Munger, Tolles & Olson

October 26, 2023

VIA E-MAIL AND U.S. MAIL

Director Yolanda Morrow
Manager Andreia McMillen
Bureau of Gambling Control
California Department of Justice
P.O. Box 168024
Sacramento, CA 95816-8024

Re: *Draft Rotation Concept Language, September 11, 2023*

Dear Director Morrow and Ms. McMillen:

Our firm represents the California Gaming Association ("CGA"), an industry trade group whose members comprise the majority of the active cardroom tables in California. The CGA's members provide tens of thousands of living wage jobs to working Californians and hundreds of millions of dollars of tax revenue to host communities and the state.

Communities for California Cardrooms ("CCC") and the California Cardroom Alliance ("CCA") also join in this letter. The CCC is a nonprofit organization that provides a united voice for small businesses; advances and protects local jobs and the economy that is provided by cardrooms; and educates the public on the benefits and history of cardrooms in their communities. The CCA is a nonprofit organization that represents cardrooms from around the state while partnering with local communities.

On behalf of the CGA, CCC, and CCA, we write to oppose the Draft Rotation Concept Language published September 11, 2023 ("Rotation Proposal" or "Proposal"). The Proposal has numerous elements that conflict with existing law and exceed any requirement in court decisions or statutes. The Proposal also conflicts with the hundreds of game approvals issued by the Department of Justice ("Department") since the Gambling Control Act (the "GCA") was adopted. The Proposal therefore lacks the (1) necessity, (2) authority, (3) clarity, and (4) consistency required for adoption under the Administrative Procedure Act. (Gov't Code §11349.1.)

In addition, the Department has not identified any rationale for the proposed rules. No Statement of Reasons has been issued. As a result, we are unable to compare the regulatory proposal with any published objectives, and are unable to comment on any unstated arguments upon which the Department may erroneously rely. Government Code section 11346.2 requires a regulatory agency that intends to promulgate new regulations to explain the "specific purpose" for each new or modified rule, including "the problem the agency intends to address." (Gov't Code § 11346.2(b)(1).) The agency must also provide descriptions of reasonable alternatives and explain why those alternatives have been rejected. The Department has discussed modifying its standards for cardroom game approvals since 2014. In that process, the industry has provided detailed written and oral comments explaining the legality of the games currently licensed by the Department under Penal Code section 330 and surrounding caselaw. The Department has refused to provide any contrary law or otherwise explain its concerns regarding the licenses it has issued over the last 20 years. If the Department intends to engage in a meaningful discussion regarding the new Rotation Proposal, the Department must provide actual reasoning and analysis to support the proposed changes in the manner in which the Department has approved games since the adoption of the GCA.

I. The Proposal Fails to Satisfy the Requirements of the Administrative Procedures Act

Penal Code § 330 prohibits "banking" games. The term "banking game" has "a fixed and accepted meaning" under California law: "the 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." (*Sullivan v. Fox* (1987) 189 Cal.App.3d 673, 678 ("*Sullivan*"), *Hotel Employees and Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 606-07) ("*Hotel Employees*").) In a banking game, there is "a fund against which everybody has a right to bet, the bank being responsible for the payment

of all the funds, taking all that is won, and paying out all that is lost. (*People v. Carroll* (1889) 80 Cal. 153, 157-58.)[1]

The player-dealer games approved by the Department are not banked games. In player-dealer games, there is no fund that is the only permitted source of payouts. At any time, other players can take the player-dealer position and no player can prevent another player from accepting the position when offered. In addition, there is no fund that takes on all comers, since the player-dealer wager is a fixed and limited amount, chosen by the player-dealer, which may not be enough to cover all wagers on the table.

Four Court of Appeal decisions have ruled on player-dealer games where each player has the opportunity to take the player-dealer position and where the player-dealer wager is fixed. None found that those rotation rules created a banked game. (*City of Bell Gardens v. City of Los Angeles* (1991) 231 Cal.App.3d 1563, 1568-69; *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 250; *Sullivan*, *supra*, 189 Cal.App.3d at pp. 676 fn. 2, 678; *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, 1294 fn. 2.) The courts in *Huntington Park* and *Bell Gardens* held that the player-dealer games were not banked games.

By contrast, the California Supreme Court struck down a tribal "player's pool" system because the pooled fund was "the only permitted source of payouts," and it did not make a fixed and limited wager on each hand. (*Hotel Employees*, *supra,* 21 Cal.4th at pp. 606-07.) Because there was no opportunity for anyone but the pool to pay and collect bets, "the *pool* itself function[ed] as a bank, collecting from all losers and paying all winners." (*Id.* at p. 608 fn. 4.)

Following these decisions, in 2000, the Legislature adopted Penal Code section 330.11, which creates a safe harbor for player-dealer games with continuous and systematic rotation of the player-dealer position. Because section 330.11 is framed as a safe harbor ("'banked game' does not include …"), even if a game's rules do not fall within section 330.11, a game may nonetheless not violate section 330. Whether a game is "banked" under section 330 depends upon the legal definition of banking from the decided cases. Accordingly, regulations cannot prohibit games simply because they do not comply with section 330.11.

Notably, along with section 330.11, the Legislature also enacted Business and Professions Code section 19980, which recognizes and provides for the licensing of Third-Party Proposition Player Services ("TPPPS"). The Legislature determined that having those services occupy the player-dealer position did not create a banked game. The Department supported this legislation and has continuously licensed TPPPS companies and approved their contracts with

[1] Moreover, as *Sullivan* explained, the prohibition on "banking" "pertains to situations where the house is actually involved in play, its status as the ultimate source and repository of funds....This is covered by section 330's prohibition against banking games." (*Supra*, 189 Cal.App.3d at p. 679.)

cardrooms. Further, both the Office of Legislative Counsel and the Office of the Attorney General found Penal Code section 330.11 to be constitutional as amended in Assembly Bill No. 54.

It is well-settled that the *opportunity* for any player to take the player-dealer position is what distinguishes a permissible player-dealer game from an illegal banked game under section 330—not the number of players that accept that position within a certain time frame.[2] *Bell Gardens*, for example, approved a game that gave "each player … the opportunity to act as dealer for two consecutive rounds." (*Supra,* 231 Cal.App.3d at p. 1566.) Business and Professions Code section 19805(ag) similarly defines a player-dealer game as one where each seated participant has the "opportunity" to be the player-dealer. Conversely, as noted above, the California Supreme Court struck down a tribal player pool system because the pool was "the *only permitted* source of payouts." (*Hotel Employees*, *supra*, 21 Cal.4th at 606-07, italics added.) That interpretation of section 330 comports with the California Constitution as interpreted by the Supreme Court and reflects the Department's longstanding position on Penal Code sections 330 and 330.11, upon which the industry has relied for decades. By requiring the player-dealer position to rotate at a fixed interval, the Proposal suggests a new interpretation of the law that conflicts with this longstanding authority.

Moreover, the mere fact that section 330.11 exempts games that feature "continuous[]" rotation of the player-dealer position does not mean that the position must rotate at any fixed interval to qualify for the section 330.11 safe harbor *or* to otherwise comply with section 330. Indeed, the Legislature specifically rejected a statutory mandate that rotation must occur after a specified number of hands. The legislative history of section 330.11 confirms that earlier versions of the bill did mandate player-dealer rotation at a fixed point. (*See* Assem. Bill No. 1416, as amended March 23, 2000; Assem. Bill No. 1416, as amended July 5, 2000.) But those versions were rejected in favor of the current version of the statute. (*Ibid*.) The Proposal requires the Department to do what the Supreme Court has expressly forbidden: interpret a statute by "'insert[ing words that] ha[ve] been omitted [and] omit[ting words that] ha[ve] been inserted.'" (*Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.)

After those foundational court decisions and the subsequent enactment of Penal Code section 330.11, the Department continued to approve player-dealer games for play in licensed California gaming establishments where the player-dealer position was offered after every two hands. Over the last 25 years, hundreds of such player-dealer games have been approved and are currently offered for play across the State without complaint from or harm to the public. The

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[2] *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, 1409, disapproved of player-dealer game rules prospectively in a declaratory relief action only if the possibility existed that a single person could keep the position "for a long time."

Department's consistent interpretation for the last two decades has engendered industry-wide reliance on that interpretation, creating a strong presumption against this Proposal.

> While the ultimate interpretation of a statute is an exercise of judicial power and it is the responsibility of the courts to declare its true meaning even if it requires rejection of an earlier administrative interpretation …the contemporaneous construction of a statute by an administrative agency charged with its administration and interpretation, while not necessarily controlling, is entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized …This is true particularly where there has been continued public reliance upon and acquiescence in such interpretations.

(City of Santa Ana v. City of Garden Grove (1979) 100 Cal.App.3d 521, 530.)[3] There are no new court decisions or statutes and no other basis to now adopt regulations contradicting the Department's legal interpretation for the last 25 years. Consequently, the Proposal lacks necessity, authority, and consistency.

The Department's position should mirror the game approvals, letters, and guidance provided by the Department at the time that section 330.11 was enacted and the subsequent years of its initial implementation. That is the most accurate legal analysis of what the Legislature intended. If this administration has a different opinion of what the statutes require, then the Department is obligated to share its legal reasoning with the public, as set forth in California Government Code sections 1134.2 and 11346.2, which require the Department to articulate those legal reasons. Since 2016, when the Department first issued new informal guidelines, we have never been provided any legal basis or authority for changing the original interpretation of the GCA or Penal Code sections 330 and 330.11.

II. Specific Comments on Section 2077(a)

Section 2077(a)(1): This section requires that the player-dealer position be offered before every hand, rather than after every two hands as has been the approved practice for the last 40 years. The proposed rule directly conflicts with controlling precedent involving player-dealer games. The rule also does nothing to further any policy aim but does have negative impacts on gameplay.

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[3] *Compare Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13 [additional deference due if an "agency 'has consistently maintained the interpretation in question, especially if it is long-standing'"] with *Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1105 fn. 7 [minimal deference due when agency adopts a new statutory interpretation that "flatly contradicts its original interpretation"].

(1) *Offering the player-dealer position after two hands is consistent with numerous court decisions and hundreds of the Department's own game approvals over the last 25 years.* California courts have repeatedly considered games where the practice was to offer the opportunity to be the player-dealer to each active player in clockwise order every two hands. For example, in *Bell Gardens*, *supra*, 231 Cal.App.3d at p. 1566, the court noted that the player-dealer position "rotates systematically among the players and each player has the opportunity to act as dealer for two consecutive rounds." The court found that player-dealer games operated under these rules were not banked games.

The Department cannot impose a rule that the offer must occur after every hand when a court has already found that every two hands suffices. There is no necessity, authority or consistency with court decisions for any requirement that the player-dealer position be offered after *every* hand.

(2) *Offering the player-dealer position after every hand is impractical.* The proposed rule would slow down the game significantly. It may also disincentivize players from accepting the player-dealer position, since holding that position for two hands in a row enables players to even out their odds.

(3) *Alternative:* There is no legal authority for requiring the offer to be made after every hand. Nor is there authority for the Department to refuse to approve game rules that provide for less frequent offers, consistent with *Bell Gardens* and the Department's longstanding practice. The Department should continue to approve game rules that require that the player-dealer position be offered after every two hands.

Section 2077(a)(3): This section requires that the player-dealer position be offered before every hand, verbally and physically, to each of the seated players.

(1) *Requiring a verbal offer after every single hand is unnecessary and inconsistent with precedent.* For the same reasons provided for subsection (1), offering the player-dealer position after every hand furthers no sound policy and conflicts with longstanding industry practice and controlling legal authority.

(2) *The proposed rule is also vague and unworkable.* The Proposal is unclear as to whether the verbal offer of the player-dealer position needs to be made to each player individually, or whether the offer simply needs to be announced to the whole table at the same time. The rule is unnecessary either way. But it would be particularly nonsensical to adopt a rule requiring the house dealer to ask each player *in turn* if they wish to be the player-dealer. Asking the same question up to eight times after every hand would serve no purpose other than to annoy players and greatly slow down the pace of the game.

Visualize this practice for a moment: If a typical game has 30 hands per hour and eight seated players, the dealer will be asking players the same question *240 times* per hour. Of course, players will already know that they can take the player-dealer position due to the posted written notice, required under subsection (2). An additional 240 hourly reminders will be both superfluous and tiresome for players. The proposed rule is of no more use than a rule in poker, requiring the dealer to instruct players individually on each turn that they can raise, call or fold.

(3) *Alternative.* While there is no legal authority for requiring the offer to be made in a specified way, a game rule could instead provide that the dealer must announce the offer of the player-dealer position to all players at the same time, while physically offering the dealer button with an extended arm that crosses in front of every seated player's position. That, in addition to the written notice at each table, is sufficient to advise players of the opportunity to take the position.

Alternative Rule Language:

> At least once every two or more hands, the dealer shall offer the player-dealer position to all active player positions at the table in a clockwise [or counter-clockwise if provided in the approved game rules] manner starting from the player position which last held the player-dealer position.
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> The house dealer shall verbally announce at the table the offer of the player-dealer position and make a distinct, physical motion with their arm extended holding the dealer button that crosses in front of each seated player's position. The offer will be visible to at least one surveillance camera.

Section 2077(a)(4) This section requires that three players occupy the player-dealer position in the course of every 40 minutes. There are several problems with this section.

(1) *Requiring rotation of the player-dealer position to at least three players lacks necessity, consistency, and authority.* We infer that one goal of this rule is to prevent a single player from occupying the player-dealer position indefinitely. But if that is the goal, then rotation between *two* players is sufficient. A player cannot continuously occupy the player-dealer position so long as any intervening player accepts that position during the course of play. No statute or court decision has ever indicated that rotation between two players constitutes a banked game. The Proposal's new three-player requirement defies common sense, as well as precedent. For example, in a game with three or more persons, it is not unusual for the player-dealer position to rotate between a TPPPS and just one other player. The Proposal would prohibit this behavior—even if the TPPPS and other player alternated repeatedly over the course of 40 minutes, and there were only three players total at the table.

(2) *The proposed rule, read with subsection (a)(5), lacks clarity.* Subsection (5) states that if there is only one player at the table in addition to the TPPPS, then only one player needs to take the position every 40 minutes. But there is no explanation of how to measure how many players are present over a 40-minute period. Players frequently leave the table, either to cash out, play a different game, or even just to find a luckier seat. Often, players leave temporarily—to go to the bathroom, talk to someone, eat a meal, go to a vending machine or convenience counter, take a phone call, or take a cigarette break. Some players hold their seat and leave their chips on the table. Others leave the table altogether, then return just a few minutes later. During any 40-minute period, there may be times when there as many as eight players at the table, and times when there is only the TPPPS and one other player. The rule does not explain how to count the number of players during those 40 minutes: Is it the number of players present at minute one or minute 40? Does the clock start over when a third person starts playing? If that third person plays for only five minutes of the 40, does the position still have to rotate to three people within 40 minutes?

(3) *The Proposal also lacks clarity, necessity and authority because it fails to account for "dead spreads" when no one is wagering.* Dead spreads occur when a table is open but there are no active players. Some cardrooms will keep the table open with the dealer present with no activity; other cardrooms will deal out "dead" hands with no wagers in order to interest new players in sitting down.

The Proposal does not state if dead-spread time counts toward the 40-minute limit. For example, does the clock on the 40 minutes run only when there are active wagers?

There is no authority for requiring rotation during any fixed period, let alone a period that includes a dead spread. There is no authority for making the cardroom close a table without active wagers and insist on a new person taking the player-dealer position when the game resumes, which could be hours or even a day later.

(4) *For the play of card games, "a long time" is clearly longer than the 40 minutes proposed under the rule*. In 2016, the Department determined that, for card games, "a long time" was at least an hour. The CGA was told at the time that a standard time on each hour is easier for the dealers and staff to track and apply, and for the Department to monitor.

In ordinary usage, determining what constitutes a "long time" depends on context. A friendship that lasts a "long time" can refer to decades of time, while a new swimmer who holds her breath for a "long time" can refer to mere seconds. For card games, few people would travel to a casino, park and take a seat to play for only 40 minutes. The vast majority of patrons visit a cardroom or casino with the intention of remaining for several hours and going to several different tables or games for extended periods of time. It is not uncommon to stay for several hours. Even home card games (poker, bridge, or hearts, for instance) are expected to last for several hours. The concept of a "long time" must be considered in the context of gaming.

Notably, prior to the passage of Proposition 1A, tribal casinos offered player-dealer games rather than house-banked games. Tribal casinos allowed one player to occupy the player-dealer position for an entire dealing shoe of 6-8 decks, which (depending on the number of players at the table) could result in 50 or more hands played with the same person occupying the player-dealer position—effectively more than an hour at a time. The tribes took the position that their practices were lawful under California law.

Section 2077(a)(5): This section would stop a game indefinitely until another person accepts the player-dealer position, even if that occurs three days later.

(1) *An indefinite stop in the game is not required by any law, and imposing such a requirement would be highly unreasonable.* It is off-putting to a new player to be told they must take the player-dealer position on their very first hand when they have just taken a seat because, many hours earlier, the game broke with entirely different people present. To a new player, risking a wager on a single hand is very different from having to wager against all the other players at once. Often, a new player will not want to take the player-dealer position until they are comfortable playing. It is inconsistent with the role of a regulator for the State to force players to make particular wagers.

Furthermore, in this scenario, the game break would likely be longer than the game itself. There is no reason why a game-break has to be of an indefinite duration and cannot resume after some specified intervening period of time. Any short game break would interrupt the ability of a player-dealer to continuously occupy the player-dealer position, as the Department recognized in 2016 when it proposed a two-minute break.

The Department must explain why it has rejected the practices set forth in the existing game approvals, as well as the less restrictive proposals that it presented in 2016.

III. Specific Comments on Section 2077(b)

These sections prohibit back-line wagering in the player-dealer position, direct bets between players, and players combining funds for wagers. Each restriction is invalid, contrary to statutory aims, and contrary to the Act and decided cases. None of these restrictions is authorized, necessary, or consistent with the law.

Backline Wagering. This proposed rule directly convenes statutory and judicial authority. The GCA expressly authorizes backline betting, and the courts have also recognized it. Critically, no law limits backline wagers to seated players. Under Business and Professions Code section 19843, other players can place wagers "with a single seated player upon whose hand the wagers are placed." In the decisions upholding player-dealer games, the game rules included the possibility of wagers made by the players behind a seated player. (*See Huntington Park*, *supra*, 206 Cal.App.3d at p. 245 ["More than one participant may wager on a hand."];

Sullivan, *supra*, 189 Cal.App.3d at p. 677, n.2.) *There is no exception or exclusion for the player-dealer position,* and the Department cannot create one. (*In re Sabrina H*. (2007) 149 Cal.App.4th 1403, 1412 ["It is … against all settled rules of statutory construction that courts should write into a statute by implication express requirements which the Legislature itself has not seen fit to place in the statute."], quotation marks omitted.) Section 330 must be construed in harmony with section 19843, which expressly provides for backline wagering without excepting the player-dealer position. (*See Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 ["statutes or statutory sections relating to the same subject must be harmonized"].)

In 2000, when section 330.11 was adopted expressly to codify existing practice, there was no provision eliminating or curtailing back line wagers in the player-dealer position. The findings in section one of Assembly Bill No. 1416 and the corresponding Assembly Floor Analysis (Aug. 28, 2000) each described the player-dealer position as one where: "players" can wager against other players. With backline wagering, "players"—plural—can wager on the player-dealer hand.

Similarly, section 330.11 describes a "player-dealer position" as a "position" that "rotate[s] amongst each of the participants." The player-dealer position rotates amongst the seated players even when backline wagers are made on the seated player-dealer's hand. Just as in every other "position" at the table, other players may wager on the seated player-dealer's hand.

Prohibiting backline wagers (and, as discussed below, shared wagers) is at cross purposes with the ultimate statutory objective of allowing controlled gambling while prohibiting banking games. A "bank" is "a fund against which everybody has the right to bet, the bank being responsible for the payment of all the funds, taking all that is won, and paying out all that is lost." (*People v. Carroll*, *supra*, 80 Cal. at p. 129.) The word "all" appears three times in the court's definition. Thus, to be considered a bank, one person or entity must be responsible for the payment of winning against *all* funds wagered. But when more than one patron wagers on the player-dealer position, no one person is taking on all comers, paying all winners, and collecting from all losers, and none of the players is "taking on all comers, paying all winners, and collecting from all losers." (*Sullivan*, *supra*, 189 Cal.App.3d at p. 678.) As one of the tribal letters to the Department, dated October 3, 2012, concedes (at p. 3), when a player wagers behind a seated player-dealer, that player obtains only "the differences, taking his share of the winnings and paying his share of the losses." The Department's proposed regulations should include these betting practices as options for ensuring *compliance* with the prohibition on banking games, rather than attempt to prohibit authorized conduct that furthers the regulation's objectives.

Pooling Funds. The proposed rule would prohibit players sharing funds for any wager in a player or player-dealer position, although—like backline betting—this practice is protected by section 19843. That provision makes clear that any player may wager with a seated player. (See Bus. & Prof. Code, § 19843.) Yet, the proposed rule would make it effectively impossible to do so by prohibiting anyone from combining funds with a seated player. No legal authority exists for prohibiting pooling funds in a player or player-dealer position.

Recreational players often combine funds for luck, camaraderie or to share risk. Doing so allows for more action, which is appreciated by other players. And, as explained above, pooling wagers on the player-dealer position furthers the Legislature's express aim of eliminating banking.

Direct Bets. Direct wagers or "buy bets" also mitigate against a person taking on all comers and paying all winners. In a buy bet, two players wager against each other, without wagering against all the other players at the same time. This contrasts with the legal definition of banking as "taking on all comers."

For example, some players may not wager more than a nominal amount when not in the player-dealer position. But the player taking the player-dealer position may want more action. They may believe that the dealer hand is lucky or that a particular position is not, so they will ask another player to wager a larger amount against the player-dealer hand. Because the player-dealer hand has a small statistical edge, as an inducement, the player-dealer may give the other player a small amount to even the odds and make a larger bet. This is referred to as "buying" the player-position bet. Similarly, a player receiving an inducement to wager is not "taking on all comers, paying all winners or collecting from all losers." They are wagering only against the player-dealer and not against any other player positions.

IV. Specific Comments on Section 2077(c)

The Proposal provides that only one TPPPS can offer services at a table in a player-dealer game. There is no legal authority for such a requirement.

Indeed, the Commission's regulations are written so that representatives of more than one TPPPS may play at a single table: TPPPS contracts are required to provide only "[t]hat no more than one owner, supervisor, or player *from each provider* of proposition player service shall simultaneously play at a table." (Cal. Code Regs., tit. 4, § 12200.7(b)(5), italics added.) Similarly, "a gambling establishment may contract with more than one [third party service] at the same time." (Cal. Code Regs., tit. 4, § 12200.7(g).)

Having two TPPPS would facilitate rotation. For essentially the reasons discussed in Section III above, the Proposal's prohibition of this practice would hinder, rather than advance, the Legislature's goal of eliminating banking games.

V. The Proposal Would Cause Billions of Dollars of Damage to the California Economy

Government Code section 11346.3 mandates that the Department summarize the economic and fiscal impact on local and state governments and perform an analysis if the impact is $50 million or more. CGA's October 2019 economic study pegs its contribution to state and local governments at $5.6 billion and estimates that a substantial share of lawful gaming activity at cardrooms will be eliminated by the proposed "concept language." The regulation will be lethal for the majority of California cardrooms and extremely detrimental to the fiscal integrity of dozens of California communities and the livelihoods of tens of thousands of working families that the cardroom industry supports.

CONCLUSION

The Rotation Proposal is not a permissible or advisable path forward. It is contrary to the Gambling Control Act and the line of Court of Appeal decisions upholding player-dealer games as they have long been played. The Proposal is also inconsistent with the GCA and two decades of game approvals. If enacted, it would represent a complete divergence from over 20 years of statutory implementation and pose an existential threat to the cardroom industry, resulting in needless economic devastation for cardroom employees and communities across the State. Accordingly, the Department should desist from the Rotation Proposal.

Very truly yours,

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