes had major changes also and wondered whether the Legislature had a chance to catch its breath and ask where it was going. He did reference back to the bad incident earlier that involved a couple of legislators, referring back to GamScam and everything that happened several years ago. He said that he had seen this in other areas where the Legislature had ceded too much of its authority to agencies and he was interested in that across the board. His question was whether the elected representatives of the people have enough oversight over what was going on. He wanted to make it clear that he did not want those in the industry to think this was picking on any individual person, and that he shared this same concern about rule making and wanted to make sure that the Legislature was asking some questions.

The committee talked briefly about looking at some gambling issues during the interim and had a planning meeting that was scheduled near the end of session. They ended up canceling that meeting. Ms. Hunter assumed that had they had the meeting, they would have gone through the list of what items they wanted to look at during the interim. She did not know if there would be that type of meeting during this special session, and she did not think there was any requirement that they have a work session and go over those. Obviously, they can develop their list of items that they want to look at during the interim. She was not certain if gambling would be on the horizon or not. Ms. Hunter thanked the Commissioners for their input, adding she was glad they decided to have this discussion early as opposed to waiting until the fall because that would give more time to meet with members during the interim to take back any comments the Commission has and if their position of neutral with concerns has changed.

Senator Prentice said she was still neutral with concerns, except she was glad for the chance to see what it was that had been bothering the Legislature, and some of it was just bad memory. She recalled being there – and particularly it was the pilot program -- and it was not really explained as applying to all applicants but was explained as a pilot program. She thought “pilot program” meant a limited number. She remembered thinking that she could have kicked herself because it was not defined or limited. She said she always felt a little uncomfortable and she gathered that Chair Hurst was also feeling that way, then those kinds of uncomfortable feelings begin to increase. And it looks like several legislators had questions that really did not get asked at the time. Perhaps what is being seen is a chance to have a better discussion. If the legislators are feeling uncomfortable with something, then they should say so and make it clear at the time. Commissioner Prentice did not want to see overlooked what the Commission was created for. It is going back in history, but maybe the Commission should take a look at how awful things were and why the government tried to take the politics out of it. She did not want to lose the Commission’s complete focus on that. Some of the people that testified do not always agree with the Commission and do not always like the discussion. The point is, the Commission takes it seriously and tries and knows all about it. The legislators have to deal with so many things. Commissioner Prentice said another thing she was afraid of – and people always have to be careful – was if you do not get it done early, a legislator can play a few games and say move to the ninth order of business and your bill does not get through. The Commission does not do that here; they do not have that ability. They know the games that can be played. Commissioner Prentice said she would rather keep the Commission’s and the Legislature’s focus and have some good rancorous discussion because she believed everyone on the Commission and the Legislature was sincerely trying to do what was right within the state. The Commission does not want to deliberately have anybody fail, but it has to deal with what the federal law said to do with Tribes. It has tried to be fair. This is going to continue. She thought the kinds of discussions might be uncomfortable at the time, but also thought they were very healthy. The Commission and staff need to make the Legislature feel more comfortable with what they do. **Commissioner Gray** said she absolutely agreed.

Senator Conway made an observation that a ruling was made by Brad Owen that the enhanced raffle bill was considered an expansion of gaming in the Legislature. Probably one of the most important public issues the Legislature has to consider is how certain changes lead to the expansion of gaming in this state. He said he had left the House and moved to the Senate at the time and did not actually know how this bill came about because he was not involved in any of the development of it. The bill has not been heard in the Senate; there has not been a Senate hearing on the bill. He said that, if he understood anything about the background of this bill, the Legislative concern was that any action the Commission might take might lead to an expansion of gaming. Senator Conway knew that prior to his leaving the House, the wager bill was one of those considerations of raising the wager limits without really taking into consideration how that might potentially expand gaming in general. If there was any kind of concern he saw in this bill, it was trying to ensure that the actions of this Commission do not adversely impact the expansion of gaming because of the relationship between what the Commission authorizes and what would lead to an expansion of gaming in general. That’s what he saw in the bill. He understood the complexities of the issue in terms of what was meant by enhancements. That is the kind of phraseology that would be subject to a great deal of interpretation; what is an enhancement and what is the dividing line between what the Commission can do and what the Legislature has the authority to do. In the testimony, clearly, the constitution set the authority of the Legislature in the

expansion of gaming, so that is the line that the Commission is trying to figure out here. Senator Conway said he had some background in this issue because the Legislature had some concerns about the issues of how some rule making that might occur on the Commission's level might actually expand gaming in general in the state.

Commissioner Prentice said she thought part of what was being seen was that the Chairs of the Committee had been different and that was what was being reflected in the different interest levels. Representative Chris Hurst is completely sincere and very smart, and he wants to look at the concerns a little deeper than they have been, which is fine. But it might look uncomfortable because he has a different focus, but she thought they could all live together.

Chair Ellis agreed, adding that Ms. Hunter had made the point at the last meeting that, to the extent there were comments being made by legislators, it might be time to look at these issues and study the gambling issues that reflect the change in the committee structure and the change in the committee personnel – the Representatives in the House that are now looking at gambling issues who were not there previously. Following up on the point that Senator Conway made, he noted it was not that long ago that then Representative Conway and Senator Kohl-Welles had a joint committee review of gambling issues. He did not think that any members of the House Oversight Committee were even aware that the study had gone on and he could imagine why it was difficult for the members to know that, particularly if there was also staff turnover in the interim. An important part of the process that needs to be had in connection with this bill, assuming that it continues to be on the table in the next session, is to educate the legislators about that kind of past history, as well as the past history that Commissioner Prentice and Senator Conway mentioned. The issue now before the Commission, recognizing that the Commission has taken a neutral with concerns position in the past, is whether they should take a position actively opposing the bill to make the Commission's view clear. Since the Commission was considering taking a position on this legislation, he thought the public should have the opportunity to address the issue, and opened the meeting to public comment.

Ms. Dolores Chiechi, Recreational Gaming Association (RGA), welcomed Senator Conway. She said the RGA knew how much knowledge and history Senator Conway brought to this issue, and they were encouraged by that. Ms. Chiechi said her mind was a little jumbled as to how she wanted to begin because when this bill was introduced, the industry felt it was quite a hit at them. In fact, when she met with a number of the sponsors of the bill, one of them said "Yes, Dolores, this is a target on your forehead." So when a legislator says something like that to her, she takes it seriously and does what she can to protect her members and see its defeat. She would like to see a thorough discussion and the Commission's awareness of some of those political things that occur when talking about the Legislature and the process that takes place there versus at the Commission meetings, which is much more apolitical, much more thoughtful, and a lot of time goes into it. There were many mis-statements that happened during that hearing. Ms. Chiechi said it was hard to sit in that audience and not have someone knowledgeable, like Ms. Hunter, on staff who could refute and explain to the Chair that, in fact, the Legislature did not create a pilot program; that was the Commission. The Legislature authorized house-banked card games, but the Commission made the decision to go into a pilot program. Ms. Chiechi said she did her best with all due respect to argue that point with the Committee Chair. House-banked card rooms have been in existence for 16 years and there has been all that time for the Legislature to pull back. As Commissioner

Prentice and Senator Conway know, there have been numerous bills year after year to put the card room industry out of business, to tax them out of business, and to restrict what they could do. So, they have been fighting for their existence, but they are now down to 55 clubs.

Ms. Chiechi said that when she inferred it would be difficult for the card room industry to get a hearing in front of the Legislature, the Chairman replied that “Well, there was an individual who called, asked for a hearing, got a bill drafted, and we passed it out of committee. It’s as easy as that.” Ms. Chiechi responded that for the past ten-plus years she has been working for this industry, and they have not been able to get a hearing on bills they want. That is the difference between this body of Commissioners and that legislative body. The RGA has presented petitions to this body and gotten some wins and some losses, but at least they get to have the dialogue, the conversation, with the Commission. She said she appreciated Commissioner Prentice’s comment. It is sometimes raucous, and sometimes the industry vehemently disagrees, but it has always been done with respect and they have the opportunity to come to the podium and make their arguments. That is not the case when they cannot get a hearing on a bill that could save their industry. She wanted the Commission to understand that it was a lot different when they were talking about trying to educate 146 people in Olympia, not to mention committee staff that has changed more than three times, when committee staff does not have the knowledge to refute something the Chair says or something an individual testifies to. There were comments made that if the Tribes wanted an increase, it had to go before the Legislature – but it does not, and the committee was not corrected. The legislative staff did not correct them because maybe they were not aware. So that committee walks out thinking the bill affects everybody and that it was something that could potentially rein in the industry as a whole, but it would not. It would rein in 12 percent of the industry, but 88 percent would not be touched by this legislation. Ms. Chiechi had a hard time when those misstatements were made and she was sitting in the audience, with her tongue bleeding down her face, wanting to say “wait, that is not factual.”

Some of the staff of this Commission has been doing this for decades and they understand the nuances of the industry, the licensees, and the politics of it. This Commission has been very conservative in addressing petitions that have come forward based on that, limiting the scope and nature through strict regulation and control. That is constantly part of the rules procedure and it is constantly part of the Commission’s consideration as they look at petitions that are brought before them. It is really tough when the industry is outmanned, outgunned, and outspent in the Legislature. In this body, they do not have that influence because the Commission listens to the facts, the people, and the staff. Ms. Chiechi wished and hoped that the Commission would change its position and take a staunch opposition to this bill and really explain to the Legislature why it is important that these issues remain under the Commission’s purview.

Commissioner Amos commented that it had been a real learning curve for him over the past five years since he was appointed. Before he got this appointment on the Commission, he was an officer with the Yakima Police Department and was the State President of WACOPS. When dealing with the legislature, they were able to go to Senator Conway’s office and talk about legislation to help law enforcement, and also to talk with Senator Prentice. He said he felt the same way as Ms. Chiechi about House Bill 1295. He does not particularly care for the bill and thought the Commission needed to take a stance. The Commission should decide what it wants, and then it has to go back to the Legislature for them to vote on it. He did not think that was the

intent when it was set up all those years ago – back in the 70s when it first started because of the corruption in the gambling in this state. Commissioner Amos firmly believed the Commission needed to take concerns over this bill. He thanked Ms. Chiechi for her testimony. He said he wished he knew the hearing was going on because he would have liked to be there. Representative Chris Hurst and he have been cops together for years, which might give him a chance to discuss the bill.

Ms. Chiechi thanked Commissioner Amos, and asked what the purpose of this Commission would be if this type of legislation occurred; what the duty and the scope of this Commission would be. It would have to trim down. There would still be administrative hearings, but there would not be much point to have a meeting each month for about an hour. She thought a lot of those things should be relayed to the Committee by the staff. The statute that created the Gambling Commission outlined its duties. This Commission has been asked by the Legislature to come to them with recommendations, to come to them with the knowledge of sitting on this Commission for six years or the staff for decades, and to bring that knowledge forward to the Legislature who deals with thousands of issues every year for three months, 105 days or 60 days, and then they are bombarded with their personal jobs back in their district. They do not have time to delve into the issue as the Commission does. Ms. Chiechi thought this was an opportunity for the Commission to take a look at what the statute reads for its role and take more of a proactive position with the Legislature and show them that the Commission knows what it is doing, that the staff is educated and aware and knowledgeable on this issue.

Commissioner Prentice said she was not as inclined to punch the legislators back, but agreed they really did need more factual information. Chair Hurst talked about the industry continuing to expand, but the Commission knew that was not true. They get the list of all of those businesses that are no longer in existence, plus a couple more that are going to be gone soon. The Commission has tried to look at why. Some are because the economy is bad, but she wondered what else was going on. It is a big concern to everybody in this room, yet the assumption is it keeps growing. Commissioner Prentice thought the Legislature needed to take a look at that list, look at the changes, and look at what has happened with bingo, which is down to about 16 places now in the whole state. Each time it is less. The Commission is watching this huge change and is not just expanding everything. It is not so. But she wanted to be polite and show the Legislature a comparison of last year's list and this year's list so they can see what has actually happened. Commissioner Prentice said she was not ready, at this point, to hit back because the facts are wrong.

Ms. Chiechi replied that part of her challenge is that she could not even get a meeting with some of the legislators.

Chair Ellis commented that he was struck by the extensive number of comments about how slow the process is before the Gambling Commission and the alleged need for a faster process. As Ms. Hunter pointed out about the speed – it has to do with the Administrative Procedure Act and the various elements of that Act that have to be done at different times in order to allow public participation before a decision can be made by an administrative agency. It is ironic that when looking at the history of the petitions before this Commission, many of them have come from the RGA. And to the extent that there are victims of this slow process, it is the RGA and its members

that have been the victims, yet Ms. Chiechi was not complaining about the slowness of the process. **Ms. Chiechi** thanked Chair Ellis.

Commissioner Gray commented that as she was listening to Senator Conway, she recalled a conversation she had that she felt was really important. The Legislature makes policy; that is the role of the Legislature to make policy. The role of the Commission is to ensure that policy is followed. When she read the bill, she said that was administrative; it is taking one piece and giving that to the Legislature to deal with without really looking at the policy. She hoped that if this came back again, that in the interim some time would be spent on what the policy is that they are really looking at, and then they can begin to look at the role. She thought this bill does not do what was intended by the Legislature.

Commissioner Prentice added that the Commission is designed to be regulatory and law enforcement and she did not know if anyone in the Legislature knew that. There are assumptions about what the Commission is doing – like they were just giving the whole thing away – but she thought there was a whole lot of education that needed to be done politely. The Commission needs to be very clear about what they are about.

Senator Conway said that when he was Chairman of the House Commerce and Labor Committee he was a firm believer in having a greater relationship between the Gambling Commission and the legislative bodies, which they did work on a little bit. He shared an incident that does not deal with the Gambling Commission, but with the Lottery Commission. The Lottery Commissioners made a decision to allow machines to be put up in the grocery stores and people to be able to go directly to those stores and purchase tickets. That decision by the Lottery Commission directly impacted the gaming and how gaming is done in this state, in terms of putting money into machines. That is the issue where this line is so important. The decisions made at a Commission level may have impacts on how gaming is done and how it is authorized in the state. Many who have a long history with gaming in this state know how things have changed. Even legislators often pass bills without knowledge of how they are going to impact the general nature of gambling in this state. Senator Conway said he knew that history very well, but was not going to revisit it. He thought the Legislature was trying to ensure that everyone clearly understood how their decision-making can impact gambling in general. That case of the Lottery Commission is a good example of how they were just trying to help the sellers of their tickets do it easier and not have to have the sales going on directly with a clerk. But when they allowed that machine to disburse tickets with money going in, it impacted how gaming and gambling was done in this state. He said he just wanted to bring caution to that. Although he has had no involvement on this bill, he believed that was what the Legislature was looking at. Maybe this bill does not reflect exactly the language that is needed, but he thought that was the issue: how Commission decisions impact gambling in general or the expansion of gambling in general in this state.

Chair Ellis agreed that was an important point. There are times when it can be difficult for the members of the Commission to clearly focus on whether they are over the line in getting into developing policy in the gambling area versus enforcing what the Legislature has already decided. He thought it would be extremely valuable to the Commission going down the road that Senator Prentice is now a regular Commission member. She has on a number of occasions pointed out to the Commission that they were on that line or over it and that it was something the Legislature

should deal with. He said it would also be excellent to have Senator Conway present to the extent he was not tied up in the Legislature and was able to participate in that kind of dialogue. He asked if there were any other comments; there were none.

Commissioner Amos said he was not happy with “concerns” and asked if there was a definition from an attorney that was a little stronger that would get the point across. **Chair Ellis** asked if he meant other than oppose. **Commissioner Amos** replied he thought the Commission should oppose the bill. **Ms. Hunter** responded there were no actual definitions. The sign-up in the House and the Senate are different and people sign up under many different ways. When she signed up to talk on this bill, she put “other” because that was the closest box to neutral with concerns, and then she just explained it. Ms. Hunter did not think there was a problem with the Commission just being flat out opposed to the bill, which sends a different message than neutral with concerns. She thought the Commission was in the right place in February, but as the bill moved forward and as staff pondered enhancements and expansion, she started thinking maybe she should have recommended opposed at that point. But staff is just dealing with the best information they have at the time. All of these comments are very helpful and will help direct staff’s comments, regardless of whether the Commission decides to remain neutral with concerns or opposed. Just hearing the discussion has already given Ms. Hunter many ideas of other things that can be shared with the individual members during the interim

Commissioner Amos made a motion seconded by **Commissioner Gray** to oppose House Bill 1295. *The vote was taken; the motion passed with four aye votes.*

Chair Ellis called for a break at 11:40 a.m. and reconvened the meeting at 11:55 a.m.

Problem Gambling Program Updates

Interim Director Trujillo reported that the Commission was fortunate to have two presentations on problem gambling. He explained that he and Lena Hammons from the Tulalip Tribes had known each other for a very long time; when he was a regulator from the State and she was a regulator from the Tribe. He introduced Ms. Lena Hammons from the Tulalip Tribes. **Chair Ellis** welcomed Ms. Hammons.

Tulalip Tribes (PowerPoint Presentation)

Lena Hammons, Tribal Gaming Commission/Family Services Manager
Ellie Lorenz, Family and Youth Serviced

Ms. Hammons, Tulalip Tribal member and Executive Director of Behavioral Health that includes their problem gambling program, thanked the Commission for the honor of being here today to present her program in front of the Commission and the audience. Ms. Hammons said she has an extensive history with the problem gambling program with the State, the Tribes, and the RGA program. When she accepted this job, she had no clue that she would be in charge of the problem gambling recovery process, but was grateful to be back in this arena again. She introduced Diane Henry, who is the Clinical Supervisor in the Chemical Dependency Program and is also the Supervisor of their Problem Gambling Program. Ellie Lorenz has been in their problem gambling coalition over the past few years along with Ms. Hammons before she became Behavioral Health.

Ms. Lorenz is very knowledgeable and works very hard on the program. In addition to being the lead problem gambling counselor, Ms. Lorenz is also a chemical dependency counselor. Ms. Ellie Lorenz will be giving the presentation.

Chair Ellis welcomed Ms. Lorenz.

Ms. Ellie Lorenz introduced Diane Henry who would be showing the PowerPoint, adding that she did a wonderful job in designing the presentation. Ms. Lorenz reported that she came to work for the Tulalip Tribes in 2008. She is a Blackfeet from Montana, so she is the other Native. That was one of the good things about being able to come to work for Tulalip, which has been such a rewarding experience. Gayle Jones was their Clinical Director at that time. Ms. Lorenz said a lot of people were interested in the history of how they started their own Problem Gambling Program among the Tribes. Tulalip started the program in 1999. They wanted to have the counselors become certified, but had not yet developed the ongoing state program. Ms. Lorenz came on as a Chemical Dependency Counselor in 2008. In 2009, she was going to Doctor Maurer, who was their supervisor consultant in Seattle for the gambling program. At that time, the Tulalip had three counselors that were interested in becoming problem gambling counselors; herself, Gayle Jones, and Gary Isham. They went to training and heard about the Compact funds. Gayle Jones had the initiative to find out how the Tulalip could start its own program, which was the beginning. She wanted Ms. Lorenz to apply for the coordinator position, which is what they needed, so she began. Ms. Lorenz was under supervision, so she went to one of her monthly supervision trainings with Doctor Maurer and told him that she had been hired as the coordinator and asked what she should do. There was no manual, so Doctor Maurer suggested Ms. Lorenz meet with Maureen Greeley from the Evergreen Council on Problem Gambling and a couple other people that could be her mentors, which was absolutely incredible. From there, she had her first meeting with Ms. Greeley and Ricki Haugen from Kalispel who had started her program and had done the state certified program at the Kalispel Tribe in Spokane. They were great mentors. Ms. Lorenz went to the Advisory Committee on a quarterly basis, which was a great benefit because at that particular time new WAC rules and changes for gambling were coming in. It helped her know what was going on so she was not completely in the dark anymore. When it was time for Ms. Lorenz to get state certified, she had an idea of what to do and how to do it. Between the Advisory Committee, Ms. Greeley, and supervision with Doctor Maurer, was the ground breaking area to get this program off the ground. They are really proud to be the first state certified Problem Gambling Tribal Gaming Program in Washington State. They started outreaching into their community and did all the different things they could do to get that going, but they also reached out to everybody and offered all of their services. The Tulalip has a lot of its own cultural involvement, like the medicine wheel that brings mental, emotional, physical, and spiritual aspects to work with all of their clients. Ms. Lorenz believed there were root problems that create problem gambling, and that finding out what the roots are and being able to pull them out is very helpful. She tells her people that they are trying to eradicate all of the roots so they do not start springing up again and redeveloping. They want to get rid of them for good, which the medicine wheel gives them the ability to do. The program also has clinical assessment, with individual sessions and group counseling. Gary Isham is their group leader and deals with education. He gets down and really talks about what are pathological problem gamblers. They are also getting a recovery home off the ground to be able to reach out to people that are coming from inpatient treatment so they will have a place to go with support and ways and means to continue their freedom from the addiction. Their program has the

resources to continue the treatment without time limitations and can continue to work with people until they feel like their needs are met; they do not have a 28-session time constraint. If they have to go further, they can. They have the benefit of being able to work with them and for them for as long as it takes.

In the program's group sessions, Mr. Isham talks about finances, which is the number one thing with problem gamblers that they have to get a handle on immediately. A lot of people do not like to talk about finances, but that is what they need to reach out and touch immediately. They have to get that aspect open, shine the light on the secret and expose it, and then eradicate the root. There is a lot of grief and loss that is very heavy. People are carrying all of this within and do not even realize that it is one of the roots. A lot of times when grief or loss is mentioned, people automatically think of death, but it really is so much deeper than that. If they miss a telephone call, they can go into a grieving episode. Giving up the addiction is a grief, giving up gambling, giving up whatever their addiction is. So they spend a lot of time working on that, working on themselves, getting down and looking at what is really causing the problems. Gary Isham does a lot with values and ethics, anxiety, depression, and then Post Acute Withdrawal Syndrome (PAWS), which starts anywhere from two months and can go on for a couple of years. But PAWS is also a big part of recovery. There is addiction versus wellbriety, which is like sobriety. It is a matter of just getting well and going on from there; intellect over emotions. Mr. Isham says let's talk about their intellect; let's not go to their emotions; let's try to stay out of emotions because emotions get them into trouble. Emotion is action, so they are either going in a negative direction or a positive direction. So if they are using intellect, then hopefully they can go down the straight road. The program has inpatient treatment and can refer people if they meet the ASAM criteria and they really need inpatient treatment. Ms. Lorenz works together with Evergreen Council for referrals. There is a referral source in Louisiana and one in Oregon. There are different places where people can be sent if they really need inpatient treatment. The program also has culturally relevant programs: Sweat, Talking Circle, AWARE, and family sessions. AWARE is a very strong support system for people to be able to be around others who can support their emotions and their needs, and someone to listen to them and be there for them. Through the program, there are a lot of events to know that there are other ways to have fun besides buying into their addictions, like lots of dances, community get-togethers, and that type of thing. It is still new and is just taking off and doing well.

Currently there are more women than men in their program (about 11 men and 14 women). These are actually quite high numbers for people in gambling treatment because their Tribe does not have them knocking down the walls or kicking down the doors wanting to come in. That is because gambling is still where alcohol was about 30 or 40 years ago. It is still the elephant in the room and is something that nobody wants to talk about, nobody wants to look at, and nobody wants to identify with it – if someone knows someone who has a problem, they just deny it and try to overlook it. So it has taken time to get their numbers up, but they are up now. In 1999, when Diane Henry started the program, they had one client. All the counselors were fighting over that one client because they needed the hours to get certified, but that one client did not provide that many hours. Their people are from all around Snohomish County, so it is a lot of work to get their Tribal members in the program. Currently, they have a lot more non-tribal members. There are a few tribal members, but it is lower now than it has been in the past. There is no fee for the services and it is open to everybody, which they are very grateful for.

The number of gambling clients has increased through community awareness events. Ms. Lorenz sponsored the program with Evergreen Council on Problem Gambling because in the beginning, Maureen Greeley had opened doors for her and showed her where to go, what to do, and how to learn all the various things, which was wonderful because she had things she wanted to do. They started Four Directions Conferences, which bring the Nations together in gambling conferences to see what they have available and what problem gambling is all about. It is especially good for the Tribes that have casinos. To date they have had four of those conferences. The first one was at Muckleshoot, the next two were at Tulalip, and the last one was at Swinomish. Evergreen Council does a wonderful job of bringing this all together, and Ms. Lorenz has been pleased to be able to be a part of it. Two summers ago they offered the New Directions Summer Youth Program. Evergreen Council hired a lot of artists throughout the community to come and teach the Tulalip youth about cultural, and also provided gambling information, education on gambling, and education on different addictions. The youth also did a mural (a painting on a rock, a big beautiful one) and they were so proud of it because it was something they could look at and know they did it and were a part of.

The first couple of years, Ms. Lorenz tried to get into every community event that was imaginable. If it showed up, she was on the Richter scale and had all her stuff out there. She wanted everyone to see her, to know her, and to know that the Tribes had a problem gambling program. Even today, a lot of people do not know they have a problem gambling program, but she said she has not given up on that and is still working on it. Plans are to present at the National Conference where the Tulalip, Puyallup, and Swinomish are going to be presenters. There will be a breakout session and a hostess room to bring a lot of the Natives together and do a lot of networking, which Ms. Lorenz was excited about. It has been difficult getting the word out, letting people know who the members of the program are, and where they are located. They have benefited from the ads from Evergreen Council. The numbers are starting to go up thanks to the calls on the hotline, which has been very helpful. A meeting was started for providers, which includes five tribes that meet once a month to collaborate on what they know and to give information on what the program is doing. They bring information about what they are doing and share ideas and programs, and they have all grown from it. The Swinomish, Suquamish, Lummi, Puyallup, and Tulalip are part of the providers so far and those five Tribes have really benefited. No one showed up with a manual, so they are helping each other. The program has five staff members that include the Clinical Administrator Diane Henry and also Lena Hammons. She asked if there were any questions.

Chair Ellis asked if there were any questions of Ms. Lorenz; there were none. He thanked Ms. Hammons and Ms. Lorenz for the presentation, which was very informative on an extremely important topic. **Ms. Lorenz** thanked the Commission for their attention.

Puyallup Tribe of Indians (PowerPoint Presentation)

Interim Director Trujillo introduced Jennifer LaPointe, the Operations Director of the Puyallup Tribal Health Authority, who has been with the Puyallup Tribe for 11 years and has direct oversight of the Problem Gambling Program development.

Chair Ellis welcomed Ms. LaPointe.

Ms. Jennifer LaPointe, Program Manager for Health Authority, thanked the Commission for their time to hear about the Puyallup Tribe's program. She mentioned that the Honorable David Bean had planned to be at this meeting but was ill and could not attend. She reported their Tribe has a Problem Gambling Prevention Treatment Program. She would be reviewing some of the highlights in a nutshell and some of the things that are most exciting that have been done since they started going down this road of problem gambling. The Tribe has been working on a multi-level program and goes off in a lot of avenues. She said she would go over some of the different things they have done within the Health Authority, the Emerald Queen Casino, and the Tribal Gaming collaboration with their communication plan, education, treatment, and then a little bit about their vision of where they want to go next.

The Health Clinic, the General Manager of the Emerald Queen Casino operations, and the Puyallup Tribal Gaming Agency are all working together. They all are very busy entities, so it has been difficult to make time for them to collaborate. They have worked together on many things, the biggest being self-barring policies and making sure the people who are asking to be self-barrred from the casino know about the program and get the right resources. The casino customer population is much bigger than any population the Health Authority can serve, but a portion of them are eligible for the services. The Tribe wants to make sure those customers know about the program and have input from the program on what should be the parameters and requirements for people re-entering the program. They have had a lot of policy-type discussions and making sure that all the dots get connected and everyone knows what each other is doing in those areas. They have had discussions and will continue to have discussions on casino employees and problem gambling within the employee population: how to serve them and how to do prevention activities with casino employees. There is a lot of problem gambling with casino employees that cannot really be avoided because they work in a casino. They work together on that and make sure the HR Department has the resources and that they continue to talk about that. It is not ever going to resolve itself, so they have to try to work together to make sure their communication line is open and active, which is a good step. A lot of time and energy has been spent on communication outreach, branding, or marketing. There are a lot of education pieces in the community like Public Service Announcements (PSA) on problem gambling, responsible gaming, and all of those different pieces, but they do not speak directly to their community, which is really important to them. They need things that speak directly to their community, that the community recognizes them as their own, and that they are associated with them, their clinic, and what they have to offer. One of the first things they wanted to work on was reaching their people.

It was a large process. They created their own poster series, have their own PSAs that are played on closed-circuit TV in their clinic and in other parts of the Tribe, and did a community assessment to see what the problems were and what kind of messages would reach them. They conducted interviews with staff of the Tribe, the Council, and with walk-in patients to the clinic. Then they moved into developing some of those. They traveled around and worked with a lot of other places that have campaigns going on in different communities and casinos. They worked with Harrahs on their responsible gaming campaigns and met with some of their staff that developed it and who keep it ongoing. They went to other Tribal casinos throughout the United States that are doing responsible gaming campaigns and talked to them about what has been successful and not successful in their communities. That information was used to develop their own posters and

PSAs. Once those poster series and PSAs were developed, they did a lot of market testing and put the posters out there and asked if they really reached people, if they looked like it reached their families, if it was specific to their community, and if it would impact people. After they got that information back, it helped the program narrow down where to go. They are committed to ongoing review of that information because they know those kinds of campaigns get outdated really fast. What is relevant to the community today might not be relevant to the community in two or three years, so they did not want to just keep doing the same thing and hoping to get a different result. Once something appears out of date, people start to ignore it. Or if they have seen it too many times, they start to ignore it. A communications specialist is on their team who previously did communications for the banking industry and other industries outside of health care. Health care has a reputation for continuing to let things get out of date and are not really fresh, so it was really important to have a true expert to continually work on that.

The Tribe also has a treatment program brochure and does things in the Tribal News. They have an actual branding guideline that all of these things follow. The idea is that when people in their community see it, they know it is about problem gambling, they know it is coming from the Tribe, and they pay attention to it. Often times in clinics there are lots of things that are printed off a computer and posted all over the walls. They really try to avoid that by having a branding scheme going on. It has taken a long time for this to be sold to their community. The PSA video was too large to include on the PowerPoint, but she offered to send it to anyone who was interested in seeing it. It is not a secret; they do not want to have too much ownership of it, but want it out there for people.

The community assessment came up with the tagline, "By not gambling today, I was able to spend more time with my family." People feel that gambling really draws time away from the family, which is the center of their culture. That seemed to be something that really hit home for people. They have a 1-800 number hotline, but those posted in their community have the clinic phone number. They did not use their community members' pictures in the posters, but consciously went out and got actors to use because of confidentiality and other issues with people everyone knows. They did proof all the pictures of the people and their tone of voice with their community to make sure that, even though this person was not from their community, it still reflected what would connect them to the community.

The Puyallup Tribe serves 10 to 12,000 patients a year from about 250 different tribes around the country. Only about 17 percent of their patient population is Puyallup Tribal members. There are different levels of acculturation in their culture. To really look at the community and find out what resonates with them cannot just be what resonates with this 17 percent. Instead of using people, they tried the traditional use of animals, symbols, and culture in their campaign. There was a lot of concern about the people who gamble because they do not have a big family to spend their time with. The wolf poster is an example of one of the other ways they went. It says, "As I became lost in gambling, the trickster inside of me took over until I asked for help." Culturally, this animal is known as a trickster. Their brochure is tri-fold and follows their branding guideline: green for treatment and with the basket design on the front so that people recognize it and it resonates with the community. Those baskets were woven by a Puyallup Tribal member, and were photographed for this purpose. A Tribal newspaper comes out bi-weekly and is used for education prevention. About once a month, there are different articles in the newspaper on problem gambling and the

treatment program. Treatment counselors provide those articles to the Communications Director who gets them in the Tribal News. It is something that is done to continually reach the Tribal community and goes out to all Tribal members and is available throughout the community for other people. A lot of people in their clinic who are not Tribal members pick up the paper and read it all the time.

Community outreach has set aside one day each quarter where the clinic is open only to Puyallup Tribal elders who are 55 and older. There is a problem gambling table and counselors are there talking to people. It is pretty effective, because the clinic is closed to everybody else so it is not a busy day. It is a very slow, relaxed day, but it reaches their prime population because the elders direct the rest of the community. So if the elders get the message, it impacts whole families. A Tribal youth outreach program works with a lot of youth programs and events. Some of the problems start really young or are impacted by someone else in their family who is doing this behavior. The Chief Leschi School has had programming for education and outreach prevention and a drop-in session for problem gambling education was recently started. The biggest thing they hear people say is "I have a family member, how do I know if it is a problem?" This group is offering more information and a class where they can come and learn. The Tribe is really trying to get people to its door by saying people do not have to have a problem to talk to the counselors or know what is going on. The flyer for the education group has the same branding. The program has been able to implement universal screening for problem gambling in their medical clinic and throughout their behavioral health. A five-question screening tool has been put into an electronic health record, which is shared between behavioral health, chemical dependency, mental health, dental health, medical health, and the pharmacy. Everybody shares the electronic health record, which is a new development. Before, everyone had their own paper chart and nobody knew what the other was doing. Now, if a person is screened in medical, their counselor can see it. It is not used 100 percent of the time, but it is in the record and their providers are being pushed to use it 100 percent of the time. It takes time, and other things seem more important so they skip over it, but it is being pushed on them.

The program is also working on the outcomes of those screenings to turn into referrals. Ten years ago during tobacco cessation, the Tribe learned that people can be asked about it the first 15 times they come in and they will not say anything, but then the 16th time they are asked, they will say "yes, actually I will take that referral now." The program also provides outpatient treatment where an assessment is done and they have individual and group sessions. The numbers are very low in those, but they are trying to do all of these other things out in the community to make sure people start to recognize the problem and come forward. The program also refers out for inpatient treatment, which had been done for the Youth Chemical Dependency Treatment. When they started doing referrals for problem gambling, they said they were going to do the same values. The Tribe believes pretty strongly in not sending its people somewhere that none of the counselors have seen. So before it becomes part of a referral network, someone from the clinic has to actually do a site visit with the treatment center because it is never known what the quality is, based on the website or talking to the person who answered the phone. An inpatient preferred referral network is being developed, but it will be slow because each place needs to be visited. That is a protection that is put out there for the Tribe's community members. Ms. LaPointe did not know if that was unique or not, but it seemed like it was to her.

There are a lot of other things that are currently being done, like community-needs assessments that are being done on a three- year cycle. Every three years, at a minimum, the counselors go back to their community and ask whether the program is happening the way that people want it to be, what could be done better, what could be done differently, and if trends in the community have changed. It is important to make sure the program stays fresh and on top because there is no real point in continuing to work to develop something that is not fitting the needs of the community. That is also done in the diabetes program and a lot of other programs because a lot of work can go into something that ultimately is not reaching the community. They are also looking at developing treatment for social media, internet addictions, text messaging, and all those other kind of things that are out there that treatment programs are being developed for. This fits in with where gambling is going with the internet gambling phase, so their program will be able to have more experts on those types of addictive behaviors. That is where the Tribe is headed.

Senator Conway asked if their program had non-tribal and tribal counseling in its facilities. **Ms. LaPointe** replied their program serves 250 Tribes. It does not do counseling for non-Natives, but does counseling for non-Puyallup Tribal members. The program generally does not serve non-Natives in its clinic, except that sometimes services are provided to spouses of tribal members and step-children who are non-Natives but are still under the care of their tribal parents. If they are an actual member of a tribal household and their Behavior Health (mental or addictive behavior) is affecting a tribal family, then the Tribe can make an exception and see them. Mainly that is based on capacity because they are serving a very large Native population in Pierce County and are already having a hard time serving all of them. The program has already maxed out on its capacity just serving the people the Tribe is required to serve by Indian Health Service.

Chair Ellis asked if there were any other questions; there were none. He thanked Ms. LaPointe for an extremely impressive program.

Approval of Minutes – April 11-12, 2013, Commission Meeting

Chair Ellis asked if there were any suggested changes or corrections to the minutes; there were none.

Commissioner Amos made a motion seconded by **Commissioner Gray** to approve the minutes from the April 11-12, 2013, Commission meeting as submitted. *The vote was taken; the motion passed with four aye votes.*

ADMINISTRATIVE PROCEDURE ACT PROCEEDINGS

New Licenses and Class III Certifications

Assistant Director Tina Griffin reported there were no unusual items or anything to draw the Commission's attention to. Staff recommends approval of all licenses and class III certifications listed on pages 1 through 18.

Commissioner Gray made a motion seconded by **Commissioner Prentice** to approve the new licenses and class III certifications listed on pages 1 through 18. *The vote was taken; the motion passed with four aye votes.*

Rule Up For Discussion and Possible Filing

Staff Proposed Rule Change: Fingerprinting applicants

Amendatory Section: **WAC 230-03-060** Fingerprinting of applicants

Assistant Director Griffin reported that RCW 9.46.070(7) requires the Commission to fingerprint and conduct national criminal history background checks on any person seeking a license, certification, or permit. It is also required for a person who holds any interest in any gambling activity, building, equipment used in those activities, or who participates as an employee of a gambling activity. The RCW states that the Commission must establish rules to delineate which persons named in the application are subject to the requirements. This rule proposal clarifies who does and who does not need to submit fingerprints and undergo the national criminal history background checks. It also clarifies that staff may fingerprint substantial interest holders when staff has information that the substantial interest holder may not be qualified to be licensed or participate in the gambling activity. It also meets the intent of the Statute and brings Commission rules in line with its current practice. Staff anticipates little to no impact on the licensees or applicants and recommends filing the petition for further discussion.

Chair Ellis asked if there were any questions; there were none. He asked if there was anyone in the audience that would like to address this proposed rule change; no one stepped forward.

Commissioner Prentice made a motion seconded by **Commissioner Amos** to accept for filing and further discussion WAC 230-03-060. *The vote was taken; the motion passed with four aye votes.*

PUBLIC MEETING

Nominations and Election of Officers (Effective July 1, 2013, to June 30, 2014)

Chair Ellis asked if there was a motion to nominate a Commissioner for the chair position.

Commissioner Gray nominated Commissioner Mike Amos as Commission Chair for the term expiring on June 30, 2014. **Commissioner Prentice** seconded the nomination. **Chair Ellis** asked if there were any competing motions to nominate any other candidate to be chair; there were none. *The vote was taken; the motion passed with three aye votes. Commissioner Amos abstained from voting and accepted the position.*

Chair Ellis asked if there was a motion to nominate a Commissioner for the vice-chair position.

Commissioner Amos nominated Commissioner Prentice as Commission Vice Chair for the term expiring on June 30, 2014. **Commissioner Gray** seconded the nomination. **Chair Ellis** asked if there were any competing motions to nominate any other candidate to be vice chair; there were none. *The vote was taken; the motion passed with three aye votes. Commissioner Prentice abstained from voting and accepted the position.*

Other Business/General Discussion/Comments from the Public

Chair Ellis opened the meeting for other business, general discussion, and comments from the public.

Ms. Chiechi, Recreational Gaming Association (RGA), extended her deep gratitude for Commissioner Ellis' service on the Commission. She said it has been a pleasure getting to know him. She pointed out that he runs a tight ship and that it was very much appreciated because he has conducted it very thoroughly. Although the RGA may have not liked some of the outcomes, they appreciated the ability to come before the Commission and have open dialogue. She wished Commissioner Ellis all the best in whatever is next on his life plan. The RGA will miss him.

Chair Ellis thanked Ms. Chiechi for her comments saying he appreciated them very much. He noted that earlier in the meeting, he had mentioned that he had enjoyed working with Ms. Chiechi, the other stakeholders in the industry, and everyone else that has participated in Commission activities.

Commissioner Prentice said it has really been a privilege working with Commissioner Ellis and how he approached issues in a very studious, very analytical approach. She said she hoped the Commission intended to carry on that approach, noting that Commissioner Ellis had put a real stamp on this Commission that she hoped would last for a very long time.

Chair Ellis recalled mentioning on several occasions the amount of input and education that he had received from Commissioner Prentice through a number of telephone calls and conversations throughout the time he has been on the Commission, particularly in the early years when he desperately needed that education. It has been really valuable to him, and he really appreciated Commissioner Prentice's words.

Commissioner Gray said she really appreciated the mentor that Commissioner Ellis has been for her this past year.

Chair Ellis thanked Commissioner Gray. He asked if there was any more public comment on any topic; there was none.

Executive Session to Discuss Pending Investigations, Tribal Negotiations, Litigation, and the Qualifications of Applicants for the Director Position

Chair Ellis explained he expected the executive session to last approximately 90 minutes, and then the meeting would be resumed for the purpose of selecting applicants to be interviewed by the Commission for the Director position. He noted the next meeting was scheduled for July 11 and 12 at the Bellevue Red Lion and suggested checking the Commission website prior to the meeting date for information on whether the meeting would be one or two days. He called for a break at 12:50 p.m. and called the Executive Session to order at 1:00 p.m.

Chair Ellis called the public meeting back to order at 3:05 p.m. He reported that in the executive session, Ms. Benavidez provided the Commissioners with applications for eight applicants who met the minimum qualifications for the Director position. They reviewed each of the applications,

including the application from candidate #1 who was deemed to stand out based on qualifications, as well as the applications for candidates #2 through #8 who would be good applicants for many positions. Based on that review, he asked if there was a motion concerning which applicant or applicants should be included in the interview process by the Commission for the position of Director of the Washington State Gambling Commission.

Commissioner Prentice made a motion seconded by Commissioner Amos that Ms. Benavidez schedule candidate #1 for an interview by the Commissioners.

Senator Prentice said it was very clear that, as they looked over the entire field, candidate #1 had many good qualities and believed this one jumped out, particularly with all of the background included.

The vote was taken; the motion passed with four aye votes.

Adjourn

Chair Ellis adjourned the meeting at 3:10 p.m.

Minutes submitted to the Commission for approval,

Gail Grate, Executive Assistant

Exhibit I

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
STRATEGIC DISCUSSION
WEDNESDAY, OCTOBER 9, 2013
APPROVED MINUTES**

PUBLIC MEETING

Chairman Mike Amos called the Gambling Commission meeting to order at 9:45 a.m. at the Spokane Davenport Hotel and introduced the members present.

MEMBERS PRESENT: **Commissioner Mike Amos**, Selah
 Commissioner Margarita Prentice, Renton
 Commissioner Kelsey Gray, Seattle
 Commissioner Chris Stearns, Auburn
 Commissioner Geoff Simpson, Issaquah
 Senator Steve Conway, Tacoma

STAFF: **David Trujillo**, Director
 Mark Harris, Assistant Director – Field Operations
 Tina Griffin, Assistant Director – Licensing Operations
 Julie Lies, Assistant Director – Tribal & Technical Gambling
 Amy Hunter, Administrator – Communications & Legal
 Callie Castillo, Assistant Attorney General
 Gail Grate, Executive Assistant
 Michelle Rancour, Administrative Assistant

Welcome

Director Trujillo welcomed everyone to the Commissioners' strategic topic discussion. He explained that at the June Special Commission Meeting there was indication of a desire to talk about strategic items and how certain items may impact how the Commission does or should do business in the future. The discussion is scheduled to last until 12:30 p.m. If it looks like it will take more time than that, the Commissioners may decide to continue the discussion at the November Commission meeting. Director Trujillo explained that he had sent a suggestion of various strategic topics to the Commissioners and Ex-Officio members for their consideration.

The first topic simply had to do with technology in general; the second item had to do with working within the legislative environment; the third topic was problem gambling; the fourth topic was conducting the business of the Gambling Commission, which he thought meant not the Commissioners per se, but how staff works; the fifth item was legislative reports; and the sixth item was technical assistance and training. Those topics were ranked by importance, so the four

items that would be discussed at this meeting were technology, working within the legislative environment, problem gambling, and conducting the business of the Gambling Commission. Director Trujillo explained that, because the schedule was quite ambitious, he had previously communicated with Commissioner Gray who has much experience in helping discussions move along.

Strategic Discussion

Commissioner Gray explained the goal was to have an open discussion, whether or not a conclusion or decision was made. The ideas and suggestions would be recorded and may turn into decisions later. Commissioner Gray suggested the Commission read the series of questions within the technology topic area (excerpted in text box below). (Handout with questions on all topics is attached and incorporated by reference herein.)

1. **Technology**

The same technological pressures that citizens are placing on state government to modernize the way it conducts business are the same pressures and expectations we are facing as changing technology reinvents the gambling industry every year.

I-582 and I-583 are current initiatives that propose allowing online intrastate poker. How do we prepare for this possibility without looking as if we are promoting it or somehow sanctioning it?

Digital currencies are becoming more common. Some are supported by government, such as the MPeso in South America, and others are not, such as the decentralized Bitcoin. As these become more and more prevalent, how do we keep informed of this technology and how do we ensure this technology does not enter Washington gaming unless the Legislature authorizes it.

How do we continue to plan for rapid advances in technology on mobile gaming devices such as cell phones, notebook/notepad computers, or Google Glass that can impact WA gambling, as well as electronic enhancements to traditional gambling games?

How do we address the gambling industry's desire to be able to enhance their gambling products with advanced technology?

Senator Conway indicated he was interested in the whole online gambling issue in terms of what was going on in Delaware, Nevada, and New Jersey, and also to figure out how to anticipate what may be happening as people are online.

Commissioner Gray asked Commissioner Simpson if his idea was to really review the RCW.

Commissioner Simpson affirmed, noting that the last time the RCW was modified with regard to technology changes was Substitute Senate Bill 6613, which was Senator Prentice's bill in the 2006 legislative session.

Director Trujillo thought it was important to step back before the RCW in question, moving straight to the Constitution of the state of Washington. Article 2, Section 24, Lotteries and Divorce, from that Constitution were included in the agenda packet. It is important to understand the foundation from which the Commission began to operate. Section 24 says the legislature shall never grant any divorce. And lotteries shall be prohibited except as specifically authorized upon the affirmative vote of 60 percent of the members of each house of the Legislature, or notwithstanding any other provision of this Constitution by referendum or initiative approved by 60 percent affirmative vote of the electors voting thereon. That is the foundation from which the Gambling Commission came from and from which everything else now flows.

The legislative declaration, which is RCW 9.46.010, describes a little bit about what the Commission is to do. Then there are about 21 sections in RCW 9.46.070 that define the Commission's powers and duties. The Legislature determined the Gambling Commission was a law enforcement agency, which is a healthy distinction from a criminal justice agency. In 1988 came the Indian Gaming Regulatory Act. That framework provided the foundation for the Tribal Compact environment that the Commission operates under. RCW 9.46.240 was brought forward with the change and citizens believed it was only the State Legislature that was making internet gambling illegal. But it was the Constitution that declared that if it was not specifically authorized, it was not legal. This simply clarified it into one of the most clear internet statutes in the nation.

Senator Prentice recalled that all the Legislature did was insert the word "internet." She said she was approached by Jerry Ackerman of the Attorney General's office, who asked her to do that legislatively because there was a lawsuit involving the World Trade Organization and they wanted the state to be consistent. It seemed innocuous, but there were a lot of people who thought the Legislature was taking their rights away from them. That was why it was extremely important. If it was not specifically permitted, it could not be done anyway, but the hysterics that went around nationwide was pretty surprising.

Commissioner Gray explained that she would like the Commission to have a discussion on these topics, but would like to first get some of the ideas down on paper and then open it up for a discussion. Internet gambling is coming into the United States, whether it comes into Washington or not is another question. To answer the question that Senator Conway proposed, the Commissioners have an obligation to discuss the topic and figure out what the expectations are. Commissioner Gray asked the Commission to write down a couple of their thoughts with respect to the two questions that were asked: what should be one change the Commission would like to see made that would enhance the role of the Commission to deal with this changing environment; and how to anticipate and what to expect with respect to online gambling as it relates to other states.

Senator Conway said there was some history around internet interstate compacts and revenues with the Horse Racing Commission who does online gambling on horse racing in

this state. That is something that goes on and the state has a share of that revenue. If this becomes big, and Washington citizens engage in it, revenues will pour into the other states and Washington State is not going to be happy about that. Online gaming came about with horseracing because people were participating in the internet. The Horse Racing Commission went to the Legislature who changed Washington law to ensure that the state captured the revenues to help that industry. He said he was just raising that point as a strategic problem.

Chair Amos suggested adding a discussion about how to capture monies for revenue for Washington State when this comes – and it will be here. He thought it would require somebody who had technical knowledge on how to track people on home computers that are online playing poker with somebody in Mississippi. Somebody like Special Agent Dibble, who is really sharp in computers, could tell the Commission how to track that.

Commissioner Simpson said that, when looking at the bill that Senator Prentice had passed, one of the things it did was to specifically add the words "the internet," "a telecommunications transmission system," and "or similar means." He thought one clarification that could be made to this RCW was to make it clear that Washington does not allow any kind of new forms of gambling. Currently the RCW says "whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunication transmission system, or similar means." Commissioner Simpson suggested simply changing "or similar means" to say "or any other means." That could end any possibilities that there was some other technological advancement along the horizon that the Commission was not going to anticipate. The other thing that bill did was to change it from a gross misdemeanor for a person guilty of this to a Class C felony. If the state is experiencing difficulties with people who are disregarding the law and conducting illegal online gambling in Washington, then this Commission should consider changing the penalty for that. If it is not appropriate, then the Commission should recommend the language be changed in order to stop the illegal activity.

Commissioner Gray asked if Commissioner Simpson was suggesting the Commission look at Substitute Senate Bill 6613 and enhance it so there would not be any internet gambling.

Commissioner Simpson replied that was the intention of the bill. It had been silent on internet gambling, so Senator Prentice's bill specifically called out internet gambling. He suggested this discussion be about those things the Commission did not have any way of anticipating. He thought the Commission could strengthen that RCW just by saying Washington State does not allow gambling by any other means than was currently allowed. That would be something for the AG's office to look at. **Commissioner Gray** added that if, as Commissioner Amos said, the Commission anticipates there would be online gambling, it would then require some change in that legislation. **Commissioner Simpson** replied that online gambling was already illegal in Washington and is a Class C felony if convicted.

Commissioner Gray asked if he was suggesting changing that, which would require changing the law. **Commissioner Simpson** affirmed, if the state wanted to allow online gambling, which he did not think it should, the Legislature would have to change the law.

Commissioner Prentice suggested assessing where the people of Washington State were in terms of gambling before the Commission plunged ahead that far. She explained the Legislature was having hearings all over the state at that time. There was one consistent message that came through, and it was very broad: where the state was, whatever was being done right then, it might be more than some wanted, but it was okay, but do not plunge any further. That was in 2006, and as time has gone on, people may have changed in their acceptance. Commissioner Prentice recalled that when the Lottery first came in the implication was that it was going to go to education, but the actual bill did not say that. So there was always a disconnect between what the public thought and what the Legislature knew. Commissioner Prentice did not want to create that kind of animosity and suggested making it very clear that the Commission was doing this, but that there was acceptance from the people of the state of Washington. The public needs to know what the Commission is doing.

Commissioner Stearns commented on the suggestion about how the state captures revenue, how to track it, and what was one change the Commission would like to see to enhance their ability to work in this environment. He thought they should discuss how to allow the Commission to recommend a strategy for the state to authorize and regulate internet gaming, which he thought was the future. He did not want to ignore it; he thought the Commission needed to be experts on it. He said he liked the idea of holding the kinds of hearings where they become experts at the issue. Commissioner Stearns also thought it would be a great idea to have a professional economist work with the Commission so they could better understand the economic environment and the implications for the state.

Commissioner Gray agreed with Commissioner Stearns and thought it would be good to become experts on it and perhaps as a Commission look at bringing in an expert to talk to them about the future and how to capture those revenue funds.

Senator Conway thought if the Legislature wanted anything, the Gambling Commission could do a strategic study of the impacts of the changes that are going around the internet. He said an example would be what the Legislature was doing with regard to trying to get to a streamlined sales tax and a destination sales tax as a way of capturing the lost revenue going on by people going on the internet and purchasing goods out of state. Congress is considering major legislation around that. The fact is the internet has become the way business is being done. It is obvious that people go online and they do not understand that they cannot do something because they do not know the RCWs. Senator Conway recalled that at the July Commission meeting, the Commission talked about how internet gaming could be tracked and how the Gambling Commission tracks it, which was a very interesting discussion. He thought that, with more states considering online gaming, he anticipates this to start tumbling and much like horse racing, the state will be drawn into it. Senator Conway thought strategic planning by the Commission around this and understanding what was actually going on currently would be very helpful to the Legislature.

Commissioner Gray said what she was hearing was that one of the things the Commission could do that would also be helpful to the Legislature would be to undertake a real look at online gambling, what its impact would be, and the possible revenues.

Senator Conway added that involved in that, as Commissioner Simpson suggested, was whether the RCWs needed to be changed. He asked if the Commission needed to anticipate further change. He thought it was wise to plan for this because it is here and it is reshaping how the state currently collects sales taxes. The reality is that people are doing more on the internet and they use it constantly; it is becoming part of our world and younger people are always on the internet. It is just good public planning.

Commissioner Gray suggested tapping into some of the experts the Commission has to look at online gambling across the country.

Director Trujillo thought this discussion illustrated why this was a good topic of discussion. The Commission is fairly knowledgeable of gambling and has such diverse thoughts on it and he could only imagine what the public thinks about it, since they do not really have as much of a background as the Commission does. He shared that having been in this for awhile, he could see that there are technological pressures to be faced at some point. Washington is a very conservative state when it comes to gambling, evidenced by two public opinion surveys that basically said the citizens were okay with where gambling is currently, but they do not want to see it expand. Plus there were the initiatives that were put forward that failed because the people did not vote in favor of them. Knowing that, and recognizing what is happening outside the boundaries of Washington, is something the Commission needs to reconcile a little bit, even if it is just to change the statute to clearly say absolutely no way, or to step on the other side a little bit and provide information that the Legislature could use to make good informed decisions. There is a difference between internet gambling and intranet gambling, which is what the states are moving forward with. Intranet gambling is within the boundaries of the state. Director Trujillo expected to see the states have the ability to enter into compacts with other states. As Washington legislators begin to field questions in the upcoming session, it is good to have this discussion. Staff gets these questions all the time and the Commissioners will also be getting these questions from the public and constituents. It is a good topic from the standpoint of bringing this up as an awareness topic for discussion.

Ms. Hunter said she thought it was a testament to this Commission and ex-officio members that they were taking the time to have this discussion. She really appreciated it because it brought up all of these things that people are hearing about. In meetings with legislators, staff is asked very direct questions about what they think about internet gambling. She recalled someone asking her what her best advice would be to the legislators if they were to allow internet gambling. It would be helpful to know where the Commissioners are on that issue. Sometimes in those discussions, Ms. Hunter felt like she was on this line and was not sure which side of it she should be on because she was not sure where the five Commissioners and

the four ex-officio members really were on the issue. The Commission wants the Legislature to make good informed decisions, so some of the discussion about the economic impacts would be really important. It is also important from the perspective of the licensees and the Tribes that are currently involved in gambling to understand how that would impact them, because these are the people the Commission have worked with for a long time. She thought the Commission could appreciate all of the economic impacts of their businesses, regardless of which part of the industry is offering that gambling. Ms. Hunter thought that, particularly with a couple of the initiatives that are out there, legislators want to know what is going on in other states and she was never quite sure how much information the Commission wanted staff to provide in response to those questions. She has had questions about what the Commission thought of the initiatives, about Delaware's approach, about Nevada's approach, and about New Jersey's approach. Ms. Hunter appreciated the discussion, finding it very interesting. She said it was much easier to shop on the internet than to drive to the stores, so there are a lot of purchases made that way; it is true that the internet is where people are going.

Senator Conway indicated he thought it would be good to include the article about where, in Nevada, people can use their cell phones to legally gamble. He asked what was going to stop Washington citizens who are using their cell phones in Nevada to gamble from continuing when they get back home in Washington where it is illegal. Nevada's move online with gambling activity is just going to spread. He asked how the enforcement was for this and thought the enforcement side of this was another strategic issue. Senator Conway said he was not trying to judge what the Commission should do here, but he thought they needed to strategically discuss what the impacts would be when people do this. He felt it was fascinating and it was going to spread. He recalled when this internet discussion was started. The federal government had a really clear federal objection to anyone getting involved in internet gaming. It seems like now that legal environment is changing and states are entering into internet gaming. Senator Conway thought the Legislature would need help, and he warned they were looking for revenue in Olympia because of the needs of the state and schools because other things are stripping Washington's revenue capabilities. This is a high issue in Olympia and it is going to come up. He said some guidance on these issues from the Gambling Commission would especially be helpful. Help from the Commission on that issue was going to be critical in the future, and he thought it was strategic planning, as much as anything.

Commissioner Stearns said there are these two initiatives that are in various stages, which might create some kind of a timeline. He indicated his preference was that the Commission be able to weigh in and assist the Legislature. There are all these questions and all these issues, and then the Commission makes a recommendation. It looks like there is a timeline and he did not agree that this gets to be studied for five years.

Assistant Director Harris responded that his staff is currently tasked with the internet gambling regulation. They are looking at what other states are currently doing to find the good, the bad, and what the problems are. He thought the wait and see approach was good on

the Commission's part to see where the other states jump in, what the shortcomings are, and the different approaches taken. One state is looking at more of a revenue generator and the regulation approach is secondary. They have all had some kinks they are working through, and AD Harris thought that was good to see. When the Commission has to go forward and do something, they can actually find the best method that works for the Commission and learn from the states that jumped in right away. The Commission staff is quite prepared for some of the problems that would be encountered. He said there are ways of determining if people are still gambling on their cell phones inside Washington State, like geo-location etc. He thought a couple of states use two methods to confirm where somebody is, and another state will use three methods. So the more methods they have, the more reliability there is to it. The Gambling Commission has the potential, the experts on staff that could give the Commission an Internet Gambling 101 class – the nuts and bolts of how that actually works.

Commissioner Stearns asked if Assistant Director Harris could set something up for the Commissioners. **Assistant Director Harris** replied something could be set up either informally or formally.

Director Trujillo said that Gambling Commission agents have had great success in the enforcement of illegal internet gambling because the strategy has not been focused on players, but rather on operators and providers, especially those currently within Washington State. He thought that at one point there were several thousand operators that would accept internet bets from within Washington State. After Gambling Commission enforcement activities partnered with the other states, that number is now under 500, which may still sound like a lot, but it is much less than it was previously. As long as outside operators or vendors have a hope of obtaining a license in another state to conduct this activity, they are likely to look at the Washington State statute and see that it is very clear that they probably should not allow bets coming from Washington citizens because it is illegal. Therefore, if they want to have a chance of obtaining a license in one of these other states, they probably will not accept those bettors. That has also been part of the Gambling Commission's success, because of the clarity of the current Washington State statute.

Assistant Director Griffin explained she has been watching and monitoring the licensure activity for the three states that have gone forward with online gambling to see what they are doing in terms of who they are licensing and how that is progressing.

Assistant Director Julie Lies said her staff was focusing a lot on online gambling. She thought the Commission needed to focus on the technological advances to existing gambling activities. There are a lot of people out there that are trying to add the bells and whistles as they try to attract the same types of customers in a brick and mortar location as they would online. That was another important part that the Commission needed to keep an eye on as well.

Commissioner Prentice pointed out that she thought that, although they were doing this in Nevada, they were broke. She wondered if there was sufficient revenue to make it worth it. She said one of the things that concerned her was that kids were adept at this too and she thought the Commission should take a big look at that. She said she realized that the Commission has tended to be more conservative, but all states were not equal. Washington gambling laws started in different way, so what people tolerate or even know -- and she thought that some of those states that were plunging into it did not really know what they were doing. In some states it was not regulated at all, so Washington is well ahead by having its 1973 law in place even before the Indian Gaming Regulatory Act (IGRA) hit. It was not that Washington State was so grand, it was just that it has been a lot more cautious, which has been fortunate. She always said that the state, with that awful situation in King County where they cheated so much, had a good law. That is where this state is, and it is better regulated than a lot of other states.

Commissioner Gray captured some of what has been brought up so the Commission could continue with their discussion: look at a study of the impacts of internet gambling, both economic and the full range of impacts; look at some other states and what they are doing, how they are regulating, and whether it works, including the good and bad of that – there may be some folks within the Commission that could help with that; review the legislation and see what might be needed in terms of changes; connect with the Commission’s partners, clients, and the people that staff currently work with, both in terms of tribes and house-banked card rooms; and look at enforcement. She also heard that the timeline was pretty close and that this needed to begin shortly since there were at least two initiatives currently concerning online gambling, and that the Commission needed to study this and become more aware in terms of their own knowledge about internet gambling and its impacts.

Commissioner Simpson said he thought it would be a mistake for Washington State to begin to allow internet and online gambling. Not only would it negatively impact those people that are conducting brick and mortar operations here in state, it would transfer money out of state, and it would be much more difficult to enforce winnings and whether they were conducting it legally – are those people in the Cayman Islands who are running poker games cheating the people here in Washington. He said the Commission, as it moves forward, should be very cautious about those things. Another topic he thought deserved consideration was a broader discussion of what gambling is. People can go online and find a site that lets them play some kind of gambling operation, like an online slot machine, which does not cost them anything. They can buy credits and can continue to play. He did not know if that was actually gambling. He did not think Washington State statute was very clear about what exactly does constitute gambling. Is it the purchase of credits online? Is it the ability to win something of value? People are always dreaming up new ways of doing things on the internet. He asked if Director Trujillo thought that was something the Commission should discuss.

Director Trujillo affirmed that was correct. People are creative and staff receive questions all the time about whether this online game, or free play, or if social gaming qualifies as

gambling. Staff looks at prize, consideration, and chance. If any of those elements are not included, then it is not considered gambling. However, as time goes on and people become more creative, the lines become blurred. Some of the questions staff receive from legislators are from other questions they receive from their constituents who would like to come do business in Washington State, but they are not sure if what they are doing is gambling or not. Generally speaking, staff does not look at social gaming and make a determination that it is not gambling, but instead staff does the reverse by providing the three components of gambling. Then if it meets the definition of gambling, staff lets them know it is gambling and they will enforce the law. Part of that is because there is a whole exploding realm of technology that is a resource impact. Another part is that every single case is unique and there are always different nuances to every scheme. Director Trujillo pointed out this was one of the topics that was included for later.

Commissioner Gray said that Commissioner Simpson was pretty clear about not allowing online gambling and asked if he would be willing to have the Commission look at and examine the economics and the kinds of impacts on both Gambling Commission clients and partners, and the kind of enforcement issues.

Commissioner Simpson agreed he thought it was worth looking at. He added that he would also like to discuss the impacts on problem gambling and the economic impacts on families and underage gambling. He thought it was a real problem because it was too easy for somebody to just get online and gamble away the rent money. It takes more effort to get in the car and go down to the nearest gambling facility.

Senator Conway added to his earlier comment about people being able to use their cell phone to gambling in Nevada. They are going to allow access to online poker with the cell phone, but what about after they have used their cell phones on vacation in Nevada, is that signal going to be blocked? Are they going to suddenly say those cell phones are now outside of Nevada and so the signal is blocked? He asked if that was a federal law, if it was interstate commerce. **Assistant Director Harris** replied they do have that capability. Part of one of the aspects in Nevada is geo-location, so if that person's cell phone shows they are outside of Nevada, then they would not be able to participate. The trouble Nevada is running into is with people that live a couple miles inside the border of Nevada not being allowed to gamble because they are close to the border and the geo-location cannot determine where those people are located. They would rather exclude somebody as opposed to include them.

Senator Conway asked if they had the capability to put a block on a bet coming from outside Nevada. **Assistant Director Harris** affirmed, adding that just as with any technology, if someone wants to spend enough money and be creative enough they could probably get around it. **Director Trujillo** added that he believed those were operator or vendor blocks – it is not the government imposing those blocks. **Assistant Director Harris** affirmed.

Commissioner Prentice said she thought one of the things being overlooked, even since the 2006 law that was referred to, was at that time it seemed like life was simple. It was against federal law. Times have changed. The rug has sort of been pulled out from under and they said now it was up to the states to decide, which is why that proliferation is being seen out there. She thought the Commission needed to keep their bearings as they plunge ahead and see where they fit in and if there were going to be other stuff being done at the federal level.

Commissioner Stearns asked if Commission staff work with Senators Cantwell and Murray or the Representatives and whether they ask about the internet gaming. **Director Trujillo** replied that, generally speaking, Gambling Commission staff has not worked with Washington State representation in Washington, D.C. Contact has been with local legislators here in Olympia. Staff often tries to balance how to approach something without appearing to drag the Commission along and over-step staff's authority, which then translates to a HB1295 initiative like last year. It is all an interesting balancing act.

Commissioner Gray asked if it was possible to ask staff to basically put together a study where the Commission could add some of these questions; maybe have an economist or someone familiar with online gambling to come in and provide that data so the Commission can move forward to come up with recommendations for the Legislature or ideas for the staff. **Director Trujillo** replied that staff could do something; although, he was not exactly sure how complete it would be based upon the timeline. He thought that providing factual data versus recommendations at this point would be advisable. **Assistant Director Harris** pointed out there might not be a lot of data out there, since this is a fairly new activity, and the states have only been conducting it for less than a year at this point. That might be a little bit of a constraint on what is available within the United States. He said he knew there were a couple of provinces in Canada that have been doing it a little bit longer, but within the United States, it would be a very short period of time for assessing that data. There is not going to be much data available.

Commissioner Stearns thought there was a lot of pre-packaged information put together that is out there. For instance there was a whole online gaming association in Congress at the G2E.

Assistant Director Harris indicated that, if the Commission was looking for statistics inside the United States, only a small amount might be available at this point because the activity has not been conducted for very long.

Commissioner Gray thought it might be helpful to the staff if each of the Commissioners gave their ideas of where they might look for information to the staff. For example, some of the Commissioners may know some congressional people who might have staff that is aware of some of the internet gambling. They could go to them and ask them to come in fill the Commission in on what they see as the future. She asked about the online gaming association

that Commissioner Stearns mentioned. **Commissioner Stearns** he replied it was a daylong session at G2E, that the AGA's annual conference had a whole day session on it.

Commissioner Gray said, to wrap this topic up, she was sensing there was a conclusion that the Commission needed to look further into internet gaming and that they would ask staff to put together some kind of factual information on potential economic impacts, social impacts, and enhanced internet. They would be reviewing the legislation and providing the Commission with an opportunity to talk with some of the clients that they currently serve.

Director Trujillo said AAG Castillo said a motion was not necessary because this was just a discussion and that a suggestion is just fine.

Commissioner Gray asked if there were any other comments on technology or internet gaming. She knew there was at least one question about digital currencies and asked if staff was familiar with that. She asked if Director Trujillo wanted to talk a little bit about internet currencies.

Director Trujillo responded it was just another example of what is proliferating out there. Eventually, digital currencies such as Bitcoin, which is probably one the Commission may be familiar with because it has been in the news recently, is a decentralized digital currency that is used to purchase goods from one person to another and has the value of whatever people decide its value is. Because it is decentralized, there is no one place for federal agencies to step in and regulate. However, they have had recent meetings with the Department of Justice. Another one is called MPeso, which is changing life in South America. He thought that one was a government-sanctioned digital currency. There are more out there and it will be interesting to see how that manifests itself in Washington State. People will go to legislators or Commissioners and ask if they think it is something that can be utilized in Washington State. The answer would be “probably not.”

Senator Conway pointed out an ad he has seen where someone transfers money from their banking account directly to another person using their cell phone. He asked if that was what Director Trujillo meant by “digitized.” **Director Trujillo** replied that was probably not the same thing. That would simply be electronically transferring money from one account to another account. That is money; this is something that does not have the foundation as tangible money but is more like a barter system that has the value that people determine the value is.

Commissioner Simpson explained it would be like a group of people getting together and deciding that certain rocks were worth a certain amount and the more rocks someone had, the more currency they had. **Director Trujillo** agreed. It is essentially utilized on the internet and is making its way into various gambling arenas as well with all the technology there is out there. Part of what Washington State is looking at is how to utilize this technology to best serve its citizens who, for the most part, will begin accessing services on mobile devices. That

encourages repackaging of computers and cell phones, which then encourages repackaging of electronic gambling, which has changed so much in the past few years and will continue to change.

Commissioner Gray thought that was another topic area was how the Commission addresses the gaming industry's desire to be able to enhance their gambling products with advanced technology, which comes before the Commission regularly. How does the Commission address that regularly in either a new game, or an update on a current game, or a new way to play an existing game?

Commissioner Simpson said that, as a new Commissioner, he had a hard time envisioning a method or some broad policy that the Commission could employ that would work. Because every new technology is individual in its nature, the Gambling Commission, by necessity, needs to examine each one and determine whether they believe it is something that should be allowed in Washington State. Aside from his general belief that the Washington State should not allow online gambling, some of the proposals the Commission has received to allow different types of games shows they are highly individualized, and he did not know how the Commission would take a shotgun approach to that.

Commissioner Prentice said she was looking at what she saw as a consistently slippery slope. There was a time not so long ago, when Congressman Barney Frank was the advocate for internet gambling. He is now retired and not there anymore. But at the time it was against federal law, but that was changed. The President was approached about that and then they said it was up to the states. So there are things changing that people really have no control over. The political discussions are out there and the Commission has to live with them also. She thought she knew what the law was, and then the rug was pulled out from under her. She said the Commission needed to pay attention to what was happening out there and what the stresses and the urges were. She also kept thinking she did not know who it was that was getting rich because she saw some states really struggling. She recalled the last initiative that failed by 61 percent, so she was concerned with the receptiveness of the public and whether they really wanted this. She admitted she had no idea how the signature gathering was going on with the initiatives that are currently out there because she has not seen any of them. She asked if Ms. Hunter knew.

Ms. Hunter replied she assumed Commissioner Prentice was referring to the poker initiative. She said she did not know, but staff did contact the Secretary of State's office to see if there were any types of check-in processes and there are not. The Secretary of State's office did not know how many signatures had been gathered; although, one of the organizations put out a statement to their members letting them know they needed more money in order to work on signature gathering and that they did not have that funding. **Commissioner Prentice** said she has not seen any signature gatherers at the grocery stores or any place else, which indicated to her that it was kind of sluggish with no momentum for it.

Commissioner Simpson asked if it was possible to hear from the public about that. **Director Trujillo** replied that would be the prerogative of the Commission. **Commissioners Simpson and Prentice** both said they would be interested in hearing what anybody had to say.

Commissioner Gray asked if there was anybody in the audience that would like to speak to this issue of technology and what they think would be coming forward. **Commissioner Prentice** added she was sure the public had opinions on this issue.

Mr. Victor Mena, Chief Operating Officer for Washington Gold Casinos said the topic being discussed is a very broad in scope. The topic in his mind in terms of what is – they are kind of linked. The Commission is discussing how the online gaming aspect is somehow in time going to be part of reality. He thought that, in time, things that are done in his industry would have to evolve as well as part of that reality. There are some products that we use that he has found could be a little antiquated; pull-tabs is an example of something that is fairly archaic and very cumbersome to deal with from the standpoint of being able to accurately determine that the product's integrity is still there. Something as simple as opening up a bag of pull-tabs and having the humidity factor of that bag's tickets evaporate over the course of two weeks to show that now they have fewer tickets than they originally started with, but that bag had never been touched. He thought that type of issue was one of inaccuracy that lends itself to the question of gambling; the integrity of what takes place gets questioned based on the fact that somebody could say they have a shortage, but the reality was that they did not have a shortage. The reality was that the product itself was flawed from the standpoint of being able to monitor the product. It is cumbersome to do it correctly because it is a bag of 6,000 tickets and somebody has to take the time to count those tickets. Those types of things could absolutely be looked at as ways to enhance and change, and control and regulate much more accurately. That was just one example, but obviously there are other examples of how the integrity of certain products could be corrected.

He said he has looked at things in the industry as far as table games that are completely electronic. And this Commission, a few years ago, looked at a product that was very similar to that. The integrity of that game gets controlled by technology so they would not have a card missing, per se. And this happens in his world when a dealer makes a mistake washing a deck on a table and a card slips under the rail because the dealer was unaware, brought the cards back in, and started to deal a game. Now the integrity of that game was compromised. It is human error; it happens, and it is not intentional. A table game like what was demonstrated to the Commission a few years back would actually control those types of human errors. So, in retrospect to the Commission's question, he thought that, in time, technology would be needed to keep gambling safe and honest.

Commissioner Gray thanked Mr. Mena and asked if there were any other comments from the audience; there were none. She moved on to the next topic.

2. *Working Within the Legislative Environment*

We are responsible for regulation and enforcement of licensed gambling activities, unlicensed but authorized gambling activities, and illegal gambling crimes. However, our funds only come from licensed activities, a declining revenue source. Every time we stop an illegal or unauthorized venue, theoretically, gamblers move back into the legal regulated environment. Also, free online games are becoming prevalent resulting in legislators and staff continually faced with vendors who want a determination that their product is not gambling. How do we connect our funding source to our legislative mandate and changes in stakeholder expectations?

How can we build confidence in the Legislature that the Commission can regulate gambling without additional legislative restrictions?

Today, we can effectively enforce the laws against illegal online/electronic gambling but if our funding is declining how do we remain effective in this role as well as be poised to regulate it should the Legislature wish to authorize online gaming?

Commissioner Gray asked the Commission to read the paper on working with the Legislature, (excerpted in text box above) which includes an introduction that says “the Commission is responsible for regulation and enforcement of the licensed gaming activities, unlicensed but authorized gambling activities, and illegal gambling crimes. However, Gambling Commission funds only come from licensed activities, which is a declining revenue source. Theoretically, every time the Commission stops an illegal or unauthorized venue, gamblers move back into the legal regulated environment.” Also included in this topic were two or three questions, and an RCW. She asked the Commission to jot down some ideas around the question of how the Commission could enhance the confidence of the Legislature that the Commission is effectively regulating gaming. The RCW has to do with working with the Legislature, building confidence in the Legislature, and effectively enforcing the laws against illegal gaming.

Chair Amos called for a break at 10:55 a.m. and reconvened the meeting at 11:15 a.m.

Commissioner Gray pointed out that one of the questions asks how the Commission could build the Legislature’s confidence in the Commission that it can regulate gambling without additional legislative restrictions. Today, the Commission can effectively enforce laws against illegal online electronic gaming, but its funding is declining. She asked how the Commission could remain effective in this role, as well as be posed to regulate it, should the Legislature wish to authorize online gaming. She asked Director Trujillo to provide some information about RCW 9.46.070 for fees and how those are established.

Director Trujillo reported the Commission has an interesting fee structure, which the licensees would probably say was probably the most complex fee structure they deal with

when it comes to city, county, and state governments. An initial applicant has to look at that fee structure and try to guess how they were going to operate in a given year because the license fee is based on a class activity, which is based on the actual gambling that is conducted throughout the year. Then they have to renew their license prior to their year end, which means they have to look at their numbers to determine if they will come close and whether they need to pay more to increase the license fee class or less to decrease the license fee class. That can be problematic because the Gambling Commission sends out a renewal notice based on what staff estimated that person's license class was going to be at the end of the year. But staff does not actually know what their license class is until they report their activity for the year, which is after the fact. So it is an interesting structure that has been in place for many years.

When it comes to how best to utilize the fee structure in a declining license scenario, which is what staff is undergoing right now, staff has looked at restructuring the fee schedule, but with any restructure, some fees go up and some go down. The Commission has a broad mandate, which is unlicensed and authorized activities, licensed activities, and illegal activities. But the Gambling Commission's funding source only comes from licensed activities. So, as the Commission moves forward into the future, the question comes up on how best to operate that. Within the Commission's powers and duties is their authority to set fees or a schedule that covers Commission activities. That has changed over the years, but basically the fee structure has remained the same. It is a complex fee structure that is not easy to work through.

Commissioner Prentice wondered if it was possible to put together a brief summary that would answer some of the things being discussed today, particularly with all the questions that have come up as to who the Commission is and what the Legislature knows about it. She recalled that in her early days on the Commission, the legislators thought they were supporting the Commission and were surprised that was not the case. She noted that most of the legislators were extremely ignorant, even those that thought they knew. They think they know, and they sort of like it or do not like it. The Commission could at least give them something accurate for now to say this is how it is done. Commissioner Prentice suggested the Commission start sharing the information with the Commerce and Labor committee, which she thought still had gambling within them, and then see where that leads. She knew they have had some big discussions at some time or another, like a "Gambling 101," but only those that have a high interest attend.

Commissioner Simpson agreed there were so many things that legislators have to try to be knowledgeable about that it is very difficult, especially when they are first starting. He thought it would be good for legislators to have a clear understanding that this agency is totally dependent on fees. Every day, the average legislator probably gets thousands of pages of information given to them. But all the Commission can do is provide the information and hope they understand. **Commissioner Prentice** suggesting putting the information in a notebook and they could look it up when they need it.

Commissioner Gray explained she would like the Commission to discuss the questions about how to build confidence in the Legislature that the Commission is doing the job that it needs to do and how best to do that, given the lack of knowledge, the lack of updates, and the changing environment.

Director Trujillo thought it came on the heels of the legislation that was introduced last year. While the Commission and staff are very conservative, deliberate, and methodical in their approach, it certainly did not appear that way in the legislation that was introduced, which he thought was kind of the origin of this particular thought topic.

Senator Conway said he thought at times there has been an issue of communication with the between the Commission and the Legislature. So often that occurred around some gambling expansion type of issues that were in the Commission and then the legislators heard about them, which then creates mistrust. Keep in mind, the state has a pretty high bar when it comes to gambling expansion. Even in the Legislature, nothing is passed without a high bar of votes. Something as controversial as the expansion of gambling cannot be passed, for example, three to two at the Commission meeting because then the Legislature is going to say “wait a minute. You know, we have a much higher bar when it comes to the expansion of gambling in our voting.” Senator Conway thought that was where some of the suspicion in recent years around what was going on with the Commission came from. He said he wanted to share that with the Commission because the Legislature really feels it is their role to expand gambling, not through a Commission decision. He said in his years here, that was one major issue he has seen in Olympia.

Commissioner Gray asked if they knew what expansion of gambling was.

Senator Conway replied they usually have to have a ruling by the Secretary of the Senate currently as to whether a particular decision is an expansion of gambling. He said he was not sure what that means at the Commission’s level, but assumed their legal counsel would be evaluating whether a decision would constitute an expansion of gambling. Of course, the Legislature has many bills that come to the floor that are challenged on the grounds that it is an expansion of gaming. It is a high bar in the state Legislature. It is an issue the Commission has to be sensitive about when they are talking about relationships with the Legislature. Because if the thought is to move a gambling expansion issue through this Commission, then they are going to run right into the Legislature and efforts to curb or roll back the authority of the Gambling Commission. He said those are the kinds of issues recently that have come up.

The other piece is interaction with the Legislature through the Gambling Commission. For years Senator Conway said he chaired the House Commerce and Labor Committee. At the time, it was great because then Representative Alex Wood was on the Gambling Commission and would report back to the chairman of the committee about what was going on with the Gambling Commission. And then Senator Margarita Prentice played that role completely with the Senate. But the Commission has no control over the ex-officio members who are the

ones that provide the linkage to the Legislature. It is important to try and build that linkage if the Commission is involved in that. Senator Conway thought that, as long as the Commission had those linkages, everyone knew what was going on and what debates were going on, and that works. Sometimes legislators that are not on the committees that deal with the gambling issues get appointed to the Gambling Commission. Senator Conway has observed through the years that, when that happens, there is a breakdown of communication. He pointed out that he had no knowledge of what they are currently doing at the Lottery Commission or the Fish and Wildlife Commission – commissions really exist in a world of their own. Even though legislators do not read every report that comes to them unless they are very interested in the issue, there needs to be some way of communicating with the Legislature what is being done on the Commission level.

Ms. Hunter agreed with what Senator Conway said about the link between the ex-officio members being really critical. She thought there have been a couple of things in the past few years that have made more things that the Commission has to do. When Senator Conway was in the House, he chaired the Commerce and Labor Committee for many years before he was elected to the Senate. The Gambling Commission had two years where it went to the State Government and Tribal Affairs Committee before that was changed to the Government Accountability and Oversight Committee. Staff was constantly building those relationships with legislators and staff. At meetings with legislators, staff give them a two-page legislative newsletter that is put out twice a year and includes what has been going on at the Commission. Staff also gives them a brochure that answers those basic questions about the Commission that staff gets from legislators. She thought the role of the ex-officio member was critical and it was great when they were able to help convey that, which was easier when they were on the committee. Three of the current ex-officio members are on the committees. Representative Hurst is the chair of the House committee where the gambling bills go and Senators Conway and Hewitt are both on the Senate committee, which really helps a lot. Ms. Hunter said she has some good information available on those rulings in the Senate about expansion of gambling. It comes up definitely in the Legislature, but it does not come up for the Commission in the same way. Jerry Ackerman had talked about that quite a bit as the Commission has had different decisions before them dealing with expansion of gambling.

Commissioner Gray said she had a question that deals with the Legislature and really goes back to the discussion about the technological changes. Proposals for technological changes have come before the Commission and they have to ask if that would be an expansion of gambling, if enhancing the technology of a game meant that was enhanced gambling. She thought it would be really nice to have access to the Legislature to help them understand what it was that the Commission was being faced with and were being asked to make those kinds of decisions as to whether a technological change was enhanced gambling.

Commissioner Stearns asked if Ms. Hunter felt the Commission's reputation in terms of law enforcement was really strong and solid and what its reputation was with the Legislature.

Ms. Hunter replied she thought it was good. She said she had talked with staff about this last week at some staff training. It was sometimes actually good when the legislators did not know exactly who someone is because that means that people have not been complaining about you. She explained the first thing she usually covered was that the Gambling Commission was not the Lottery or the Horse Racing Commission. She has had many legislators tell her over the years that they know the Gambling Commission is a small agency that regulates a big industry, and that people do not complain about the Gambling Commission to them, which is good. She thought that, overall, it was pretty positive and she felt good about what staff does. Elections occur every two years, so there was always a new wave of people coming in. Ms. Hunter said she has done legislative work for the Commission for about 15 years and so those faces have changed a lot. When there is a big election with a lot of new people, then staff is out meeting with those new people and letting them know who we are. Staff does a lot more in the legislative outreach each year. Ms. Hunter explained she works on legislative issues almost every single day. Staff gets a good reception when they meet with legislators, regardless of their party.

Chair Amos asked if Senator Conway considered the request yesterday for an increase in the bet on a Baccarat game as an expansion of gambling. **Senator Conway** replied it was the sort of issue that comes up and they have to seek legal counsel on it. He gave an example of a bill that the Gambling Commission was neutral on – the Special Olympics raffle bill – that bill was a major change in how raffle was conducted in this state, was subject to a challenge on the floor of the Senate, came through committee without being challenged, got to the floor of the Senate and it was challenged as an expansion of gaming. The President of the Senate ruled it to be an expansion of gaming and so that was the sort of thing that goes on – would a particular game be subject to that challenge if it had to be authorized by the Legislature? That is where legal counsel is critical in terms of their evaluation. He said the House and Senate are a little different. The Lieutenant Governor, President of the Senate, has very distinct rulings. A bill could get passed through the House without a challenge, but then when it gets to the Senate it could get challenged, and probably vice-versa too. So this issue of expansion of gaming is a big issue in the Legislature. In answer to Chair Amos' question, that is where legal counsel comes in – to determine if a certain type of gaming constitutes a major change in the way the state does gaming and, as a result, would it be considered an expansion of gaming. That is what happens with those rulings in the House and Senate. It is important for the Commission to understand that process. He assumed the Attorney General was here for that very reason, in part to evaluate those issues. The enhanced raffle was considered to be an expansion of gambling and the state has had raffle businesses forever. This new way of conducting that raffle was considered a gambling expansion by the President of the Senate, and as a result, it was subject to a 60 percent rule. Senator Conway said that, because it was hard to know exactly how those rulings were going to come, but it was an issue the Legislature looks at very carefully.

Commissioner Prentice responded it truly depends on whether they believe it is or not, where they are coming from, and what their perspective is. She recalled one of the initiatives where

the proponents of it here said it was just a shift from one kind of gambling to another, and then it failed. At the Commission meeting in Yakima, she overheard the proponents at the next table say they did not get their message out. She recalled thinking the public felt it was an expansion of gambling. Whatever legal counsel might have said, they believed it was and that was why it went down. The Commission can be very technical about it, but they did not accept it, they did not want it, and it did not fly.

Commissioner Simpson said he was not on the Commission at the time, but understood there was something that concerned some legislators that the Gambling Commission did last year prior to the legislative session that prompted this legislation. He thought that was part of the checks and balances of the system here. The Legislature set up the Gambling Commission to be a separate entity that has specific authority and if the Legislature feels the Gambling Commission oversteps that authority, they can communicate in ways like dropping legislation to abolish the Gambling Commission. He said he once co-sponsored a piece of legislation with Steve Conway's seat-mate to make it a Class C felony to commit fiscal note fraud because it felt like some agencies were manipulating fiscal notes so that the legislation would not pass. So there are lots of reasons people file bills. He said the Commission had to be cognizant of the fact there was a wide variety – there are probably at least 98 different points of view in the House on gambling and 49 in the Senate – so it has to be recognized that the Legislature has their authority, and the Commission has theirs along with mandates they are subject to.

Commissioner Gray said she thought the way the Commission approached an issue, the kind of questions they asked – for example, Commissioner Prentice had said if the Commission asked the public if they wanted gambling to expand in Washington State, they may say no. On the other hand, if the Commission asked how the tax revenue from gambling or new technology in gambling could be accessed, the Commission may get an entirely different answer. It all depends on the question that was asked and how the question was asked. She asked if it was appropriate for the Commission to go through Senator Conway to ask the Legislature or the Committee a question. **Senator Conway** replied he did not recall, but he thought Commissioner Simpson was probably right about the Commission having their authority. He did not remember the Gambling Commission ever coming to him, even informally, asking if he would see whether something was going to be considered an expansion of gaming. **Senator Conway** referred to the mini-baccarat the Commission was looking at yesterday. He said part of the role of the Attorney General's representative was to play that role with the Commission to evaluate whether a particular proposal would be considered a gambling expansion. And then, within the Commission's authority, he assumed they would use that legal counsel for that purpose. Then the Legislature would look at it with their checks and balances, and if they considered it to be a gambling expansion, that would be when the Commission would probably see legislation appear. But that is a big issue. Gambling expansion is probably the biggest issue this particular Commission has to manage. From the legislative perspective, he thought the statute was pretty clear that was a legislative prerogative. Whether something is considered to be an expansion of gaming is the key issue.

Director Trujillo added that he certainly welcomed Commissioner Simpson as an addition to the Commission. He thought that what also may have occurred was that the rule process that was behind the legislation that was introduced last year was not a quick rule process, by any means. It was not three months, or six months, or nine months – it was at least two years. Commissioners and staff recognized that it was somewhat controversial. The petitioner withdrew it, made some corrections, and brought it back. That was the type of process the legislators were not a part of – not the Commission ex-officio members, but the committee members that then went to hear that particular bill. So the Commission, with Senator Prentice as a long-serving ex-officio, has been very methodical in its approach. The Commission does depend heavily on staff, initially, to look at their expertise to see whether something is compliant with current rules. If staff has any doubts whatsoever, they look to our legal representatives. It is really only then that something comes before the Commission for their thoughts. So, it is a check and balance system even before it makes its way to the Legislature.

Commissioner Prentice thought it was really important to remember the history of where the ex-officio members came from and why they are on the Commission. At the time when the Indian Gaming Regulatory Act (IGRA) came about, there was discussion within the Legislature as to how they were going to deal with it. One of the things that was brought up by Senator Jeannette Hayner, who was in charge, was that they did not want the whole Legislature voting on tribal compacts, and it made a lot more sense to have somebody from each caucus on the Commission. Commissioner Prentice said she was the first ex-officio to start attending the Commission meetings regularly. She said she was viewed at first with great suspicion and she was not necessarily welcome. But, those were necessary positions; it was not as if it was all cut and dried and the ex officio members understood what they were about. Commissioner Prentice thought that the ex officio members have been enhanced by regular attendance. It is their role to keep the Legislature informed as to what the Commission was doing. She said opening it up made a huge difference, which she has been around and watched it evolve.

Commissioner Gray said what she heard was the way to be sure the Legislature had confidence in the work the Commission does is to make sure they understand the work the Commission does, how they approach their work, and the limits the Commission undertakes, and to use their ex-officio members as much as possible to relay that information because that was the reason they were on the Commission.

Commissioner Simpson commented that Ms. Hunter does an outstanding job of outreach to the Legislature. That was his experience – he saw Ms. Hunter lots of times this last session up there working every day.

Senator Conway agreed, adding the continuity of having Ms. Hunter there has been really important.

Commissioner Gray asked if there were other comments about how the Commission might interact with the Legislature.

Senator Conway suggested talking a little bit about the funding of the Gambling Commission. He thought it was a major problem and very important on how it was funded. There have been a number of sweeps of the gambling account during bad state budget times, which raises a whole different perspective than what has been talked about. The other piece of this, of course, is the license fee issue that is always one that gets generated inside. It is important to understand that in the Legislature, there are very separate committees that deal with these things too. The Gambling Commission's budget gets swept by Ways and Means staff who does not always talk with the ex-officio members when they do that. Margarita Prentice was lucky because she was the ex-officio and she was on the Gambling Commission.

Commissioner Prentice replied she did not know how lucky that was because she could only fight it off one year. It looked as if the Commission was protecting this huge amount of money and everybody else was hurting, so it happened anyway.

Senator Conway suggested keeping in mind that, whenever the Commission raises license fees, the legislators hear about it because they have constituents who go to them and say what they see going on at the Commission. That is a whole other process, aside from gambling policy. The funding of the Gambling Commission is another major issue of legislative involvement and he urged the Commission not to lose perspective on that. He thought Ms. Hunter might like to comment on that. She is the one that has to run by the Ways and Means Chairs to ask what they are doing sweeping the gambling fund again this year. The people that pay for those fees are the ones who actually should be a little alarmed because they pay their money for enforcement purposes. The basic reason the Commission has license fees is to pay for enforcement activity. He thought that was in the statute. When the Legislature sweeps those funds, they are sweeping the funds that are used for enforcement. In Olympia, there are also several levels of policy involvement, especially in funding. There is the Ways and Means staff, which is OPR staff, and there is also the staff that serves the committee from the partisan perspective. It is important to have a relationship with this full staff to understand clearly what is going on. It is a very complicated challenge, but one of the reasons the Gambling Commission has been struggling with funding is the Legislature has been sweeping the gambling fund, and there lies part of the reason for fee increases, which everyone here probably has some concerns about. Senator Conway said he just raised this because he thought it was another critical relationship with the Legislature.

Commissioner Gray said the Gambling Commission has declining revenues because of the declining operations.

Commissioner Simpson explained that, as he read the statute, he thought it was the responsibility that was given to the Commission when the Gambling Commission was created to make sure there was the provision of the funding necessary to carry out the mission of

keeping corruption out of gambling and so forth in Washington. It is a responsibility of this Commission to provide that funding, but there are a lot of moving pieces. In some cases, there are increasing costs, like health care costs rising every year. For employers, that is a big cost driver, and some portions of the gambling that is legal in the state has seen a decline. Commissioner Simpson said it reminded him of a game one of his kids had called something like SimCity where the person who is operating the city is able to set the level of taxation. If they make taxes too high, then their citizens start revolting, but if they are too low, then they do not have enough. It is a delicate balancing act to be able to accomplish what is needed to be accomplished and not be too oppressive with the fees. He said he did not know enough yet to be able to make good decisions about the structure or about who is being taxed and how much. He looked forward to learning more about that and having a much greater understanding of the Commission's existing structure and who was paying for it. He has visited the Gambling Commission offices and discussed these things with the staff, and thought they have done a very good job of working hard to become more efficient and do more with less. Commissioner Simpson said he believed that the Commission is reaching a point where they can no longer continue along the path of not hiring additional people when someone leaves or allowing positions to go unfilled. So the Commission has a responsibility. He thought he needed a better understanding of the existing structure and the history of it, so that he could make a reasoned decision about how to proceed and how to adequately fund the activities the Commission is responsible for taking care of in the future.

Commissioner Stearns agreed the Gambling Commission was getting close to the point where its funding was affecting its ability to do what it is supposed to do. He also thought the funding and the revenue issue in terms of at what point does the Commission endanger the public by not doing its job. He knew there were similar questions when looking at the military and how much they could cut before it started creating problems for the country's safety. It is important to be aware that there probably is a threshold and if the Commission goes under that, it is not going to be able to carry out its mission.

Commissioner Gray wondered if there were additional ways to enhance the revenue of the Gambling Commission, which is currently done through fees.

Senator Conway responded that one perspective he has shared with a number of folks was that he believed the Gambling Commission was in charge of a large chunk of industry in this state. These are businesses and a lot of people have employment through these businesses. In Pierce County, their casino employment is probably one of their biggest categories right now. It used to be the tide flats. Between health care and the casino, that is where a lot of the employment is, which requires the Commission to examine its responsibilities in that arena. A lot of people get their jobs there and depend upon those jobs. It is not just enforcement activity anymore; it is also responsibility for a chunk of people who are working at jobs and people at businesses as well. Senator Conway thought that was something that has changed considerably from the 1970s, 1980s, and 1990s. The employment at their major casinos is huge in the communities now. This is an enhanced role that is being played by the growth of

the gambling industry, which is probably worthy of saying, given that, is there more that the Commission needs to be doing. And if so, do fees solely for enforcement by statute meet the need. He said the Commission could ask the tribes how many people were employed at these casinos, but there are a huge number of people who are working and getting jobs from these casinos. It varies, but by virtue of that, this has become a major industry in this state for employment.

Commissioner Prentice commented that she hoped time did not run out before they really get to what she saw as one of the major stresses, which is because of the Indian Gaming Regulatory Act. IGRA is a federal act and the Commission had to deal with it. The tribes were able to have whatever gambling was occurring within Washington State, so because casino nights were allowed, that was what really brought it all in. She remembered it was an attempt at having some equity. Card rooms were allowed five tables at the time and then were expanded to 15 tables. They never were intended to be the same thing, but it was also trying to deal with some of the hostility that was seen from communities that were going to have tribal gambling. It was very real in those days and people kind of act like that never happened, but it did. The Commission also has to keep in mind that it has to deal with the federal law; it cannot be avoided. It does not matter who hates it, it is just simply there and the law must be abided. Commissioner Prentice said one of the things she wanted to comment on earlier was that the Commission does deal with the Attorney General's office, but she could remember one time where the Commission felt strongly enough, and that was the Quinault Tribe and whether or not there had been an unbroken ownership in a flea market, which was where their big casino is. The Commission disagreed with the AG's office and did it anyway, and the Governor at that time agreed with the Commission. So there was plenty of give and take. They were not the same thing, and Commissioner Prentice thought the Commission had to remember that the federal law applies, and they have attempted to live with it. Washington is in a lot better shape than some states because there was already a Gambling Commission attempting to deal with those things. Commissioner Prentice said she was not astute enough to tell the industry what efficiencies were necessary. Obviously, they are concerned or they would not be here. She thought the Commission was open to any ideas that might be given and the industry can help with this.

Director Trujillo referred to talking about the openness of the Commission and said one of the questions in topic number 4, which will not be covered today, was how the Commission staff does business. Within that was a suggestion Chris Kealy made last month that had to do with independent audits and whether staff could do something there or not. Director Trujillo said he wanted to share with Mr. Kealy that his suggestion did make it into the list of discussion topics although it was probably not going to make it into today's discussion. He did not want Mr. Kealy to have to repeat himself if he did not need to.

Commissioner Gray called for public comment.

Mr. Chris Kealy operator of the Iron Horse Casino in Auburn, a former president of the Recreational Gaming Association (RGA), and the current past-president, said so many subjects had been covered today and he was sitting there wondering if the Commission was going to let the public comment, and now he was not sure how to cover them all. He explained they were in a phase of what he called re-regulation, which was his new buzz word, and he was going to sell it to the Commission today. This Gambling Commission in 2001 supervised approximately 21,000 people. Today, tribal gaming units in general have done a good job themselves and are regulating a huge portion of this activity. Mr. Kealy said, to Senator Conway's point, that the activity being seen in Pierce County is enormously under the purview of the Puyallup Tribal Nation and under their regulatory body. The Commission helps that body, so is now a supplemental agency, where in 2002 it was that regulatory body. He thought that after seeing that re-regulation shift, this body lost a significant portion of its mission. That is just the reality of it. So this agency has gone from 170 or 190 people to about 146 FTEs today, and it was his thorough suggestion that it needs to be about 80 FTEs because the mission has shifted and public demand on gambling was and is huge. It was, and it was ignored, but now it is acknowledged and taxed, or organized in ways that policy makers have chosen to let the activity occur. So there is no particular interest in running an illegal gambling operation because they do not have a customer base. They have a source for what they want to do. So the regulation, or the need for the Gambling Commission in their mission surrounds money laundering and protecting our country's assets via terrorism, drug money laundering, and other activities that clearly are not even really a part of, but people are vulnerable to, because it is heavy cash businesses. Mr. Kealy said understanding what the mission is today versus ten years ago is the first step to then identifying what this agency really needs to look like. As they watched the mini-casinos melt down, it was not just that. It was a policy decision on where the activity would occur and then who, in fact, would regulate it, which happens to be their tribal partners in this process. He said the Commission has got to identify the problem before they start guessing at solutions. He said he has heard the Commission ask several times, what do they do to increase revenue. The market has shifted, and the people that are responsible for that activity are not the Commission anymore.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, stated this process was very encouraging and, in fact, it appears as one of the vision statements on the website that states "anticipating and responding to the evolving gambling industry," is actually coming to bear now. She has been watching that statement on the website for a number of years and saying when might that happen. As Mr. Kealy mentioned, there has been a lot of statements made, and conversations and topics. And as her mind was buzzing, she finally just started jotting down some things. In regard to the initiatives and them being touted as public opinion, or what the public wanted at that time, if you look back to history, the tribes ran two initiatives and both of them were defeated by over 70 percent. The public said no, they did not want them to have slot machines. The tribes negotiated through the friendly lawsuit and they obtained slot machines. When the card room industry, along with another entertainment industry, ran Initiative 892, they got it on the ballot and were all excited about that, but they did not have any money left. There was \$6.7 million spent to defeat the Initiative. That was

the adjustment of the public opinion. Had the industry had \$6.7 million of its own to run its own “yes” campaign, it may have come out a little differently. So it was much easier to get a no vote than it was to get a yes vote. Ms. Chiechi wanted to make clear that it should not be touted as a public opinion and what the public wanted, because the public got one message, they did not get the other message.

As far as expansion of gambling, it has been stated what is an expansion of gambling, but it has never been defined. Past attorneys from this Commission have attempted to define it, the Attorney General's office attempted to put it in a category, and the President of the Senate has certainly made rulings on a number of occasions. But when the house-banked card room legislation was passed, that issue was never raised, nobody asked the question, and the card room industry was created to be what it is. Every time the Commission approves a new location, is that an expansion of gambling? Every time they approve a new game, for example the third bet on the mini-baccarat, is that an expansion of gambling? She thought it was really a squishy subject. Unless and until somebody challenges it in court and there is an outcome, it is really a squishy outcome of what that looks like, who is defining it, and what does it mean. Ms. Chiechi said she did not know how to answer that unless there was a court battle on that issue, but she did not think anybody had the money or the desire to go into court and get that outcome.

Ms. Chiechi noted that Commissioner Simpson had stated that it was the design of the Legislature to create a separate agency that was separately funded and was not part of the Legislature. And that has worked. For 30 plus years, this agency has done what it has done under the guise of the powers and duties that have been handed down by the Legislature to say this is what they want the Commission to do, this is what they do not want the Commission to do. All it takes is someone to write a letter or call a legislator and say, “Do you know what they're doing over there? No, I don't; tell me. Well here's what they're doing.” That's what they learn, and they knee-jerk react, and the Commission gets a letter saying cease and desist or else. What they do not get is the other side of the story, or sitting in the room of the ex-officio members who actually hear the full picture of the two-year dialogue that occurred. All it takes is for a legislator to hear from an opposing view that they should be concerned. And guess what? The legislator is going to come to the Commission and say “What are you doing? I don't really know the whole story, but I just know I'm being told I shouldn't like it.” So that is where the politics of this Commission and the Legislature get kind of merged together.

As far as what the Commission's duties should be or what their relationship in the legislative environment should be, Ms. Chiechi thought what Ms. Hunter, the past director, and the current director have done in meeting with legislators and informing them and educating them, that has to take place just within this Commission. There are five Commissioners who come from all walks of life who do not understand a lot about gambling. She said she would not use the word ignorant, they just do not know what they do not know. When it comes to mini-baccarat, they do not know how it is played. Ms. Chiechi thought that, perhaps monthly they have a “game of the month” and set it up at the back with the layout, and either the licensees

or the staff shows the Commission how it is played. Ms. Chiechi said she would benefit from that because she does not know how mini-baccarat is played. That was the purview of her members to know how that operates. But it makes sense for this Commission to have that education level. And it cannot be expected for 149 people in Olympia to understand it, when some of the Commissioners and staff do not understand it. So there is a good symbiotic relationship that could take place with the industry. There are decades of experience in the audience that come and sit, and just cringe when somebody asks about a mini-baccarat game and the Commission is regulating it. Ms. Chiechi thought there was an opportunity there for a lot of shared information and a lot of education that could take place within this Commission. She said the industry does its best to try to educate legislators as well. So, when the Commission's bill comes up, they have a reason to go talk to the legislators. If there is no bill to talk about, it is likely they legislators are not really interested to have a conversation with Commission staff.

Ms. Chiechi thought the path this Commission appears to be on is taking a more proactive approach to the Legislature in getting to them and saying they would like to come and inform them about what the Commission is up to, rather than waiting for staff to be asked to come forward and give a presentation at a hearing or a work session. Perhaps having conversations that are more broad and specific as well would give the legislators a better understanding of what this Commission does and that it knows what it is doing. When the bill was up for a hearing, there were some mis-statements made by some testimony. And the staff of that committee had no idea that they were mis-statements so the legislators walked away believing what those statements were. It just goes to show if that bill were to pass – they get a mini-baccarat bill, the Commission has how many weeks to get ten legislators that are on that committee to understand and the staff of that committee to understand what that bill would do and what the game would do. It makes Ms. Chiechi very concerned that the Legislature would consider shifting the authority away from this body. The Gambling Commission has the methodical approach of months of discussion, staff analysis, staff presentations, questions and answers, and demonstrations that help the Commission to make an informed decision. By no means would Ms. Chiechi say that this Commission has been knee-jerk or not methodical in its approach to making those decisions. She wanted to just say, as well, the ex-officio roles are huge because it helps the committee; it helps the Commission when they attend, and listen, and pay attention, and then go back and report to their committee what is going on. That committee is a little bit more informed than if that ex-officio chose not to attend and not to communicate back what was happening. Ms. Chiechi thought there were some of those processes that could be reinforced, but she was also very encouraged by this process and the fact that the audience, the public, and the industry are allowed to comment and participate. She thanked the Commission for their time.

Commissioner Stearns said he wanted to follow-up on Ms. Chiechi's comments. When he worked in Congress on the committee that dealt with gaming, there was no way they could have done their job except for the fact that they traveled the entire country and exhaustively studied security, the money, and the games. He did not know how many casinos and how

many other operations he visited, in addition to holding hearings on it, but just having that knowledge was absolutely critical.

Commissioner Gray repeated what she had heard. One of the effective ways of dealing with the Legislature is to make sure the Commission was informed, that they understand the games, and that they take advantage of anything they can, and to use the legislative liaisons to get information to the Legislature.

Mr. Martin Durkan Jr., representing the Muckleshoot Tribe, stated there was obviously a diverse opinion on these issues. He said he was not interested in rewriting history or having a different understanding of what has taken place in gaming and initiatives over the past 20 years. The Commission itself has done independent surveys. They speak on their behalf on their own. A survey obviously is only a point in time. The Commission could certainly do another one, but Mr. Durkan thought they would find that the numbers were relatively the same in terms of where the public is on the amount of gaming that is taking place in the state of Washington. Mr. Kealy and Ms. Chiechi are quite correct in that everyone knows internet gaming is coming. And if it is about new revenue, the opportunity for new revenue for Washington State and for the Commission is with new games and new market sectors. And so the Commission's preparation for that is very wise because it certainly is coming eventually and they have to be prepared for it.

Mr. Durkan said he worked hard with Ms. Hunter last session trying to get the salary freeze lifted for the gaming agents because the Commission was not retaining some very well-qualified staff. And the Legislature needs to be aware that the Gambling Commission has to be competitive in the wage market to retain these people because they are going to go to other police agencies to get better compensation. So there is a lot of brain trust here and it functions well, and they have done a great job regulating the state of Washington. But if the Commission loses more people, there is going to be a problem. The tribes are concerned about the overlap with the Tribal Gaming Agency because they have their own gaming commissioners and their own gaming agency. There is a duplicated process that is going on with the Commission, and as they move forward in the next few years, if the tribes begin to open Compacts, the Commission is going to see a number of tribes wanting to regulate themselves. And that will be a big loss of funding for the Commission. So the Commission has to look at those issues. And Compacts are going to be reopened and renegotiated, and things are going to change, probably more than Mr. Durkan realized and more than the Commission realized. He said he had a small comment on the mini-baccarat. He was not alluding that it was an expansion of gaming, and he did not believe it was. He said he had a problem with somebody that was not licensed in the state proposing a game. He would think that someone would need to be licensed to propose a game, to even evaluate a game, a game that is not licensed anywhere else. The letter from Nevada said they did not license him – they said they did not require a license. Mr. Durkan said his tribe's gaming officials were concerned that nobody would play it and it would be hard to regulate, so they would not do it. That was his comment and that was what he meant. He did not think it was an expansion of

gaming. Like Senator Conway said, it was an evolving issue with the Legislature. He thought the reason the raffles were scoped was because of the size of the prize. It was a major prize and a major change. Mr. Durkan believed the Commission was going to see a lot more expansion of raffles and a lot of nonprofits wanting to do that. So that raffle business has to be watched; not that it impacts the tribes, the card rooms, or anybody else, but it is a big number. Mr. Durkan asked what happens if they never sell enough tickets or they never win the condo. It is very interesting. He thanked the Commission.

Commissioner Gray asked if there were any other comments on this topic; there were none.

3. **Problem Gambling**

These days, it seems almost everyone knows of someone with a gambling problem. What is our role in this area?

There is a massive increase in online play for points. Such vendors are positioning themselves should internet gambling become legal. Does this tie to problem gambling? Even though there is no charge for the activity, players often buy enhancements that increase their activity. While there may be a legal distinction between such a purchase and a gambling activity, the problem gambler may not see a difference. Is this something we should be looking at?

Online Penny Auctions are not considered gambling by the letter of the law; however, many people consider the activity to be very similar to gambling. This may result in increased problem gambling. Is this something we should be looking at?

Commissioner Gray introduced the third topic (excerpted in text box above): problem gambling, both in terms of the kinds of problem gambling that is seen today and the continued – and again it goes back to internet gambling and if it becomes legal, what kind of problem gambling would there be. There are penny auctions now that are not considered gambling, but is that in fact enhancing the gambling problems? She opened it up to a discussion about problem gambling and the role the Commission might have in that issue.

Chair Amos asked what online penny auctions were. **Director Trujillo** replied it was something he did not quite understand, and asked if Assistant Director Harris would like to try to explain it in a way that might be understandable. **Assistant Director Harris** explained there have been some ads on TV for penny auctions. Basically, they start out by giving people a certain number of free bids and each bid goes up by a penny. After that, each time someone places a bid there is a fee charged for placing the penny bid. So, technically someone could win something like a cellphone for \$5 if they happened to be the last bidder. But then they also have paid the fees to place the penny bids. Basically, it is like an auction, but people are paying a fee each time they bid, and the bids usually just go up a penny.

Chair Amos asked if it was basically like buying off eBay. **Assistant Director Harris** replied it was similar to that, except there was a fee for each time someone places a bid on the item that they might not necessarily win. So, even if someone has placed a couple bids, they get charged for those bids – even if they are not the end winning person for the item, they are still paying that fee to place those bids. **Director Trujillo** asked if that fee could be several dollars. **Assistant Director Harris** affirmed. **Director Trujillo** said it may cost someone to bid a penny, \$3, \$4, or \$5. And then if they want to bid that again, it would cost them that fee again, so it just continues to go up. So in the end, it may cost \$5 for the item, but that was not the true cost because it cost \$5 in pennies, plus all the fees that were paid for the bids. And in the end they win the prize. **Chair Amos** asked if that was going on in this state. **Director Trujillo** affirmed, adding that it is currently a consumer protection issue under the Attorney General's office. **Director Trujillo** said it was very similar to gambling and there were not a lot of people who report those items to Commission staff as gambling issues. Staff would then refer them to the Attorney General's office, but as Commissioner Gray talked about, it may be enhancing a gambling problem.

Commissioner Gray asked if there were any comments about the gambling problems that are in Washington.

Director Trujillo said Dolores Chiechi and Maureen Greeley from Problem Gambling have made presentations to the Commission. Tribal representatives have described the programs that they are in charge of, and Ms. Chiechi and Ms. Greeley have partnered with them a couple of times.

Commissioner Gray thought the question for the Commission was whether there were attempts to deal with problem gambling within the gambling industry. She opened the discussion up to what the role of the Gambling Commission was with respect to problem gambling.

Senator Conway said that, having been in Olympia, Commissioner Prentice and he both were there when the problem gambling issue really took off in the 1990s. That was when the Legislature finally got around to putting together some funding mechanisms for problem gambling. And keep in mind that that became the method. Then the Compacts picked up on it and started placing problem gambling into the Compacts. He thought one way in which an industry ensures the public that it is sensitive to the problems it creates is to be engaged fundamentally in the problem gaming issue. The stories are sad – stories of people who have lost their home, lost their lives, or been put in jail because of a problem gambling problem. Senator Conway said the gambling industry is expanding in Washington State and the question was whether sufficient resources and strategies were being generated to address it. As a legislator involved in this for years, Senator Conway thought the Legislature was looking for that kind of role. When he looked at the statute, he did not think it says the Gambling Commission will be the agency that manages problem gambling. He thought it was almost a health care issue, a DSHS issue in fact. But the gambling dollars are not with DSHS, and he

thought it was their game really to bring together the parties to work on problem gambling. **Director Trujillo** affirmed there was no specific mandate in the statute that the Gambling Commission shall be in charge of a problem gambling program.

Senator Conway said he was reminded a little bit about liquor. Liquor has all of its consequences. And of course what has happened very carefully with the liquor issue is that the liquor tax revenue was used to address the problem drinking and everything that came from all of that. He said that, to him, problem gambling was a similar kind of challenge, because it was critical. The public thinks the revenues to address problem gambling issues are generated by the industry that was created the problem. Senator Conway thought therein lies the issue that the Commission is trying to get at here, what the role of the Gambling Commission is in this. To some degree, it was the responsibility of the state to address the problem, but he did not think anyone was saying that problem gambling was not with us. One of our legislative bodies saw what happened here just recently, and it is not as if problem gambling was not out there. The question is the industry needs to be responsible and to ensure that their resources are being developed to address those problems and help control them.

Commissioner Gray asked if there were any other comments, or any comments from the audience.

Ms. Chiechi introduced herself again and stated that on behalf of the Problem Gambling Advisory Committee, of which she had been the Chair for a number of years, it was the advisory committee that works within the Department of Social and Health Service's (DSHS) program to monitor, direct, and make recommendations to the state agency with regard to the program that is funded by the industry. The industry pays that .13 percent--horse racing, lottery, bingo, charities, pull-tabs, and card rooms. And then the tribal revenues by way of their Compact agreements also contribute. These are ways which help the public with problem gambling. As far as what role the Commission should play, she thought the Commission has played a tremendous role in coordinating and collaborating with not only the Problem Gambling Advisory Committee and the state program, but also the Evergreen Council on Problem Gambling, which is the nonprofit entity in our state, which is internationally known as one of the top go-getters after this issue. Ms. Chiechi said she would encourage a similar communication, shared information, and also offer the opportunity for the Council, as well as the state program, to come with ideas and concepts to staff and present those as opportunities where there can be partnerships between the Gambling Commission and the programs that currently exist. She then explained that the state program had recently done a sole service contract with Evergreen Council to provide much of the services, the treatment, the training, the awareness campaigns and prevention. The program is successful, the funding is there, and if there was more money that could be contributed, it certainly would be put to good use. She thought a continued collaboration with the Gambling Commission would be a benefit, and thanked the Commissioners.

Commissioner Simpson asked if Ms. Chiechi could give an example of someone who was being assisted by the Problem Gambling and how they become engaged with the program and the process.

Ms. Chiechi replied there was a 1-800 number that was required by all gambling entities. They are required to have one as it is in the statute. The Gambling Commission has the fliers, brochures, and posters that are to be put near all of the gambling activities that occur in the state. For example, a person calls the 1-800 number 24-hour hotline and is referred either to a Gamblers Anonymous, or to a counselor, or a treatment center. In fact, treatment is free. If a problem gambler calls the state and says they have a problem, they will communicate and work with the Evergreen Council. The Evergreen Council has sent a number of people out of state because currently they do not have an in-state residential treatment center. The Evergreen Council has counselors that will see someone two or three times a week. They also supplement that with Gamblers Anonymous meetings. But the Evergreen Council has the funding through the tribal contributions and other contributions that actually send people away for a 30-day out-of-state inpatient intensive treatment.

The Evergreen Council has also created what they are calling therapeutic justice in Pierce County. For example, if someone who embezzled funds can show that the reason and the cause was because they had a gambling addiction, they could actually get a reduced sentence, and it is kind of like drug court where if you can prove that you are not using, and you are going to treatment, and you are staying off the drugs, they can diminish your fine, or diminish your penalty. Of course, problem gamblers are still going to have to pay restitution and do not get off the hook. It is challenging, however, because there is no drug test for problem gambling. Evergreen Council is talking about doing a lie detector or stress test to see if a person is telling the truth if they have gambled or not. Progress is being made and Ms. Chiechi is hoping they are expanded around the state, as well as tribal court systems. The only program that utilizes the lie detector test that exists in the nation is actually in Amherst, New York. It is a tremendous program. They have had a great deal of success with folks that have gone through that program.

The Council is making progress towards those types of processes. And as Senator Conway mentioned, it is a mental health issue. Recently the DSM-5, which is the diagnosis for the mental health community, has determined problem gambling could be an addiction and it is not just this weakness that people have. Take into consideration how far the medical profession has come with alcohol and drug addiction into believing that it is not just a weakness and admitting it is a brain chemistry thing, and they have found the same thing with problem gambling. Even though the program has come a long way, it is still further behind alcohol and drug addiction. There are advocates out there that are promoting that problem gambling is an issue and the public needs to be cognizant of it and do what is right for the people that are affected. Ms. Chiechi affirmed that families are also allowed for treatment, and that family members could call. But a person cannot be committed to a treatment unless they want to go. Next month their industry is going to be doing problem gambling training for

its employees to become responsible gaming certified. And they are doing that in concert with the Evergreen Council, who would be happy to come as regularly as they are invited and present to the Commission updates on those activities.

Commissioner Prentice suggested that the Evergreen Council come periodically to update the Commission. She referred to the hearings in which she participated in a number of years ago regarding problem gambling where it only skimmed the surface. The problem is extremely serious and it destroys lives. **Ms. Chiechi** replied that the Problem Gambling Advisory Board was also offering those updates in communication with the legislative committees as well to keep them abreast of what is happening out there. **Commissioner Gray** agreed with Ms. Chiechi.

Senator Conway asked if the problem gambling mission had some national notoriety. **Ms. Chiechi** replied, absolutely. **Senator Conway** commented that the statewide organization had its meeting in Seattle recently. He asked if the Evergreen Council has the staff support to be doing the kind of background that other countries are doing to address problem gambling as far as the best practices initiative. **Ms. Chiechi** responded that the conference was a National Conference, and Seattle was the host for the National Conference. There were attendees from Australia, Canada, New Zealand, and all over the world. And, the Evergreen Council's Executive Director, Maureen Greeley, was recently elected their president of the National Council. There is a great deal of resources and information sharing, and the excitement around that conference, and people networking, and sharing those best practices so they know what is happening in other areas so that they are not reinventing the wheel. That is absolutely taking place. The Council is expanding its staff to manage that. It is a tremendous thing to see because five years ago, staff was ready to close the doors at the Council because there was not enough money. Now they are looking at buying a building to be able to operate out of and have come that far. And it goes to say too that the tribes have been a great contributor to those programs by way of their Compacts. They have given more money to the Council than has gone to the state, but now that there is a sort of shared collaboration. It really does not matter where the money goes because it is all being spent on the proper things.

Senator Conway commented that according to Ms. Chiechi, regarding the regulatory side, there is great cooperation between the tribes and the Evergreen Council's programs on the issue of problem gambling. **Ms. Chiechi** replied yes, absolutely. That is one area they can all agree on.

Closing

Commissioner Gray thanked Dolores Chiechi for her comments and mentioned they were almost out of time. Commissioners and staff covered three topics and she said she would write a summary on the strategic topic of technology. Although there was not a vote, there was an agreement that the Commissioners need to have more education on the economics and all the impacts of what the new technology might bring; to look at what other states are doing; review the legislation; talk with our partners and clients about the new technology and online gambling. She

asked that staff put together some kind of information so the Commissioners' could have some facts and these facts could then also be shared with the legislature and our legislative representatives. While working within the legislative environment, there is still the question of the definition of the expansion of gambling; this would come directly from Legislature. Commissioners would look for a better understanding of funding, and be able to understand and look at connecting our representatives with the Legislature to make sure that the Legislature understands what the Commissions' role would be, and understand what the Legislature expects from the Commission. There was a suggestion from Commissioner Prentice to assemble a one-page document that could be modeled after the brochure that Ms. Hunter has to hand out to legislators.

Commissioner Simpson commented that he was going to be in Olympia working as well during the session, and he would be pleased to assist Ms. Hunter. If there was a circumstance where she had to testify on legislation from a staff point-of-view and would like one of the Commissioners to be there to answer questions or testify from a Commissioner point-of-view, he would be happy to help. **Commissioner Gray** thought it would be really helpful, and asked if others would be willing to assist Ms. Hunter with the Legislature.

Commissioner Prentice replied she would be happy to help, but did not want to overlook the potential for help from the Attorney General's office. **Commissioner Gray** agreed they should include Assistant Attorney General Callie Castillo to provide some information on the expansion of gambling. As discussed, the third topic was on problem gaming, and what they learned was that there is a lot being done now, both in cooperation between the tribes and the house-banked card rooms. The discussion will be reflected in the Commission meeting minutes and when they are done it would be useful to have a one-page summary as Commissioner Prentice mentioned. Commissioner Gray said she would be willing to work with staff on it. Commissioner Gray also stated there were two more topics that they did not have time to cover today, but they could discuss in the future. She then asked if there were any comments about this process or anything else.

Commissioner Prentice thanked Commissioner Gray for her preparation for the meeting. She also stressed the importance of the strategic session and understanding it would bring to the Commissioners.

Commissioner Gray thanked Director Trujillo for all the preparation work for this portion of the meeting.

Chair Amos thanked Commissioner Gray and asked if there was anything else from Director Trujillo. **Director Trujillo** replied there was nothing further.

Adjourn

Chair Amos thanked the Commissioners for their good work and adjourned the meeting at 12:40 p.m.

Minutes were submitted to the Commission for approval by:
Michelle Rancour, Acting Executive Assistant

Exhibit J

Edelson PC

350 North LaSalle Street, 13th Floor, Chicago, Illinois 60654
t 312.589.6370 | f 312.589.6378 | www.edelson.com

May 12, 2016

VIA ELECTRONIC MAIL

Jessica Quiles
Washington State Gambling Commission
jessicaq@wsgc.wa.gov

Re: *Public Records Request*

Dear Ms. Quiles:

I write to request copies of the following records from the Gambling Commission pursuant to the Washington Public Records Act, RCW 42.56:

- All records related to the creation, drafting, preparation, or publication of the pamphlet attached hereto as Exhibit A.
- All records related to the creation, drafting, preparation, or publication of the slide deck attached hereto as Exhibit B (the “Slide Deck”).
- All records related to any presentation, meeting, or other event at which the Slide Deck was displayed or otherwise distributed.

Please notify me before copying if the charges will exceed \$300. If the copying charges will be less than that amount, please send the copies and invoice me at the above address. If you require payment for the copies in advance of sending me the documents, please contact me to arrange a method of prompt payment satisfactory to you. As this request is time-sensitive, please call me when the documents are ready for production so that we can discuss appropriate delivery or shipment options.

As you know, RCW 42.56.520 requires a response to this request within five business days. If you have any questions or would like any clarification regarding this request, please do not hesitate to contact me by phone at (312) 589-6379 or by email at atievsky@edelson.com.

Sincerely,

EDELSON PC



Alexander G. Tievsky

From: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov
Subject: FW: Internet Gambling Brochure - version 3
Date: June 29, 2016 at 3:34 PM
To: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



From: Trujillo, Dave (GMB)
Sent: Friday, December 27, 2013 11:39 AM
To: Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>
Subject: Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



Internet Gambling
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Subject: FW: New Social Gaming Brochure
Date: June 29, 2016 at 3:34 PM
To: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



From: Newer, Susan (GMB)
Sent: Thursday, March 06, 2014 12:58 PM
To: Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Buckley, Dan (GMB) <dan.buckley@wsgc.wa.gov>; Stewart, Donna (GMB) <donna.stewart@wsgc.wa.gov>
Cc: Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>; Herrington, Rick (GMB) <rick.herrington@wsgc.wa.gov>
Subject: New Social Gaming Brochure

Hi Jim, Attached is the finalized social gaming brochure. It has been forwarded to Dan to post on the agency website under brochures. If there is an additional place on our website you feel this should be posted, just let us know.

Donna, here's the new brochure in PDF and I will send it to you in Publisher as you requested.

I will distribute this in the next staff newsletter.

If you have any questions, please let me know.

Thank you!

Susan



on ne soc a gam ng
brochure 2-13-14.pdf

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Thank you!

Susan



From: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov
Subject: FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)
Date: June 29, 2016 at 3:33 PM
To: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



From: Newer, Susan (GMB)
Sent: Thursday, January 30, 2014 8:15 AM
To: Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>
Subject: RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

I would be happy to make these updates and format as well. I was going to email you just now about the double space formatting (I didn't want to be too picky yesterday, but decided I would this morning) ;-). Thanks Amy!

From: Hunter, Amy (GMB)
Sent: Wednesday, January 29, 2014 8:36 PM
To: Newer, Susan (GMB)
Subject: RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

This is great...thank you!

I'm hoping you'll be up for making these changes. I think that would work better than me passing your comments onto Jim & having him make them, especially w/ the switching of the columns.

Thank you again,
Amy

From: Newer, Susan (GMB)
Sent: Wednesday, January 29, 2014 4:30 PM
To: Hunter, Amy (GMB)
Subject: RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Thanks for the opportunity to look this over. My suggestions are below:

Seems the title should include "Online", i.e. Online Social Gaming.

This sentence is missing the word "the"
Because of this, there is no prize and **the** activity is not considered gambling.

The warning signs under the red flag are great. However, what does the title "Social games are not always **social**" mean? where is the second *social* defined in the brochure? Instead, perhaps:

- Some social gaming sites offer illegal gambling.
- Social games may be illegal gambling.
- Or just remove the header above the red flag.

For how this brochure folds, I would switch the red flag column with the triple 7 column. This allows the "this is not gambling" items in the triple 7 column to flow after "these activities are not

allows me this is not gambling items in the triple / column to now after these activities are not considered gambling” in the middle column. This will also make the red flag page stand out more when the flyer is first opened.

WordRake suggested the following edits:

Be sure to Read the website’s Rules or Terms of Use page to determine if at least one of the elements of gambling is missing.

This The information ~~is intended to~~ should give general guidance. You may wish to contact an attorney if you are unsure whether your game has all three elements of gambling.

Social gaming encompasses a number of several different types of games including Role Playing Games, Adventure Games, Arcade Style Games, Casual Games, and Casino Style games.

From: Hunter, Amy (GMB)
Sent: Tuesday, January 28, 2014 3:43 PM
To: Newer, Susan (GMB)
Subject: FW:Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi, Susan.

Can you please take a look at this brochure this week & let me know what you think? Jim Dibble took the lead on this w/ Dave, Mark & I giving various edits. The intended audience is the “video gaming industry” (meaning people who create games & don’t want to accidentally make a product that is gambling).

Thanks so much!
Amy

From: Hunter, Amy (GMB)
Sent: Tuesday, January 28, 2014 3:40 PM
To: Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)
Subject: FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

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Subject: FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)
Date: June 29, 2016 at 3:33 PM
To: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



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Subject: RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

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This is great...thank you!

I'm hoping you'll be up for making these changes. I think that would work better than me passing your comments onto Jim & having him make them, especially w/ the switching of the columns.

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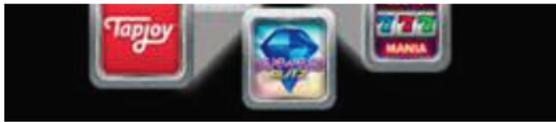
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From: Harris, Mark (GMB)
Sent: Friday, January 03, 2014 10:24 AM
To: Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>; 'Jim Dibble' <jrdibble1@msn.com>
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I had two questions/comments in the body of the document. Mark

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Date: June 29, 2016 at 3:33 PM
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Sent: Tuesday, July 22, 2014 9:35 AM
To: Herrington, Rick (GMB) <rick.herrington@wsgc.wa.gov>
Subject: FW: New Social Gaming Brochure

Here is the brochure that was developed.... What the heck else am I supposed to be working on????

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Sent: Thursday, March 06, 2014 12:58 PM
To: Dibble, Jim (GMB); Buckley, Dan (GMB); Stewart, Donna (GMB)
Cc: Hunter, Amy (GMB); Herrington, Rick (GMB)
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I will distribute this in the next staff newsletter.

If you have any questions, please let me know.

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on ne soc a gam ng
brochure 2-13-14.pdf

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Sent from my Verizon Wireless 4G LTE Smartphone

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Subject: FW: please post this new brochure as
Date: June 29, 2016 at 3:31 PM
To: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



From: Buckley, Dan (GMB)
Sent: Thursday, March 06, 2014 1:20 PM
To: Newer, Susan (GMB) <susan.newer@wsgc.wa.gov>
Subject: RE: please post this new brochure as

OK, it has been posted.

From: Newer, Susan (GMB)
Sent: Thursday, March 06, 2014 11:49 AM
To: Buckley, Dan (GMB)
Subject: please post this new brochure as

Online Social Gaming on the agency website. thank you, Susan

From: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov
Subject: FW: brochure..
Date: June 29, 2016 at 3:49 PM
To: Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



-----Original Message-----

From: Newer, Susan (GMB)
Sent: Tuesday, May 12, 2015 9:15 AM
To: Stewart, Donna (GMB) <donna.stewart@wsgc.wa.gov>
Subject: brochure..

Hi Donna,

I didn't see this brochure in the 3rd floor lobby.
<http://www.wsgc.wa.gov/publications/brochures/5-027-online-social-gaming.pdf>

Do people still come by and take brochures from the lobby? If so, we may want to have a few available there. (Or perhaps it's there and I just didn't see it) ;-)

Thanks! Susan